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DEPARTMENT OF
WATER RESOURCES

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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 LLC

**JUNIPER STATION'S
RESPONSE BRIEF**

COMES NOW Juniper Station Farm, LLC (“Juniper Station”) by and through its attorneys of record, McHugh Bromley, PLLC, and hereby responds to the opening briefs filed on June 26, 2026, with the Idaho Department of Water Resources (“Department” or “IDWR”), by Bowns Creek Properties, LLC (“Bowns Creek”), and Mayfield Ranch Estates, LLC (“Mayfield Ranch”), as joined by Mayfield Townsite, LLC (collectively these entities will be referred to as the “Permit Holders”): “Response briefs, if any are prepared shall be filed on or before July 17, 2026.” *Request for Briefs* at 2 (May 12, 2026) (underline in original). The *Declaration of Chris M. Bromley* is filed in support and contemporaneously herewith.¹

¹ Juniper Station reserves its rights to challenge the Hearing Officer’s interlocutory *Order Denying Motion to Strike* (July 9, 2026). By citing herein to the Opening Brief filed by Mayfield Ranch Estates, LLC, Juniper Station does not waive the arguments made in its *Motion to Strike*.

I. RESPONSE

A. Idaho Code § 42-103 Expressly Applies All Of Title 42 To The Permit Holders; Therefore, Chapter 3, Title 42, Idaho Code Applies In This Proceeding

Before responding to the arguments of the Permit Holders as to their specific (mis)interpretation of I.C. § 42-301, it is important to stress the overall, ongoing application of Chapter 3, Title 42, Idaho Code, to these proceedings.² To be clear: “I.C. § 42-103 specifically requires an individual wishing to appropriate water to abide by the statutory procedures laid out in title 42 of the Idaho Code before obtaining a water right . . .” *Idaho Power Co. v. Idaho Dept. of Water Res.*, 151 Idaho 266, 274, 255 P.3d 1152, 1160 (2011) (emphasis added); I.C. § 42-103 (“The right to the use of the unappropriated waters of rivers, streams, lakes, springs, and of subterranean waters or other sources within this state shall hereafter be acquired only by appropriation under the application, permit and license procedure as provided for in this title, unless hereinafter in this title excepted.”) (emphasis added).

Here, as the holders of permits, the Permit Holders possess inchoate rights, which could ripen into vested water rights if the requirements of Title 42, Idaho Code are satisfied: “In considering at which stage in the licensing process an applicant obtains a vested right in water, this Court has held that an ‘applicant gains but an inchoate right upon filing of the application which may ripen into a vested interest following proper statutory adherence.’ *In re Hidden Springs Trout Ranch, Inc.*, 102 Idaho 623, 625, 636 P.2d 745, 747 (1981) (emphasis added).” *Idaho Power* at 274, 255 P.3d at 1160 (emphasis added). As explained by the Court: “The progression from the constitutional method of appropriation – which focused purely on the

² See e.g. *Mayfield Ranch Opening Br.* at 9, fn. 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.” There are no “hidden” provisions in Idaho law because “ignorance of the law is not a defense.” *Morley v. RS Unlimited, Inc.*, 173 Idaho 14, 19, 538 P.3d 383, 388 (2023).

actions of the appropriator – to the statutory method of appropriation – which focuses on compliance with the statute – indicates that the Legislature intended that all procedures under the statute be completed before an applicant obtains a vested water right.” *Id.* at 275, 255 P.3d at 1161; *see also Hardy v. Higginson*, 123 Idaho 485, 492, 849 P.2d 946, 953 (1993) (“Such [inchoate] right is merely a contingent right, which may ripen into a complete appropriation, or may be defeated by a failure of the holder to meet the statutory requirements.”) (emphasis added). Therefore, as explained by the Court, I.C. § 42-103 applies all provisions of Title 42 to these proceedings, including I.C. § 42-301.

B. Idaho Code § 42-301 Establishes A Three-Part Test Towards Beneficial Use: (i) Commencement; (ii) Progress; And (iii) Completion

In its Opening Brief, Juniper Station explained that, in order for a permit to not be susceptible to cancelation by either a junior permit holder or the Director, there are three, sequential and time sensitive requirements that must be demonstrated to show diligence in beneficial use: (1) commencement of work or the filing of a bond; (2) progress shown through construction of one-fifth (1/5) of the work within one half (1/2) of the time allowed for completion; and (3) completion of work within the time specified on the permit. *Juniper Station Opening Br.* at 10-13; I.C. § 42-301. The Permit Holders, conversely, morph the first and second steps together, wrongly asserting that the statute simply requires two things: “The first requirement relates to the ‘commencing’ of work, filing of a bond and/or the completion of a portion (20%) of the work, while the second requirement relates to the overall/entire ‘completion’ of work.” *Bowns Creek Opening Br.* at 2-3; *see also Mayfield Ranch Opening Br.* at 5. The establishment of two steps, rather than three, is due to the Permit Holders erroneous belief that because the word “shall” is used twice, there are merely two steps instead of three. *Id.* In so doing, the Permit Holders fail to reconcile how their reading of I.C. § 42-301 is consistent

with the prior appropriation doctrine's requirement of beneficial use and prohibitions against hoarding, speculation, and locking up of the State's water resources.

As explained in Juniper Station's Opening Brief, the Legislature's use of commas to separate the three requirements is used for distributive purposes: "Here, the qualifying clause 'for the purpose of distribution or receipt' is separated from its immediate antecedent, 'concealment,' by a comma. This separation is intended to apply the qualifying clause to all antecedents. . . . Where a sentence contains several antecedents and several consequents they are to be read distributively." *Ada Cnty. Prosecuting Attorney v. 2007 Legendary Motorcycle*, 154 Idaho 351, 355-56, 298 P.3d 245, 248-49 (2013) (emphasis added). Thus, the commas establish the three, sequential steps (bold and underline), with the consequent of cancelation and voiding of the permit, either by the Director or a junior permit holder (underline):

If the holder of a permit to appropriate the public waters shall fail to comply with the requirements of his permit as to **[1]** the commencing of work **or** the filing of bond thereunder, **or [2]** 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 [3]** 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 (emphasis added).

The plain reading of the statute, with its three steps to establish commencement, progress, and completion, through a recognized timeline, is supported by and consistent with the prior decisions of the Court, which is fully consistent with the prior appropriation doctrine's emphasis on beneficial use and prohibitions against speculation, hoarding, and the locking up of the State's water resources: "Any concern which may exist about tying up the water . . . is adequately

satisfied by . . . timely commencement, progress and completion of works. I.C. §§ 42-204 and 42-301.” *Shokal v. Dunn*, 109 Idaho 330, 336, 707 P.2d 441, 447 (1985) (emphasis added).

C. As To The First Step, No Party Is Questioning The Director’s Decision Not To Require A Bond; However, The Director Is Not Foreclosed From Exercising This Discretion

As to the first step, the Permit Holders were required to commence work, with I.C. § 42-301 vesting the Director with the discretion to require either the “filing of a bond” or the performance of “work.” Here, the Director chose the latter, with the Permits each requiring “project construction . . . within one year form the date of permit issuance” *Juniper Station Opening Br.* at 12. No party to these proceedings is arguing that a bond is now required, with the time having passed for the projects to have commenced and the ability to challenge the Director’s discretionary decision to require work instead of imposing a bond.

It must, however, be explained that while the Permit Holders argue that the 1967 amendments to I.C. § 42-204 removed the Director’s ability to impose a bond for permits that post-date 1967, the Director clearly maintains the authority to put the burden on the holder of a permit, either through a bond or work, so as to prevent the tying up of the State’s water resources to the detriment of others:

I.C. § 42-203A requires the Director to consider as one of several factors the financial resources of the applicant when deciding whether or not to issue a permit.

. . . .

The ultimate question under the financial resources requirement of I.C. § 42-203A is this: who should bear the risk of failure.

. . . .

The financial resources requirement, added in 1935, was clearly intended to prevent the tying up of our water resources by persons unable to complete a project because of financial limitations. The financial requirement provision was added at a time when unscrupulous promoters were obtaining permits and lulling unsuspecting

investors into purchasing worthless securities on worthless projects. See Eighth Biennial Report of the Department of Reclamation, State of Idaho, 1933-1934, R.W. Faris, Commissioner of Reclamation, pp. 28-29. The legislature has provided Water Resources with the authority to weed out the financially insufficient applications. I.C. § 42-203A. We believe a showing by the applicant that it is “reasonably probable” that financing can be secured to complete the project within five years serves the purpose of screening out undeserving projects without being destructive of growth and development in the state. Any concern which may exist about tying up the water to the prejudice of a potential junior applicant is adequately satisfied by other statutory provisions requiring timely commencement, progress and completion of works. I.C. §§ 42-204 and 42-301.

Shokal at 335-36, 707 P.3d at 446-47 (emphasis added).

In addition to the Court’s 1986 explanation of the ongoing interplay between Chapter 2 and Chapter 3, Title 42, Idaho Code – and fatal to the Permit Holders’ argument that the bonding authority (as well as others) does not apply to post-1967 permits – is the fact that when I.C. § 42-204 was amended in 1967 to remove the requirement of a “bond,” it similarly removed the requirements that the application was not “made for delay or speculative purposes, that the applicant has sufficient financial resources with which to complete the work involved therein” Idaho Sess. Laws, ch. 374, sec. 3, p. 1087-88 (1967). Under the Permit Holders’ logic, the Legislature’s decision to remove this language from I.C. § 42-204 would mean the Director was then precluded from assessing these criteria as to the issuance of post-1967 permits. *Bowns Creek Opening Br.* at 8-9 (“Thus, post-1967, these requirements are no longer required permit conditions and thus rendering the references to these permit conditions in I.C. § 42-301 as obsolete and superseded with respect to any permits issued after 1967.”). Not so. In 1967, the Legislature did not take the occasion to remove the assessment of those criteria from I.C. § 42-203, Idaho Sess. Laws, ch. 374, sec. 3, p. 1086 (1967), nor did the Legislature otherwise amend or repeal I.C. § 42-301. Thus, the Director continues to have the authority to evaluate these criteria moving forward, as well as having the discretion to require commencement of work or

the posting of a bond. *Idaho Power* at 274, 255 P.3d at 1160 (“I.C. § 42-103 specifically requires an individual wishing to appropriate water to abide by the statutory procedures laid out in title 42 of the Idaho Code before obtaining a water right”) (emphasis added). Even assuming *arguendo* that I.C. § 42-301 had never been used before, the fact that the statute exists would still allow the Director to utilize it. *South Valley Ground Water Dist. v. Idaho Dept. of Water Res.*, 173 Idaho 762, 774, 548 P.3d 734, 746 (2023) (discussing that even though “the Director had not used section 42-237a.g. before . . . [and] while the use of the statute was ‘unprecedented in this State’s history,’ section 42-237a.g. is ‘still a tool for the Director to carry out his duties’”) (emphasis added). The Director’s use of I.C. § 42-301 will be further discussed in Section 6, *infra*.

D. As To the Second Step, Commencement Of Work Is Not The Same As Diligent Progress Through Performance Of One-Fifth Of the Work Within One-Half Of The Time

The argument that commencement and progress are one in the same is nonsensical.³ A project could be commenced by turning dirt over with a shovel, or the posting of a bond, whereas progress requires forward momentum in pursuit of completion.⁴ Indeed, and consistent with the three steps in I.C. § 42-301, the Permit Holders have the same condition in their permits, establishing the sequence of starting the project, moving forward, and then bringing the project to an end: “Project construction shall **[1] commence** within one year from the date of permit issuance and shall **[2] proceed diligently to [3] completion**” Emphasis added. The requirement to complete one-fifth (20 percent) of the work in one-half of the time (2.5 years)

³ “**Commence**” is defined as “to begin; start.” <https://www.dictionary.com/browse/commence> (last visited July 14, 2026). “**Progress**” is defined as “a movement toward a goal or to a further or higher stage.” <https://www.dictionary.com/browse/progress> (last visited July 14, 2026).

⁴ “**Complete**” is defined as “finished; ended; concluded.” <https://www.dictionary.com/browse/complete> (last visited July 14, 2026).

was the Legislature’s way of establishing an objective method in which to assess progress.

Moving a water project forward is fully consistent with the plain language of I.C. § 42-301 and the “policy of the law of this State is to secure the maximum use and benefit, and least wasteful use, of its water resources.” *Poole v. Olaveson*, 82 Idaho 496, 502, 356 P.2d 61, 65 (1960).

E. As To the Third Step, The Permit Holders Cannot Indefinitely Forestall Completion

The Permit Holders argue they may indefinitely forestall completion of their projects through the filing of extensions of time. *Bowns Creek Opening Br.* at 4, fn. 2 (“It should be noted that the ‘time allowed for the entire completion’ as provided under the permit can be modified by extensions as statutorily allowed pursuant to I.C. § 42-204 which is another reason that the application of I.C. § 42-301 has been superseded by I.C. § 42-204 and the provisions that the permit holder establish that the permit holder has exercised reasonable diligence and good cause appears therefor.”); *Mayfield Ranch Opening Br.* at 15 (“Section 42-301’s provisions allowing cancellation based on the ‘time specified in the permit’ must account for the extensions provided under Section 42-204”). There is no doubt that extensions of time are a way of delaying completion. Here, the Permit Holders have already availed themselves of this ability by achieving development periods that exceed 10 years, shown as follows:

Permit Holder	Permit No.	Permit Approval	Original Proof Due	First Extension Proof Due	Second Extension Proof Due	Development Period
Bowns Creek	61-12096	11/30/2015	12/1/2020	1/1/2025	12/1/2027	12 years
Mayfield Townsite	63-32499	1/13/2016	1/1/2021	1/1/2026	8/23/2029	13 years and 7 months
Mayfield Ranch	63-35473	1/13/2016	1/1/2021	1/1/2026	8/23/2029	13 years and 7 months

Through extensions of time, the Permit Holders have hoarded and locked up the State’s water resources, to the detriment of Juniper Station, and contrary to Idaho law: “Neither the

Idaho Constitution, nor statutes, permit irrigation districts and individual water right holders to waste water or unnecessarily hoard it without putting it to some beneficial use.” *American Falls Res. Dist. No. 2 v. Idaho Dept. of Water Res.*, 143 Idaho 862, 880, 154 P.3d 433, 451 (2007) (emphasis added). “Just apportionment to, and economical use by, those who have appropriated water for a beneficial use furthers the important governmental interest of securing the maximum use and benefit of Idaho's scarce water resources. *Nettleton v. Higginson*, 98 Idaho 87, 91, 558 P.2d 1048, 1052 (1977) ([T]he entire water distribution system under Title 42 of the Idaho Code is to further the state policy of securing the maximum use and benefit of its water resources.’).” *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 805, 252 P.3d 71, 96 (2011).

The Permit Holders cannot evade Idaho law by relying on extensions of time to thwart completion. Indeed, if the Permit Holders could rely on multiple extensions of time, it would insulate their inchoate permits from cancelation in a way that is inapposite of the requirement that the law places on the holders of vested rights, who risk forfeiture if their rights are not put to use every five years. I.C. § 42-222(2) (“rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to the use of water shall revert to the state and be again subject to appropriation under this chapter”). The holders of inchoate permits cannot have greater rights to ward off beneficial use than the holders of vested rights.

F. The Permit Holders’ Argument Concerning Pre- And Post-1967 Permits Is A Deliberate Attempt To Write Law Off The Books And Is Undercut By The Legislature’s 1986 Amendments To Chapter 2 and Chapter 3, Title 42, Idaho Code

According to Bowns’ Creek, “Chapter 3, Title 42 may not have been repealed in 1967 because it may have remained applicable to any permits issued prior to 1967 but is otherwise no

longer applicable or relevant to permits issued subsequent to 1967. Given that there are no longer permits which were issued prior to 1967, the entire Chapter is no longer applicable and could be/should be repealed.” *Bowns Creek Opening Br.* at 10-11 (emphasis in original); *see also Mayfield Ranch Opening Br.* at 11-12. This statement is incorrect and self-serving for three reasons.

First, to the extent there were any questions following the 1967 amendments to Chapter 2 and Chapter 3, Title 42, Idaho Code, the ongoing interplay was put to rest by the Court’s 1985 decision in *Shokal*. There, the permit at issue, 36-7834, was applied for on December 21, 1978. *Shokal* at 332, 707 P.2d at 443. In the “October 28, 1981” *Memorandum Decision and Order* that was the subject of the Court’s decision, *id.* at 332, 707 P.2d at 443, then-Director Kenneth Dunn unequivocally applied I.C. § 42-301, stating: “I.C. § 42-204 gives a permit holder up to five years to apply the water to beneficial use. Within the permit period, the permittee must complete 1/5 of the work in the first 1/2 of the permit period. I.C. § 42-301.” *Bromley Dec., Ex. A* at 19 and 25 (emphasis added). On appeal, counsel for the Department, Phillip J. Rassier, supported the *Memorandum Decision and Order*, arguing: “Any concern which may exist about tying up the water to the prejudice of a potential junior applicant is adequately satisfied by other statutory provisions requiring timely commencement, progress and completion of works. . . . For those applicants intending to put water to beneficial use on their own behalf, section 42-301 ensures that reasonable diligence will be exercised or else the permit may be cancelled.” *Bromley Dec., Ex. B* at 13-14 (emphasis added). Thus, the Court’s pronouncement that “I.C. §§ 42-204 and 42-301” work together to prevent “tying up the water” is consistent with the Department’s post-1967 interpretation and implementation of the statutes, *Shokal* at 336, 707

P.2d at 447, and should be entitled to deference, *J.R. Simplot Company, Inc. v. Idaho State Tax Comm.*, 120 Idaho 849, 862, 820 P.2d 1206, 1219 (1991).

Second, with full knowledge of the Court’s 1985 opinion in *Shokal*, the Legislature took no steps to abrogate it, *State v. Owens*, 158 Idaho 1, 10, 343 P.3d 30, 39 (2015) (“our Legislature knows how to abrogate decisions from this Court”), or to amend I.C. § 42-301 so that it would only apply retroactively, *Guzman v. Piercy*, 155 Idaho 928, 937, 318 P.3d 918, 927 (2014) (“a statute is not applied retroactively unless there is clear legislative intent to that effect”); *Pioneer Irr. Dist. v. City of Caldwell*, 153 Idaho 593, 600, 288 P.3d 810, 817 (2012) (“Statutes are construed under the assumption that the legislature was aware of all other statutes and legal precedence at the time the statute was passed.”); *Boudreau v. City of Wendell*, 147 Idaho 609, 612, 213 P.3d 394, 397 (2009) (“Court must strive to give force and effect to the legislature’s intent in passing the statute.”); *In Matter of Permit No. 36-7200*, 121 Idaho 819, 824, 828 P.2d 848, 853 (1992) (“the wisdom, justice, policy, or expediency of a statute are questions for the legislature alone”).

Third, and as raised by Juniper Station on page 15 of its Opening Brief, Bowns Creek’s position is directly undercut by the 1986 amendment to Chapter 3, Title 42, Idaho Code. In 1986, then-Director Dunn lobbied the Legislature to add two new sections to Chapter 3, Title 42, Idaho Code, to better address cancellation of permits and revocation of licenses. Idaho Sess. Laws, ch. 313, sec. 7, p. 772 (1986) (“Cancellation of Permits”) (now codified as I.C. § 42-311); Idaho Sess. Laws, ch. 313, sec. 8, p. 773 (1986) (“Revocation of License”) (now codified as I.C. § 42-350). As explained by Director Dunn to the Senate’s Resources and Environment Committee, he felt the authority to cancel a permit and revoke a license was established by law, but requested the Legislature enact clear process and procedure for the same:

Mr. Dunn stated he did not see Section 7 & 8 as changing the Department's authority but merely sets up a procedure for them to follow if action is needed.

Bromley Dec. Ex. C at 038 (underline in original).

An age-old question that was debated by the Committee was whether a court or the Department should hear these types of matters:

Senator Crapo commented the question seems to be, do we want the Department to adjudicate the question or have the court determine this?

Id. at 037 (underline in original).

Mr. Dunn believes a better decision would be reached by the Department than before a court as they have more experience in dealing with matters concerning water.

Id. at 041 (underline in original).

At no point did the Committee discuss the “waning applicability of Section 42-301,” *Mayfield Ranch Opening Br.* at 11, for it specifically enacted new process and procedure to cancel permits and revoke licenses, through hearings before the Department. Idaho Sess. Laws, ch. 313, sec. 7, p. 772 (1986); Idaho Sess. Laws, ch. 313, sec. 8, p. 773 (1986); *see also Bromley Dec., Ex. A* at 027 (“Statement of Purpose RS 11737C1 Amends Title 42, Idaho Code, in several instances for better administration . . . [p]rovides for the cancellation of a permit and for hearings for those individuals who are affected. . . . No fiscal impact.”). Moreover, during the proceedings before the Committee, amendments were proposed to “Strike[] archaic language” from I.C. § 42-204, *Bromley Dec., Ex. A.* at 030, with the 1986 Sessions Laws reflecting the same, Idaho Sess. Laws, ch. 313, p. 764 (1986) (“amending Section 42-204, Idaho Code . . . to delete archaic language”) (capitalization removed). To the extent that language in Chapter 3, Title 42, Idaho Code could be considered old, none of its terms were deleted or stricken; rather, they were added to. That Chapter 2 and Chapter 3, Title 42, Idaho Code were

addressed in the same legislative session gives “peculiar force” to the ongoing application of I.C. § 42-301. *Ada County v. Bottolfsen*, 61 Idaho 363, 376-77, 102 P.2d 287, 300-01 (1940) citing *Peavy v. McCombs*, 26 Idaho 143, 149, 140 P. 965, 967 (1914) (“statutes *in pari materia* should be construed together applies with peculiar force to statutes passed at the same session of the legislature”). Thus, the Permit Holders’ claim that I.C. § 42-301 no longer applies is simply a wish that is designed to frustrate Juniper Station and the Department’s ongoing duty to see that water is put to beneficial use.

II. CONCLUSION

Based on the briefing submitted, Juniper Station will first reiterate the correct interpretation of I.C. § 42-301 and will then return to the Hearing Officer’s six enumerated questions by summarizing them.

A. Through I.C. § 42-301, The Legislature Established A Three-Step Process To Demonstrate Compliance By Putting Water To Beneficial Use

The commas in I.C. § 42-301 establish the three, sequential steps (bold and underline), with the consequent of cancelation and voiding of the permit, either by the Director or a junior permit holder (underline):

If the holder of a permit to appropriate the public waters shall fail to comply with the requirements of his permit as to **[1]** the commencing of work **or** the filing of bond thereunder, **or [2]** 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 [3]** 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 (emphasis added); *Ada Cnty. Prosecuting Attorney v. 2007 Legendary Motorcycle*, 154 Idaho 351, 355-56, 298 P.3d 245, 248-49 (2013) (“Where a sentence contains several antecedents and several consequents they are to be read distributivity.”).

That work must be commenced or a bond filed, with an objective requirement for progress at the half-way point of permit development, followed by completion of work, all within defined timelines, is fully consistent with the prior appropriation doctrine's requirement to put water to use, so as to prevent hoarding and locking up of water. *Poole v. Olaveson*, 82 Idaho 496, 502, 356 P.2d 61, 65 (1960) (“policy of the law of this State is to secure the maximum use and benefit, and least wasteful use, of its water resources”).

B. Summary Of The Answers To The Hearing Officer's Six Enumerated Questions

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?

Yes. Ignorance of the law is not an excuse, *Morley v. RS Unlimited, Inc.*, 173 Idaho 14, 19, 538 P.3d 383, 388 (2023), restatements of law are not necessary for the law to remain valid, *North Snake Ground Water Dist. v. Gisler*, 136 Idaho 747, 749, 40 P.3d 105, 107 (2002), with Title 42, Idaho Code, applying to those who wish to appropriate unappropriated water, including the Permit Holders, I.C. § 42-103; *Idaho Power Co. v. Idaho Dept. of Water Res.*, 151 Idaho 266, 274, 255 P.3d 1152, 1160 (2011).

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

Idaho Code § 42-301 does not establish an independent requirement for commencement of work; rather, it works in tandem with I.C. § 42-204. Together, those sections of Idaho Code require the Director to issue a permit, thereby starting the clock on the 5-year beneficial use period, with I.C. § 42-301 establishing objective compliance markers.

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?

Idaho Code § 42-301 authorizes the Director to require either commencement of work or the filing of a bond: “[T]he holder of a permit to appropriate the public waters shall . . . comply with the requirements of his permit as to the commencing of work or the filing of bond there under . . .” Emphasis added. All projects are different; therefore, the amount of the bond will vary, with the Director entitled to exercise his discretion when it comes to requiring a bond or an amount. No party to these proceedings is arguing that the Director abused his discretion by not requiring the filing of a bond when the Permits were issued.

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?

The amendments to I.C. § 42-204 in 1967 and 2020 have no impact on the application of I.C. § 42-301, because the Legislature did not amend I.C. § 42-301 or take any steps to apply it retroactively to pre-1967 or pre-2020 permits. *Guzman v. Piercy*, 155 Idaho 928, 937, 318 P.3d 918, 927 (2014) (“a statute is not applied retroactively unless there is clear legislative intent to that effect”). As to the 2020 amendments, the updates were to better describe how permits for reasonably anticipated future needs (“RAFN”) water rights would proceed and be proved up, with RAFN permits not at issue in this proceeding. As to the 1967 amendments, the Supreme Court in *Shokal v. Dunn*, 109 Idaho 330, 336, 707 P.2d 441, 447 (1985), confirmed the ongoing interplay between I.C. §§ 42-204 and 42-301: “Any concern which may exist about tying up the water to the prejudice of a potential junior applicant is adequately satisfied by other statutory provisions requiring timely commencement, progress and completion of works. I.C. §§ 42-204 and 42-301.” *See also Respondent and Cross-Appellant Department of Water Resources Brief*: “I.C. § 42-204 gives a permit holder up to five years to apply the water to beneficial use. Within the permit period, the permittee must complete 1/5 of the work in the first 1/2 of the permit

period. I.C. § 42-301.” *Bromley Dec., Ex. B* at 19 and 25. The 1986 amendments to I.C. §§ 42-311 and 42-350, coming one year after the Court’s decision in *Shokal*, further establish the ongoing applicability of I.C. § 42-301 to these proceedings. *State v. Owens*, 158 Idaho 1, 10, 343 P.3d 30, 39 (2015) (“our Legislature knows how to abrogate decisions from this Court”); *Pioneer Irr. Dist. v. City of Caldwell*, 153 Idaho 593, 600, 288 P.3d 810, 817 (2012) (“Statutes are construed under the assumption that the legislature was aware of all other statutes and legal precedence at the time the statute was passed.”).

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?

Yes, as stated immediately above, I.C. § 42-301 most certainly applies. Idaho Code § 42-301 vests Juniper Station with the ability to contest the Permits, due to the speculative Permit Holders having locked up all of the water, contrary to Idaho law. Idaho Const. Art. XV § 1 (“use of all waters now appropriated, or that may hereafter be appropriated . . . is hereby declared to be a public use, and subject to the regulations and control of the state”); Idaho Const. Art. XV § 3 (“right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied”); *3G AG LLC v. Idaho Dept. of Water Res.*, 170 Idaho 251, 262, 509 P.3d 1180, 1191 (2022) (discussing “Idaho’s longstanding principle that individual water right holders cannot ‘waste’ or ‘unnecessarily hoard’ water without putting it to beneficial use.”).

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, 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?

Yes, if a permit is relinquished, I.C. § 42-204(6), it may be reinstated as a permit, I.C. § 42-218a, whereas proceedings commenced pursuant to I.C. § 42-301 allow for cancelation. If water has been put to beneficial use, and with the Permit Holders having already availed themselves of extensions of time, I.C. § 42-204(3), then the Permit Holders may proceed to licensing. I.C. § 42-219. Water that has not been put to beneficial use is subject to cancelation. The remedies are different, distinct, and serve a purpose in ensuring beneficial use by guarding against speculation, hoarding, and the indefinite tying up of the State's water resources.

RESPECTFULLY SUBMITTED this 17th day of July, 2026.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farm, LLC

CERTIFICATE OF SERVICE

I certify that on this 17th day of July, 2026, I caused to be served a true and correct copy of the foregoing upon the following persons by the method(s) indicated:

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CHRIS M. BROMLEY

RECEIVED

Jul 17, 2026

DEPARTMENT OF
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Attorneys for Juniper Station Farm, 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 LLC

**DECLARATION OF
CHRIS M. BROMLEY**

I, CHRIS M. BROMLEY, declare and state as follows:

1. I make this declaration pursuant to Idaho Code § 9-1406 and I declare under penalty of perjury pursuant to the law of the State of Idaho that the following is true and correct.
2. I am an attorney of record for Juniper Station Farm, LLC, in the above captioned matter.
3. Attached hereto as **Exhibit A** is a true and correct copy of the Idaho Department of Water Resources' *Memorandum Decision and Order* (October 28, 1981) that was the subject of the appeal in *Shokal v. Dunn* 109 Idaho 330, 707 P.2d 441 (1985), as it appears in IDWR's online backfile for water right no. 36-7834.
4. Attached hereto as **Exhibit B** is a true and correct copy of the *Respondent and Cross-Appellant Department of Water Resources Brief* (March 28, 1984) in *Shokal v. Dunn*, 109 Idaho 330, 336, 707 P.2d 441, 447 (1985) (Idaho Supreme Court Docket No. 15227), as provided to me by the Clerk of the Idaho Supreme Court.

5. Attached hereto as **Exhibit C** is a true and correct copy of the legislative history associated with House Bill 369 from the 1986 Idaho Legislative Session, as provided to me by the Legislative Services Office. Bates numbering has been added for ease of reference, as 001 – 053.

Dated this 17th day of July, 2026.



CHRIS M. BROMLEY

CERTIFICATE OF SERVICE

I certify that on this 17th day of July, 2026, I caused to be served a true and correct copy of the foregoing upon the following persons by the method(s) indicated:

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CHRIS M. BROMLEY

EXHIBIT A

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST)	
APPROVAL OF APPLICATION FOR)	MEMORANDUM DECISION
PERMIT NO. 36-7834 IN THE NAME OF)	AND ORDER
TROUT CO.)	
_____)	

This protested application comes before the director on remand from the district court of the Fourth Judicial District. In his memorandum decision, Judge Schroeder directed the department to reconsider two issues: local public interest and the applicant's financial ability. The district court did not reverse the department's findings on the first three factors listed in I.C. § 42-203.

Hearings were held in Twin Falls on May 5th and 6th and June 22nd and 23rd, 1981, with the parties offering exhibits and testimony on these two issues. In accordance with the district court's order the parties addressed the following sub-issues under the general topics of local public interest: water quality, effect on the stream's fishery, recreation, social benefits and detriments, impact on property values, and aesthetics.

Troutco has asked the director to separately consider the fish propagation and hydropower portions of its application. Troutco's request is consistent with the evidence, which established that each project could operate independently of the other. Thus, the denial of a permit for one facility would not, from an engineering or financial standpoint, preclude the other facility from being constructed and operated. The director will separately consider the two portions of Troutco's application.

LOCAL PUBLIC INTEREST

Water Quality

Fish Propagation

The evidence on this issue was largely uncontroverted and offered mainly by the protestants. Taken as a whole, the evi-

dence establishes that the eight existing trout farms have had a substantial, adverse impact on Billingsley Creek's water quality. With some exceptions, they discharge suspended matter,^{1/} ammonia, nitrates, and phosphorus. As a group, they have increased the amount of nutrients in Billingsley Creek, created deposits of black, organic "ooze," and fostered heavy growths of aquatic plants.

Trout farms are not the only source of organic pollutants to Billingsley Creek. Approximately 50% of the Creek's banks were grazed by cattle and sheep at the time Jim Winner's water quality study was prepared. Stock grazing erodes banks, which introduces sediment, and stock are undoubtedly a major source of fecal coliform bacteria.

Billingsley Creek's water quality has deteriorated as a result of trout farming, stock grazing and streambank erosion, although the Creek is by no means a "sewer." Jim Winner's study, at page 32, succinctly describes the current condition of the Creek:

Water quality in Billingsley Creek is generally good but nutrients, sediment and ammonia occasionally attain levels which may restrict normal uses of the water.

When the Creek's water is compared to the water at the springs which form the sources for the creek, it is apparent that Billingsley Creek carries a sizable load of total suspended matter, which produces turbidity and creates, in slow-moving sections and in eddies, deposits of organic and inorganic solids which have been variously described as "mud banks" or "ooze beds." These deposits provide part of the basis for the heavy growth of aquatic plants which are common throughout the Creek.

Billingsley Creek also contains a high concentration of soluble nutrients, such as nitrogen and phosphorus. Although the Creek's springs have high levels of nitrates, they contain

1. At the hearing, the terms "suspended solids" and "settleable solids" were used to describe solids present in the waters of Billingsley Creek and in the effluent of fish farms. Since these terms are not particularly precise, the director shall

little phosphorus. Fish farms introduce phosphorus, which increases the nutrient concentrations in the Creek, contributing to the heavy aquatic growth.

Finally, Billingsley Creek is characterized by the presence of nitrogen as ammonia and un-ionized or "toxic" ammonia. At times, the Creek and some of the fish farm discharges exceed the EPA and Department of Health and Welfare standards for cold water biota of .02 mg/l for un-ionized ammonia.

The testimony indicates that suspended matter and toxic ammonia, in that order, are the most serious problems facing Billingsley Creek. In several areas the accumulation of solids severely limits the benthic community to those invertebrates which are not highly favored by wild trout as a food source. The suspended matter, which causes turbidity impairs light penetration, which trout as visual feeders, need.

The solids pose significant problems to riparian property owners and water users. Accumulation of solids, and the aquatic plants they foster, clog sprinkler systems and increase maintenance on ditches and irrigation works, particularly for the property owners downstream from Troutco's intended site. The "ooze" beds are unattractive and can be smelly when exposed to air. Testimony of the protestants indicates that in the last five years, the "ooze" beds have become common in slow-moving sections of Billingsley Creek in the vicinity of Highway 30.

"Toxic" or un-ionized ammonia ranks as the second most

1. (cont'd)

use the term "total suspended matter" to refer to all solids in suspension. Total suspended matter, also described as total non-filterable residue, is defined as follows:

Total nonfilterable residue is the retained material on a standard glass fiber filter disk after filtration of a well mixed sample of water or wastewater. The residue is dried at 103 to 105 C. If the suspended material clogs the filter and prolongs the filtration time, the difference between the total residue and the total filterable residue provide an estimate of the total nonfiltrable [sic] residue.

Standard Methods for the Examination of Water and Wastewater, 14th ed., 1975, APHA-AWWA-WPCF.

serious water quality problem for Billingsley Creek. When toxic ammonia exceeds the EPA and Health and Welfare standard of .02 mg/l, as it apparently does at times in certain portions of the Creek, it stresses the resident rainbow trout population. Chronically high concentrations of toxic ammonia can slow the trout's growth rate and, on very hot days, could contribute to fish kills.

At times, the level of toxic ammonia rises to unacceptable levels. The production of toxic ammonia is subject to three variables: the amount of ammonia, water temperature, and pH level. A change in any one of these three components will produce a change in the toxic ammonia level. Jim Winner's study points out that these three variables can be expected at times to produce excessively high levels of toxic ammonia in certain sections of Billingsley Creek.

Evidence was offered almost entirely by the protestants on the expected waste production of the Troutco facility.^{2/} Dr. Klontz, the chief witness for the protestants, relied upon the testimony of Nyal Hoffman, one of Troutco's principals, and assumed a standing crop of 450,000 lbs of trout being fed 2% of body weight. Along with nitrates and phosphorus, Troutco's crop would produce approximately 4600 lbs of total suspended matter per day, and nearly 300 lbs of ammonia-nitrogen (NH_3 and NH_4) per day. These estimates would change, depending on the size of the standing crop, but they appear to be conservative estimates, in light of the testimony of Leo Ray and Dr. Klontz, who both opined that the facility could maintain a larger standing crop than

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2. A distinction must be made between the evidence offered on waste production and waste discharge. Through Dr. Klontz, the protestants offered unrebutted testimony detailing the amount of waste products, such as suspended matter, ammonia, etc., which a standing crop of 450,000 lbs. of trout, fed 2% of body weight, would produce. This evidence must be distinguished from the conflicting testimony offered by the protestants and the applicant on how much of these wastes, specifically suspended matter would be discharged into Billingsley Creek.

450,000 lbs.

Dr. Falter and Jim Winner provided testimony on the effect which these waste products would have if discharged into Billingsley Creek. Both testified that Troutco's suspended matter would have a significant adverse impact on the Creek. Dr. Falter estimated that water transparency would decrease 50% and the suspended matter would increase the organic content of "sludge" beds, but only minimally increase their size due to the Creek's turbulence downstream from the Troutco site. The suspended matter would decrease the diversity of benthic invertebrates and slightly thicken the plant beds.^{3/} Some of the matter and other nutrients produced by Troutco would be carried out of the creek into the Snake River, where they will cause algae blooms and increased aquatic plant growth.

Troutco would double nitrate concentrations in the Creek, but most of the effect would be felt by the small bay on the Snake River, due to the existing high levels of nitrates in the Creek in the vicinity of Highway 30. Total ammonia would be increased due to the slight amount of ammonia presently in the Creek at that point. If excessive amounts of toxic ammonia are formed, resident rainbow trout will be stressed in the manner already described.

Uncontroverted evidence establishes that Troutco's soluble waste products - nitrates, phosphorus, and ammonia, will be discharged into Billingsley Creek. Troutco's plans call for a vacuum cleaning system for its ponds, which is designed to remove solids but will have no effect on the soluble wastes.^{4/}

Troutco's discharge of suspended matter was the focus of testimony offered by Troutco and the protestants. Troutco relies primarily upon a vacuum cleaning system for its raceways, which

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3. Jim Winner testified that Troutco would have a significant impact on aquatic plant growth.
 4. The system would have some effect on phosphorus, which is absorbed by solids. Thus, removing solids will remove some phosphorus.

Andrew Morton, one of Troutco's witnesses, described as the "state of the art." This system can be expected to remove 90%-95% of all suspended matter that settles out in the raceways. These solids are then pumped into two holding ponds, which in fact are two raceways which are reserved for use solely as settling ponds.

The major disagreement among the witnesses centered on how much of the suspended matter produced by the standing crop will settle out within the Troutco facility. Nyal Hoffman testified that the water in the raceways would change, or turn over, three times per hour.

Based on the above-described evidence, Dr. Klontz estimated that 70% of the suspended matter would leave the facility due to the water velocity in the raceways. The witness's estimate was based upon his familiarity with state and federally operated hatcheries. Although he was generally aware of vacuum cleaning systems, his expertise in the field of fish culture did not include a thorough exposure to the latest innovations in cleaning systems used by privately-owned hatcheries.

Troutco offered the testimony of Nyal Hoffman, Andrew Morton, and Alex Schaefer on the adequacy of Troutco's proposed cleaning system. They did not offer detailed testimony to describe the workings of the system, but they all insisted that Troutco would not aggravate and could improve water quality. Nyal Hoffman stated that Billingsley Creek water will be of better quality when it reaches Troutco's power generating plant than when it enters the ponds.

In light of all of the evidence, the director believes that the issue of water quality should be resolved by answering the following question: Should Troutco be permitted to degrade Billingsley Creek's water quality, and if so, to what degree? Troutco argues that the Creek is already polluted and Troutco's additional pollutants will have a negligible effect. Protestants point to the decline in the Creek's water quality, the accom-

panying problems created for riparian land owners, and argue that aggravating the water quality problems is unacceptable, and that existing water quality must be preserved.

Addressing these arguments requires a balancing of the conflicting interests in Billingsley Creek. Troutco's position is untenable in light of the evidence detailing the significant adverse impacts Troutco would have on the Creek if all of the facility's waste products were discharged into the receiving water. On the other hand, the protestants cannot reasonably demand that Billingsley Creek's water quality be protected from any degradation. The Creek is not a clear, pure stream fit for domestic use, nor is it likely to become one due to the existing hatcheries and livestock operations which it supports. Preserving existing water quality will not make Billingsley Creek fit for domestic use or swimming, nor will it return the Creek to the conditions that existed twenty or thirty years ago. The evidence has not shown that preserving the Creek's existing water quality would greatly serve the local public interest.

However, Troutco cannot be permitted to have an unreasonable adverse impact on Billingsley Creek. In balancing the interests of Troutco and the protestants, an unreasonable adverse impact should be defined as one which unduly interferes with existing uses of the water or has a significant adverse impact on the Creek's aquatic habitat. Under this standard, some additional pollution would be tolerated if the stream's fishery or the interests of riparian land owners would not be significantly affected.

The evidence indicates that the addition by Troutco of more total suspended matter and high levels of toxic ammonia would create unreasonable adverse impacts. The evidence detailing the impacts of these two pollutants, which has already been summarized, demonstrates that they would both have significant adverse effects on the Creek's aquatic habitat and unduly interfere with existing uses of the water, such as irrigation.

The addition of more soluble nutrients (nitrates, phosphorus, and ammonia) would not have an unreasonable adverse impact on Billingsley Creek. According to the testimony of Dr. Falter, the approximate 1 mile of the Creek from the Troutco site to the Snake River is already saturated with nitrates, and more nitrates would not produce much of a response by the Creek's aquatic plant growth, although the bay on the Snake River could see an increase in its plant growth. Ammonia, by itself, is not a problem as long as it does not produce high levels of toxic ammonia. Since phosphorus tends to cling to solids, and solids would not be permitted to enter the Creek, phosphorus would not be a problem.

Protestants, Shokal and Reed, have argued that the Idaho Department of Health and Welfare's designation of Billingsley Creek as a Special Resource Water prevents, as a matter of law, the Department of Water Resources from issuing Troutco a permit to appropriate water. The director does not agree. Even assuming, as a matter of fact, that Troutco's proposed facility would violate the regulations of the Department of Health and Welfare, this department is not prevented as a matter of law from issuing a permit to appropriate water. This department, under the local public interest criterion, and the Department of Health and Welfare, pursuant to its statutory and regulatory authority, have concurrent jurisdiction over water quality. By issuing a water right permit, this department could not excuse the permit holder from compliance with Health and Welfare statutes, regulations, and administrative orders. By the same token, a decision or action of one agency would not bind the other agency, unless the legislature had, by its statutes, intended such a result. In the present case, Troutco must comply with all applicable law administered by Health and Welfare, regardless of whether it does or does not receive a permit to appropriate water. The applicability of the Special Resource Water designation to Troutco is a matter to be determined by the Department of Health and Welfare,

not this department.^{5/}

Hydropower

Production of hydropower at the Troutco site would not have any adverse impact on Billingsley Creek's water quality. Delbert Block, of JUB Engineers, testified on cross-examination by counsel for Crutchfield that the proposed power plants would not have any effect on dissolved oxygen, nitrogen, or water temperature. The facilities would have minimal problems with oil or grease leakage, and the velocity of the water being discharged would be compatible with the Creek.

IMPACT ON PROPERTY VALUES

Fish Propagation

The protestants have alleged that Troutco would decrease the value of their properties, which are either downstream from the Troutco site or across the stream from it. Their position can be reduced to three basic contentions: 1) Troutco's impact on water quality will adversely affect property values; 2) partially dewatering approximately 700 feet of stream channel will hurt the value of riparian property; and 3) Troutco is inconsistent with the residential nature of the neighboring properties, and residential use is the highest and best use for lands adjoining Billingsley Creek in the vicinity of Highway 30.

In their testimony, the protestants spoke mainly of the impact which the Creek's solids have had on their property. They complained of the growing "ooze" beds in front of their properties, the disappearance in the last five years of clean, sandy bottoms, and the proliferation of aquatic vegetation. Both the solids and the vegetation were becoming more troublesome to irrigation ditches and sprinkler systems.

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5. The evidence clearly demonstrates that Health and Welfare's past efforts to enforce water quality standards on Billingsley Creek have not prevented degradation of water quality. EPA's regulations only address solids and appear to be virtually meaningless, since all of the existing hatcheries have no trouble meeting the 15 ppm standard. Health and Welfare's enforcement of water quality standards has been minimal and largely limited to enforcing EPA's standard.

These solids-related problems could be expected to worsen if Troutco discharged its suspended matter into Billingsley Creek. For the reasons discussed supra p. 6, Troutco cannot be permitted to do so. Thus, the protestants' concerns over an increase in the "ooze" beds and plant growth can be laid to rest.

The protestant's second contention focuses upon the partial de-watering of 700 feet of Billingsley Creek. From the point of diversion to the point at which the 100 cfs is returned to the stream, a distance of 700 feet, 25 cfs would remain in the stream.^{6/} Protestants claim that the significant reduction in water flow in the 700 feet will lessen their property values, since the aesthetic qualities of that section of stream, which adds to their properties' values, will be diminished.

The testimony offered by the protestants, two of whom are familiar with real estate, has not established that reducing the flow of 700 feet of Billingsley Creek to 25 cfs will adversely affect their properties' values. Even if the protestants had established this fact, the department would not place great weight upon that fact in ultimately determining whether Troutco's application is in the local public interest. In opposing the partial de-watering of 700 feet of Billingsley Creek, the protestants are, in effect, asserting a riparian right to approximately 125 cfs for the purpose of aesthetics and preserving property values. In Idaho, riparian rights cannot prevent a subsequent appropriator from diverting the water for beneficial use. Although the protestants present their position under the local public interest criterion rather than by asserting a riparian right, the result would be the same in either case if the department were to adopt the protestants' position.

Finally, the protestants contend that the best and highest use for the Troutco site and other property along Billingsley Creek in the vicinity of Highway 30 is as residential property;

6. Troutco has agreed to maintain a minimum flow of 25 cfs in the stream from the point of diversion to the point at which the water is returned to the stream.

and that Troutco would be in conflict with this residential use.

Gooding County does not have a zoning ordinance, and the Gooding County Comprehensive Plan (Applicant's Exhibit R-22) refers, on page 72, to lands along Billingsley Creek as irrigated and range land. Without some type of restrictive zoning for lands along Billingsley Creek, the protestants cannot hope to prevent adjoining parcels from being used for agriculture or aquaculture. In building their homes in an agricultural area, the protestants must assume the risk that neighboring properties could be used for activities considered undesirable by the protestants - such as a cattle feed-lot, a chicken ranch, or a trout farm.

Under the district court's decision, the department must consider a project's impacts on property values if the project's economic benefits are also being considered. However, the department will venture no further into the field of land use and will certainly not become an agency which determines what use of property constitutes the "best and highest" use. That decision lies well outside the department's expertise and legislative authority, which directs the department to administer Idaho's public water--not its private property. The department may examine a proposed use of public water to determine if it will adversely affect neighboring property values.

Hydropower

The fish propagation portion of Troutco's application received the lion's share of the protestants' objections regarding potential impacts on property values. However, some of the objections of the protestants could also be extended to Troutco's hydropower proposal.

With no adverse effects on water quality, the hydropower proposal would not have the negative impact on property values which the fish propagation facility could have (increased ooze beds and aquatic growth). Hydropower would partially de-water several hundred feet of stream channel, as would the fish propagation

facility. Again, the department will not place great weight upon a property owner's concern over a diminishment of his riparian water right for aesthetic purposes. Supra p. 9.

SOCIAL DETRIMENTS AND BENEFITS

Fish Propagation

Troutco's anticipated water quality problems provide the basis for the protestants' contention that Troutco's social detriments outweigh the benefits. Aggravating Billingsley Creek's existing water quality problems, with the attendant impact on the fishery, would be a social detriment. Protestants, Shokal and Reed, in their written argument, also contend that Troutco will further interfere with the irrigation systems of downstream water users, through the discharging of suspended matter and the accompanying increase in aquatic growth.

Troutco's expected water quality problems have been adequately described, and that discussion is applicable to the question of social detriments. To summarize, Troutco's anticipated or potential discharge of suspended matter and un-ionized ammonia are unacceptable and would be a detriment to downstream irrigators and to water quality in general.

Troutco offered a substantial amount of testimony on the economic benefits Troutco would provide for the Hagerman Valley. Nyal Hoffman testified that Troutco would employ three or four people at the facility, while Larry Cope estimated that Troutco's estimated crop of one million pounds would employ thirty people from the farm stage to marketing. Troutco-produced employment and its payroll could be expected to generally benefit the Hagerman area.

Troutco would provide a more generalized benefit to the State of Idaho by using unappropriated water for food production. The State Water Plan, Part One, June, 1974, states as objectives:

OBJECTIVE: The policy of the Idaho State Water Resource Board is to support continued growth of the aquaculture industry.

Id at p. 25.

OBJECTIVE: The policy of the Idaho Water Resource Board is to seek an orderly growth of agricultural production in the state at a rate sufficient to maintain the state's current share of the national and international market.

Id at p. 29.

Although these policy statements do not dictate to the department, they do represent Idaho's commitment to using public waters for food production.

Hydropower

The evidence does not disclose any recognizable social detriments arising from the proposed hydropower facility. According to the testimony of Delbert Block, the power plant could produce enough electricity for eight to ten all-electric homes. This opinion need not dwell upon the "energy shortage" or the benefits of small hydro development. The production of hydroelectricity by Troutco would provide social benefits for Idaho.

EFFECT ON THE FISHERY

Fish Propagation

The protestants offered evidence to establish three adverse impacts Troutco would allegedly have on the Billingsley Creek trout fishery. Of the three, the most important was the water quality impact - principally additional solids and excessive levels of unionized ammonia. These have already been discussed and found to be unreasonable adverse impacts on the fishery.

Through the testimony of Dr. Klontz, the protestants offered evidence of Troutco's potential to spread communicable diseases to the stream's wild fish population, a second adverse impact. Dr. Klontz focused on enteric redmouth disease ("ERM") and stated that Troutco would "seed down" the wild trout population by increasing ERM. In response, Troutco offered the testimony of Dave Ericson, a fishery biologist for Clear Springs trout hatchery, who stated that ERM is currently a minor problem in hatcheries which does not affect native fisheries and is confined to hatcheries.

On the whole, the evidence does not support the protestants'

contention that Troutco will spread ERM, or other diseases, to Billingsley Creek's wild fishery. Dr. Klontz admitted that he had no knowledge of whether the wild trout population is presently infected or subject to infection from the existing hatcheries. Electro-fishing done as part of Jim Winner's study did not reveal the presence of diseased fish in the creek. The evidence indicates that hatchery-caused disease is not a threat to the Billingsley Creek fishery.

Finally, the Department of Fish and Game urges that escapement from Troutco's standing crop will decrease the numbers of wild trout. Robert J. Bell, regional fishery manager for Fish and Game for the Magic Valley area, relied upon studies done in Montana for his testimony. He concluded that hatchery escapees could be expected from Troutco and that they would compete with wild trout for suitable habitat. Mr. Bell opined that with fewer hatchery escapees, Billingsley Creek could have more and larger wild trout.

Although Troutco did not offer any evidence on this issue, Fish and Game's evidence fails to establish that Troutco's escapement would decrease or stress the wild trout population. Existing water quality appears to be the main limiting factor for the fishery. Excessive levels of un-ionized ammonia and very low night-time DO levels stress resident rainbow trout, while deposits of solids make spawning gravels scarce in many parts of the stream. Solids also limit the benthic community to species not preferred for food by wild trout. When all of these limiting factors are combined with escapement from the existing hatcheries, it does not appear likely that Troutco's escapement would have a noticeable impact on the wild trout fishery.

Hydropower

Obviously, the hydropower facility would not have water quality problems, communicable fish diseases, or escapement of hatchery trout. The facility's intake would be screened to prevent fish from entering into the turbines.

RECREATION

Fishing and perhaps hunting are the only forms of recreation Billingsley Creek offers from the Troutco site to the Snake River. High levels of fecal coliform bacteria pose a health hazard to humans and rule out swimming. Fecal coliform are not a product of fish hatcheries, since they can only be produced by warm-blooded animals. Livestock and wildlife are the most likely sources of the bacteria.

Troutco's potential effects on the fishery have been discussed under both the "Water Quality" and the "Fishery" sections of this decision. Those discussions shall be incorporated herein and constitute the analysis of Troutco's impacts on recreation for both the fish propagation and the hydropower facilities.

AESTHETICS

Fish Propagation

The protestants' objections to the aesthetic impact of Troutco have already been discussed under the heading of "Impact on Property Values." They claim that de-watering 700 feet of stream channel impairs the aesthetics of the Creek, and that a trout farm on the intended location would be unattractive. The analysis of the de-watering argument Supra at p. 9, shall be incorporated and applied to the instant discussion.

The contention that a trout farm would be unattractive is unconvincing. Beauty is a relative factor. Troutco believes that a hatchery would be more attractive than the existing gravel pit, while the protestants argue that a hatchery would be unattractive and out-of-place in the predominantly residential area. Declaring a winner in this argument requires a purely subjective determination, which the department will not attempt to make.

Hydropower

The hydropower proposal faces the same de-watering objection as the fish propagation facility, and the preceding analysis of

the latter is applicable to the former. Apart from the partial de-watering of a section of the stream, the evidence does not reveal any other aesthetics-based objections to the hydropower proposal.

CONCLUSION

Fish Propagation

In managing natural resources, an administrative agency often must strike a balance among competing interests. The agency is typically charged with managing the orderly use of a particular resource while preventing undue harm to the environment. The Department of Water Resources oversees Idaho's public waters and permits and encourages the beneficial use of the resource, but under conditions which prevent significant environmental degradation.

A balancing process is used to determine if an application for a permit to appropriate water is in the local public interest. In the present case, the "pros" and the "cons" of the application are viewed in light of six sub-issues: water quality, impact on property values, social benefits and detriments, effect on the stream's fishery, recreation, and aesthetics. The evidence on each of these sub-issues has already been analyzed and summarized.

Assuming that Troutco would discharge all of its waste products into Billingsley Creek, the balance would tip against approval. The discharge of suspended matter and high levels of toxic ammonia would significantly degrade water quality. Increased plant growth and "ooze" beds would interfere with downstream irrigation systems and could adversely affect property values. The fishery, and consequently recreation, would suffer from more solids and high levels of toxic ammonia.

If Troutco could operate without discharging solids and excessive amounts of toxic ammonia, the balance tips in favor of the approval of its permit application. Since only nitrates and small amounts of ammonia and phosphorus would be discharged,

Troutco would not have an unreasonable adverse impact on water quality. Supra, p. 7. Without additional solids, "ooze" beds would not increase in size or numbers and the problem of aquatic vegetation would not be aggravated. Consequently, Troutco would not affect downstream irrigation systems and would not adversely effect property values. Although the fishery would not prosper as a result of Troutco, it would not be stressed. De-watering a portion of the stream channel may have an impact on aesthetics and neighboring property values; however, these de-watering related impacts are not given much weight in the balancing process. Supra, p. 9.

Troutco would provide social benefits to the Hagerman area and to the state. Hagerman would benefit from the new jobs and payroll and from the addition of a new business to the area. Idaho benefits when water is applied to beneficial use to produce food products. Supra, pp. 11, 12. If Troutco does not discharge solids and high levels of toxic ammonia, its benefits and the lack of adverse impacts weigh the balancing process in favor of finding that the permit application is in the local public interest.

The director has the authority to impose conditions on a permit to ensure that the proposed appropriation meets the five criteria in I.C. § 42-203. In Troutco's case, the permit for fish propagation should contain conditions to prohibit the discharge of total suspended matter and toxic ammonia in excess of .02 mg/l.

Witnesses for Troutco repeatedly stated that Troutco would not aggravate and could improve water quality. Based upon their testimony, the director can fairly assume that the above-described conditions will be acceptable to the applicant.

Hydropower

The evidence demonstrates that the hydropower project is in the local public interest. The project would not affect water quality or the fishery, has no social detriments, and would not

affect recreation. Like the fish propagation facility, it would partially de-water several hundred feet of Billingsley Creek, but the protestants' objections to the de-watering have not been given great weight in the balancing process.

On the project's positive side, it would generate enough electricity for eight to ten all electric homes. Small hydro development is being encouraged at the national and state levels as part of the answer for our future energy needs. Troutco's hydropower facility is in the local public interest.

FINANCIAL ABILITY

Fish Propagation

RECEIVED
Nyal Hoffman and Leo Ray provided the applicant's testimony on its financial ability to complete the fish propagation facility. Troutco has spent \$92,000 to date on the project and needs \$127,350 to complete it. According to Nyal Hoffman, Troutco's principals could raise all of the money over a five year period and would provide Troutco with \$33,000 per year.

Leo Ray, a Hagerman area fish farmer, described his interest in financing the fish propagation facility, in return for a contract to purchase Troutco's crop for his processing plant. Ray stated that he could provide financing either by liquidating some unnamed assets in California or by drawing upon his line of credit at PCA.

The applicant also offered a letter from Tippet Land & Mortgage (Applicant's Exhibit R-26) expressing an interest in considering a loan request from Troutco. By itself, this letter adds little to the record and does not establish the availability of institutional financing for Troutco's fish farm.

The protestants did not offer evidence in rebuttal, but they point to an alleged deficiency in the applicant's proof: neither Leo Ray nor Tippet Land & Mortgage have offered Troutco a written loan commitment. The protestants argue that absent written loan commitments, the offers of financing are to be given little weight, and consequently, Troutco has not come forth with suf-

efficient evidence of financial ability.

The issue presented by the parties may be stated as follows: What must the applicant prove to satisfy the department that he meets the financial ability requirement of I.C. 42-203? Stated more generally, what legal standard does the department apply to the evidence in determining the applicant's financial ability?

Under I.C. § 42-203, the applicant must show "that the applicant has . . . sufficient financial resources with which to complete the work involved therein." I.C. § 42-204 gives a permit holder up to five years to apply the water to beneficial use. Within the permit period, the permittee must complete 1/5 of the work in the first 1/2 of the permit period. I.C. § 42-301.

When viewed in the context of these statutory provisions, a permit to appropriate water represents the state's permission to divert public waters and apply them to beneficial use within a permitted time. The financial ability criterion of I.C. 42-203 should not be interpreted as requiring the applicant, at the time of the hearings on the protested application, to have enough cash available to immediately complete the project. The applicant must show that he can obtain the necessary financing to complete the project within five years. At the hearing, the applicant must prove that it is reasonably probable that he can obtain the necessary financing to complete the project within the time constraint of the permit and the Idaho Code.

This legal standard accurately reflects the applicable statutes and the realities of financing. Often times, an applicant will not be able to secure a loan commitment for his project until he first obtains a water right permit. Common sense dictates that at a hearing on a protested application, the applicant should only be required to establish the likelihood of finding the necessary financing.

In the present case, the applicant did not demonstrate that it presently has \$127,350, or that it has loan commitments in that amount. However, the applicant did prove that it could pro-

bably raise the needed funds from either the assets of Troutco's principals or from Leo Ray. Based upon the evidence, it appears reasonably probable that the applicant can obtain the necessary financing to build the fish propagation facility.

Hydropower

The applicant offered strong evidence to demonstrate its financial ability to complete the hydropower facility. Delbert Block testified that his company, Cogeneration, Inc., would be interested in financing and building the hydropower facility. Troutco would get a 12% to 15% royalty with no investment. Based upon Block's testimony, it appears very probable that Troutco could obtain the necessary financing to construct the hydropower facility.

FINDINGS OF FACT

1. Troutco has spent \$92,000 to date on the fish propagation facility.
2. \$127,350 is needed to complete the fish propagation facility.
3. Troutco's principals could finance the fish propagation facility over a five year period by providing Troutco with \$33,000 per year.
4. Leo Ray could finance the fish propagation facility, in return for a contract to purchase Troutco's crop for his processing plant. He could provide financing either by liquidating some unnamed assets in California or by drawing upon his line of credit at PCA.
5. The evidence does not establish the availability of institutional financing.
6. Troutco has not obtained a written loan commitment from Leo Ray or from any institutions.
7. It appears reasonably probable that Troutco can obtain the necessary financing from either its principals or from Leo Ray to build the fish propagation facility within five years.
8. Cogeneration, Inc. would finance and construct the hydropower facility. Troutco would get a 12% to 15% royalty with no invest-

ment.

9. It appears very probable that Troutco could obtain the necessary financing to construct the hydropower facility within five years.

10. The eight existing trout farms on Billingsley Creek have had a substantial, adverse impact on the Creek's water quality. As a group, they have increased the amount of nutrients in Billingsley Creek, created deposits of black, organic "ooze," and fostered heavy growths of aquatic plants by discharging suspended matter, ammonia, nitrates, and phosphorus.

11. Stock grazing is a major source of fecal coliform bacteria for Billingsley Creek and contributes sediment.

12. Water quality in Billingsley Creek is generally good but has deteriorated over a period of time.

13. Billingsley Creek carries a sizable load of total suspended matter, which produces turbidity and creates, in slow moving sections and in eddies, deposits of organic and inorganic solids. These deposits provide part of the basis for the heavy growth of aquatic plants which are common throughout the Creek.

14. Billingsley Creek contains a high concentration of soluble nutrients, such as nitrogen and phosphorus. Fish farms introduce phosphorus which is not found under natural conditions in Billingsley Creek in large concentrations. Phosphorus increases the nutrient concentrations in the Creek, contributing to the heavy aquatic growth.

15. Billingsley Creek is characterized by the presence of nitrogen as ammonia and un-ionized or "toxic" ammonia. At times the Creek and some of the fish farm discharges exceed the EPA and Department of Health & Welfare standard for cold water biota of .02 mg/l. for un-ionized ammonia.

16. Suspended matter and toxic ammonia, in that order, are the most serious problems facing Billingsley Creek.

17. The accumulation of solids severely limits the benthic community to those invertebrates which are not highly favored by

wild trout as a food source. The suspended matter, which causes turbidity, impairs light penetration, which trout as visual feeders need.

18. Accumulations of solids and the aquatic plants they foster pose significant problems to riparian owners and water users by clogging sprinkler systems and increasing the maintenance on ditches and irrigation works. Water users downstream from Troutco's intended site are particularly affected by these solids-related problems.

19. In the last five years the "ooze" beds have become common in slow moving sections of Billingsley Creek in the vicinity of Highway 30.

20. When toxic ammonia exceeds .02 mg/l as it does at times in certain portions of Billingsley Creek, it stresses the rainbow trout population. Chronically high concentrations of toxic ammonia can slow the trout's growth rate and on very hot days could contribute to fish kills.

21. The production of toxic ammonia is subject to three variables: the amount of ammonia, water temperature, and Ph level. These three variables can be expected at times to produce excessively high levels of toxic ammonia in certain sections of Billingsley Creek.

22. 450,000 pounds of trout being fed 2% of body weight would produce approximately 4600 pounds of total suspended matter per day and nearly 300 pounds of ammonia nitrogen (NH_3 and NH_4) per day.

23. Troutco can be expected to have a standing crop of 450,000 pounds.

24. Troutco's production of total suspended matter, if discharged into Billingsley Creek, would have a significant adverse impact on the stream. Water transparency would decrease 50% and the suspended matter would increase the organic content of sludge beds. The suspended matter would decrease the diversity of benthic invertebrates and increase the growth of aquatic plants.

25. Troutco would double nitrate concentrations in the creek, but most of the effect would be felt by the small bay in the Snake River, due to the existing high levels of nitrates in the Creek in the vicinity of Highway 30.

26. Total ammonia would be increased in the vicinity of Troutco's outfall, due to the slight amount of ammonia presently in the Creek at that point. If excessive amounts of toxic ammonia are formed, resident rainbow trout would be stressed.

27. Troutco's soluble waste products - nitrates, phosphorus, and ammonia, will be discharged into Billingsley Creek.

28. Troutco will use a vacuum cleaning system to remove suspended matter. This system can be expected to remove 90% to 95% of all suspended matter that settles out in the raceways.

29. The water in the raceways would change, or turn over, three times per hour.

30. The applicant's witnesses insisted that Troutco would not aggravate and could improve water quality; that Billingsley Creek water will be of better quality when it reaches Troutco's power generating plant than when it enters the ponds.

31. The addition by Troutco of more total suspended matter and high levels of toxic ammonia would have unreasonable adverse impacts on the Creek's water quality. These two pollutants would both have significant adverse effects on the Creek's aquatic habitat and would unduly interfere with existing uses of the water, such as irrigation.

32. The addition of more soluble nutrients (nitrates, phosphorus, and ammonia) would not have an unreasonable adverse impact on Billingsley Creek. The addition of nitrates to the Creek below Troutco's outfall would not produce much of a response by the Creek's aquatic plant growth. Ammonia, by itself, is not a problem as long as it does not produce high levels of toxic ammonia.

33. Production of hydropower at the Troutco site would not have any adverse impact on Billingsley Creek's water quality. The

proposed power plant would not have any effect on dissolved oxygen, nitrogen, or water temperature. The facility would have minimal problems with oil or grease leakage, and the velocity of the water being discharged would be compatible with the Creek.

34. The discharge by Troutco of suspended matter into Billingsley Creek would adversely affect the property value of downstream riparian property. The suspended matter would contribute to the growth of "ooze" beds in front of the property and increase the growth of aquatic vegetation. Both the accumulation of solids and the vegetation would provide problems for irrigation ditches and sprinkler systems.

35. From the point of Troutco's diversion to the point at which the 100 cfs is returned to the stream, a distance of 700 feet, 25 cfs would remain in the stream.

36. Reducing the flow of 700 feet of Billingsley Creek to 25 cfs will not adversely affect the value of the riparian property.

37. Gooding County does not have a zoning ordinance. The Gooding County Comprehensive Plan refers to lands along Billingsley Creek as irrigated and range land.

38. With no adverse effects on water quality, the hydropower proposal would not have the negative impact on property values which the fish propagation could have (increased "ooze" beds and aquatic growth).

39. Troutco's anticipated or potential discharge of suspended matter and un-ionized ammonia are detrimental to downstream irrigators and to water quality in general.

40. Troutco's estimated crop of one million pounds of trout would employ 30 people from the farm stage to marketing.

41. Troutco-produced employment and its payroll could be expected to generally benefit the Hagerman area.

42. The State of Idaho benefits when unappropriated water is applied to beneficial use for food production.

43. Troutco's hydropower facility could produce enough electricity for 8 to 10 all electric homes.

44. The production of hydro-electricity by Troutco would provide social benefits for Idaho.

45. The discharge of suspended matter and high levels of un-ionized ammonia by Troutco would have unreasonable adverse impacts on the resident fishery.

46. Hatchery-caused communicable diseases, including enteric redmouth, are not a threat to the Billingsley Creek fishery.

47. Existing water quality is the main limiting factor for the Billingsley Creek fishery. Excessive levels of un-ionized ammonia and very low night time DO levels stress resident rainbow trout, while deposits of solids make spawning gravels scarce in many parts of the stream. Solids also limit the benthic community to those species not preferred for food by wild trout.

48. When all of these limiting factors are combined with escapement from the existing hatcheries, it does not appear likely that Troutco's escapement would have a noticable impact on the wild trout fishery.

49. Troutco's hydropower facility would not have an impact on the Creek's fishery.

50. Fishing and possibly hunting are the only forms of recreation Billingsley Creek offers from the Troutco site to the Snake River.

51. High levels of fecal coliform bacteria pose a health hazard to humans and rule out swimming. Fecal coliform are not a product of fish hatcheries, since they can only be produced by warm-blooded animals.

CONCLUSIONS OF LAW

1. Under I.C. § 42-203, the applicant for a permit to appropriate water must show "that the applicant has . . . sufficient financial resources with which to complete the work involved therein."

2. I.C. § 42-204 gives a permit holder up to five years to apply the water to beneficial use. Within the permit period, the permittee must complete 1/5 of the work in the first 1/2 of the permit period. I.C. § 42-301.

3. A water right permit represents the state's permission to divert public waters and apply them to beneficial use within five years.

4. At a hearing on a protested application, the applicant must prove that it is reasonably probable that he can obtain the necessary financing to complete the project within the time constraints of the permit and the Idaho Code.

5. Troutco made the necessary evidentiary showing and has established its financial ability to complete the fish propagation facility.

6. Troutco made the necessary evidentiary showing and has established its financial ability to complete the hydropower facility.

7. Compelling reasons do not exist for preventing any degradation of Billingsley Creek's water quality. Preserving existing water quality will not achieve any recognizable goals since it will not permit additional uses to be made of the stream, nor will it improve water quality. An absolute ban against any further decline in water quality is not in the local public interest.

8. However, unreasonable adverse impacts on water quality cannot be permitted. An unreasonable adverse impact is one which unduly interferes with existing uses of the water or has a significant adverse impact on the Creek's aquatic habitat.

9. The addition by Troutco of suspended matter and high levels of toxic ammonia would have unreasonable adverse impacts on the Creek's water quality.

10. The addition of more soluble nutrients (nitrates, phosphorus, and ammonia) would not have an unreasonable adverse impact on the Creek's water quality.

11. The Department of Water Resources, pursuant to the local public interest criterion of I.C. § 42-203, and the Department of Health and Welfare, pursuant to its statutory and regulatory authority, have concurrent jurisdiction over water quality. A

20. If Troutco would discharge all of its waste products, its application would not be in the local public interest. The discharge of suspended matter and high levels of toxic ammonia would significantly degrade water quality. Increased plant growth and "ooze" beds would interfere with downstream irrigation systems and could adversely affect property values. Aesthetics, the fishery, and consequently recreation, would suffer from more solids and high levels of toxic ammonia.

21. If Troutco could operate without discharging solids and excessive amounts of toxic ammonia, its permit application is in the local public interest. Since only nitrates and small amounts of ammonia and phosphorus would be discharged, Troutco would not have an unreasonable adverse impact on water quality. Without additional solids, "ooze" beds would not increase in size or numbers and the problem of aquatic vegetation would not be aggravated. Consequently, Troutco would not affect downstream irrigation systems and would not adversely effect property values. Although the fishery would not prosper as a result of Troutco, it would not be stressed. De-watering a portion of the stream channel may have an impact on aesthetics and neighboring property values; however, these de-watering related impacts are not given much weight in the balancing process.

Troutco would provide social benefits to the Hagerman area and to the state. Hagerman would benefit from the new jobs and payroll and from the addition of a new business to the area. Idaho benefits when water is applied to beneficial use to produce food products. If Troutco does not discharge solids and high levels of toxic ammonia, its benefits and the lack of adverse impacts weigh the balancing process in favor of finding that the permit application is in the local public interest.

22. The director has the authority to impose conditions on a permit to ensure that the proposed appropriation meets the five criteria in I.C. § 42-203. In Troutco's case, the permit for fish propagation shall contain conditions to prohibit the discharge of

total suspended matter and toxic ammonia in excess of .02 mg/l.

23. The evidence demonstrates that the hydropower project is in the local public interest. The project would not affect water quality or the fishery, has no social detriments, and would not affect recreation. Like the fish propagation facility, it would partially de-water several hundred feet of Billingsley Creek, but the protestants' objections to the de-watering have not been given great weight in the balancing process.

On the project's positive side, it would generate enough electricity for eight to ten all electric homes. Small hydro development is being encouraged at the national and state levels as part of the answer for our future energy needs. Troutco's hydropower facility is in the local public interest.

ORDER

IT IS THEREFORE ORDERED That application for Permit No. 36-7834 be approved for fish propagation and hydropower, subject to the following conditions:

1. Measuring devices of the type approved by this department shall be permanently installed and maintained at the point of diversion and at the point of effluent discharge.
2. The applicant shall maintain a minimum flow of 25 cfs between the point of diversion and the point of return flow, at all times.
3. The permit shall not be assigned or sold without first securing the written approval of the department.
4. The permit cannot be assigned, mortgaged, or conveyed without complying with Sections 42-205 - 42-210, Idaho Code.
5. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before October 27, 1986. The permit holder shall comply with I.C. § 42-301.

6. Water quality:

A. General effluent limitations:

- 1) Un-ionized ammonia shall not exceed 0.02 mg/l in the effluent from the fish farm.
- 2) The suspended matter concentration of the effluent shall not exceed that of the influent except during the cleaning of ponds and/or raceways. Suspended matter concentration of the effluent shall not exceed 15 mg/l during cleaning.

B. Monitoring:

- 1) The permit holder or his agent shall perform the monitoring and provide the department with the results of the monitoring on every first day of the month.
- 2) Influent water shall be sampled at the point of diversion from the creek. Effluent shall be sampled from the discharge before mixing with the Creek.
- 3) Ammonia, suspended matter concentrations, pH, and water temperature shall be sampled three times daily. Sample periods must be two or more hours apart. During the months of July and August, one sampling period shall occur after 5 p.m. but before 8 p.m, MDT. The influent and effluent samples must be collected within the same 10 minute period.
- 4) Analyses must be conducted according to Standard Methods for the Examination of Water and Wastewater (APHA, 1975) or another method approved by the department. Analyses for pH must be completed within 10 minutes after the sample is collected. Samples for ammonia and suspended solids must be refrigerated if not

analyzed immediately. Analyses must be completed within 48 hours after the samples were collected.

- 5) Ammonia shall be determined according to Standard Methods for the Examination of Water and Wastewater (APHA, 1975), and the un-ionized ammonia concentration calculated using the following table taken from Quality Criteria for Water (EPA, 1976):

Table 3.-Percent un-ionized ammonia in aqueous ammonia solutions*

Temperature (°C)	pH Value								
	6.0	6.5	7.0	7.5	8.0	8.5	9.0	9.5	10.0
5 ...	0.013	0.040	0.12	0.39	1.2	3.8	11.	28.	56.
10 ...	0.019	0.059	0.19	0.59	1.8	5.6	16.	37.	65.
15 ...	0.027	0.087	0.27	0.86	2.7	8.0	21.	46.	73.
20 ...	0.040	0.13	0.40	1.2	3.8	11.	28.	56.	80.
25 ...	0.057	0.18	0.57	1.8	5.4	15.	36.	64.	85.
30 ...	0.080	0.25	0.80	2.5	7.5	20.	45.	72.	89.

* [Thurston, et al. (1974)]

C. Violations

- 1) The weekly (Sunday through Saturday) average suspended matter concentration of the effluent shall not exceed the weekly average suspended matter concentration of the influent. The department will notify Troutco of a violation if the weekly average suspended sediment concentration of the effluent exceeds the weekly average suspended sediment concentration of the influent. A second violation in any six month period will be considered a violation of the conditions of the water right permit and constitute a basis for revocation of said permit.
- 2) Suspended matter concentration in the effluent shall not exceed 15 mg/l during cleaning

operations and measurements made during raceway cleaning shall not be figured into the weekly average.

- 3) Un-ionized ammonia shall not, at any time, exceed 0.02 mg/l in the effluent. The department will notify Troutco if the un-ionized ammonia concentration in the effluent exceeds, at any time, 0.02 mg/l. A second violation in any six month period will be considered a violation of the conditions of the water right permit and constitute a basis for revocation of said permit.
- 4) Failure to comply with the monitoring and reporting requirements, or submitting false information will be considered a violation of the conditions of this permit and constitute a basis for revocation of said permit.
7. The director of the department will continue jurisdiction over this matter to insure compliance with these conditions and to insure proper distribution of water.
8. The design and construction plans of the proposed fish propagation facility must be submitted to the department for review and approval to ensure that the facility will comply with condition no. 6. The applicant must demonstrate to the department how the proposed facility will comply.

DATED this 28 day of October, 1981.


A. KENNETH DUNN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28th day of October, 1981,
a true and correct copy of the foregoing MEMORANDUM DECISION AND
ORDER was mailed, postage prepaid, addressed to the following:

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HOWARD CARSMAN
Deputy Attorney General
Department of Water Resources

EXHIBIT B

MAR 28 1984

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

EDWARD C. SHOKAL, COLE M. REED)
and BILLIE REED,)

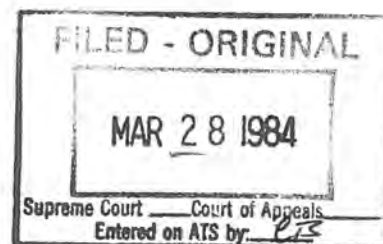
Petitioners/Appellants)
and Cross-Respondents,)

vs.)

A. KENNETH DUNN, Director,)
IDAHO DEPARTMENT OF WATER)
RESOURCES, and TROUT CO., holder)
of permit no. 36-7834, an Idaho)
corporation,)

Defendants/Respondents)
and Cross-Appellants.)

Docket No. 15227



RESPONDENT AND CROSS-APPELLANT DEPARTMENT OF WATER RESOURCES BRIEF

APPEAL FROM THE DISTRICT COURT
FOR THE FOURTH JUDICIAL DISTRICT

HONORABLE W.E. SMITH, presiding

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

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and BILLIE REED,)

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STATEMENT OF THE CASE

Nature of the Case

This case involves an appeal and cross-appeal of a decision by the district court which reversed and remanded an administrative determination by the Idaho Department of Water Resources (DWR) approving an application for permit to appropriate the public waters of the state for nonconsumptive fish propagation and hydropower generation purposes. The appellants, who were protestants in the proceeding before DWR, assert on appeal that the application should have been ordered denied by the district court and not remanded for further hearing before the agency. Protestants further assert on appeal that the district court erred in denying them costs as a prevailing party before the district court.

DWR, as cross-appellant, asks this Court to determine whether the district court correctly interpreted the requirements of I.C. §§ 42-202 and 42-203 regarding the submission of detailed construction plans and the showing of sufficient financial resources. DWR also asks for a determination as to whether the district court was correct in concluding under the facts of this case that the agency decision was made upon unlawful procedure.

ADDITIONAL ISSUES ON APPEAL

A. Whether the district court erred in holding that the Department of Water Resources applied an erroneous standard in determining "sufficient financial resources" under I.C. § 42-203?

B. Whether the district court erred in holding that final, detailed construction plans for a proposed water project should be presented to the Department of Water Resources at the time of filing an application for permit to appropriate water?

C. Whether the district court erred in holding that the decision of the Department of Water Resources was made upon unlawful procedure?

POINTS AND AUTHORITIES

I.

Section 42-203, Idaho Code, states in part as follows:

In all applications whether protested or not protested, where the proposed use is such . . . (4) that the applicant has not sufficient financial resources with which to complete the work involved therein . . . [t]he director of the department of water resources 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.

II.

The primary purpose for inserting the sufficient financial resources requirement in I.C. § 42-203 was to protect the citizens of the state from unscrupulous promoters of water projects. Eighth Biennial Report of the Department of Reclamation, State of Idaho, 1933-1934, R.W. Faris, Commissioner of Reclamation, pp. 28-29; Ninth Annual Report of the Department of Reclamation, State of Idaho, 1935-1936, R.W. Faris, Commissioner of Reclamation, p. 15.

III.

Since Idaho shares a water law heritage common to other western states it is proper to look to the law of those sister states for guidance. 5 Clark, Waters and Water Rights, § 409.1.

IV.

The director of the Department of Water Resources need only be convinced that the applicant has a reasonable probability of obtaining necessary financing in order for a permit to issue. Bullock v. Hanks, 452 P.2d 866 (Utah 1969); United States v. District Court of Fourth Judicial District, 238 P.2d 1132, 1137 (Utah 1951).

V.

The financial ability criterion is common but not universal to other prior appropriation states. Wy.Stat.Ann. § 41-4-505; Nev. Rev.Stat. § 533.375; Utah Code Ann. § 73-3-11.

VI.

The general rule is that lack of financial means is not a sufficient excuse for delay in putting water to beneficial use

under a permit. 2 Kinney, Irrigation & Water Rights (2d.Ed.) § 739; 1 Weil, Water Rights in the Western States (3rd Ed.) (1911) § 383; 1 Hutchins, Water Rights Laws in the Nineteen Western States (1971) p. 376; Rio Puerco Irr. Co. v. Jastro, 141 P. 874, (N.M. 1914).

VII.

Exceptions to the general rule have been made for water permit holders of limited means who settled on the public domain to make their homes. Hall v. Blackman, 8 Idaho 272, 68 P. 19 (1902); Conant v. Jones, 3 Idaho 606, 32 P. 250 (1893).

VIII.

Any concern which may exist about individual applicants tying up the water to the prejudice of other potential junior applicants is adequately satisfied by other statutory provisions requiring timely commencement, progress and completion of works. I.C. § 42-204 (Supp. 1983); I.C. § 42-301 (1977).

IX.

To require "here and now" financing to complete a water project before a permit is issued is a needless and unsound impediment to the constitutional right to appropriate the unappropriated waters of the state. Idaho Const. art. XV, sec. 3.

X.

A holding that final project plans must be submitted with the filing of an application for permit to appropriate water is not supported by statute. I.C. § 42-202 (1977); I.C. § 42-203 (Supp. 1983).

XI.

It is reasonable to conclude that the plans and maps which are to accompany an application to appropriate water should be of sufficient detail to allow for proper evaluation of the application. I.C. § 42-202; I.C. § 42-203.

XII.

Additional information which is required to evaluate an application may be requested by the director. I.C. § 42-204 (1983 Supp.).

XIII.

An applicant for a water right permit should not be expected to undertake the potentially large expense of having final plans

for a project prepared before the application is even filed. Bullock v. Hanks, 452 P.2d 866, 868 (Utah 1969).

XIV.

An appellant should not be allowed to successfully object on appeal to a procedure which they did not timely object to before the agency. C.J.S. Trial § 658.

XV.

A litigant may not remain silent as to claimed error during a proceeding and later urge his objections thereto for the first time on appeal. Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 655 P.2d 926 (1982); Hoppe v. McDonald, 103 Idaho 33, 644 P.2d 355 (1982); Bradford v. Simpson, 97 Idaho 188, 541 P.2d 612 (1975).

XVI.

The procedural error asserted does not constitute "plain" or "fundamental" error so substantial as to result in injustice or to take from the appellants essential rights. State v. Haggard, 94 Idaho 249, 486 P.2d 260 (1971); Johnson v. Elliott, 112 Ariz. 57, 537 P.2d 927 (1975); Heacock v. Town, 419 P.2d 622 (Alaska 1966).

XVII.

Chapter 2, Title 42, Idaho Code, does not provide a protestant with the right to a further hearing upon an applicant's efforts to satisfy the director that it can meet the conditions of a permit when opportunity for written comment is provided. I.C. § 42-203.

XVIII.

An appeal from a decision of the director of the Department of Water Resources is had in accordance with the provisions of I.C. §§ 67-5215 and 67-5216. I.C. §§ 42-203 and 42-1701A(4).

XIX.

If the district court was correct in reversing the agency decision upon the grounds that an erroneous legal standard was applied and that unlawful procedure was used, the matter must be remanded to the agency for further proceedings consistent with the decision of the court. I.C. § 67-5215(g) (1983 Supp.).

XX.

It is not the function of the appellate court to reweigh the evidence to determine if it satisfies a new legal standard.

Workman Family Partnership v. City of Idaho Falls, 104 Idaho 32, 38-39, 655 P.2d 926 (1982).

XXI.

When an appellate court holds that an incorrect standard of proof was applied by an administrative agency it would be error for the appellate court to substitute its own findings. Tappen v. State, Dept. of Health & Welfare, 98 Idaho 576, 578, 570 P.2d 28 (1977); Van Orden v. State, Dept. of Health & Welfare, 102 Idaho 663, 667, 637 P.2d 1159 (1981); Mason v. State, Dept. of Law Enforcement, 103 Idaho 748, 751, 653 P.2d 803 (Ct.App. 1982).

XXII.

When an appellate court holds that an agency decision is based upon unlawful procedure because of failure to conduct a further hearing it would be error for the appellate court to make its own findings rather than remand the matter to the agency for further proceedings. Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 655 P.2d 926 (1982).

XXIII.

The district court sitting in its appellate capacity has the same authority as the Supreme Court to deny costs to the parties on appeal. I.A.R. 40(a); Sheppard v. Sheppard, 104 Idaho 1, 24, 655 P.2d 895 (1982); Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 39, 655 P.2d 926 (1982); Langmeyer v. State, 104 Idaho 53, 58, 656 P.2d 114 (1982).

AGRUMENT

I. A SHOWING OF REASONABLE PROBABILITY OF OBTAINING NECESSARY FINANCING SATISFIES THE FINANCIAL ABILITY REQUIREMENT OF I.C. § 42-203.

The district court held that DWR used an incorrect standard for evaluating whether the applicant Trout Co. had sufficient financial resources to satisfy the requirements of I.C. § 42-203. (Ct. R. p. 64).

I.C. § 42-203 provides with respect to financial ability that:

In all applications whether protested or not protested, where the proposed use is such . . . (4) that the applicant has not sufficient financial resources with which to complete the work involved therein . . . [t]he director of the department of water resources 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.

The director of DWR in his memorandum decision and order followed a long-established agency interpretation of the financial resources requirement of I.C. § 42-203. That interpretation is that an applicant for a water right permit must prove that it is reasonably probable that he can obtain the necessary financing to complete the project within the time constraints of the permit and the Idaho Code. (Conclusion of Law No. 4, Agency R. Vol. II, p. 543).

The district court rejected DWR's interpretation of the financial resources requirement of I.C. § 42-203. The district court held that the statute requires that an applicant for a water right permit is bound to show at the hearing that he then and there has the financial resources to complete the project

within the time allotted. (Ct. R. p. 65).

The long history of water appropriation practices in Idaho and other western prior appropriation states does not support the district court's interpretation of what the legislature intended with respect to the financial resources of an applicant under I.C. § 42-203. The statute in its earliest form as enacted in 1929 did not contain a provision specifically addressing the financial ability or resources of the applicant for a water right. 1929 Sess. Laws, ch. 212, § 1, p. 429. The statute at that time addressed itself only to the review of applications for permit to appropriate water for power purposes. In 1935 the statute was amended to apply to other types of proposed water uses involving more than twenty-five cubic feet per second. 1935 Sess. Laws, ch. 145, § 2, p. 353. It was at this time that the present language addressing the "sufficient financial resources" of the applicant was inserted into the statute. Id.

The legislative purpose behind the 1935 amendment to the Idaho Code appears to have been to protect the citizens of the state from unscrupulous promoters of water projects. The problem which the legislature was addressing with the 1935 amendment is described in the 1933-1934 Biennial report of the Commissioner of Reclamation:

Section 3 of Article XV of the State Constitution declares that the right to divert and appropriate the unappropriated waters of any natural stream to beneficial use shall never be denied. At the general election in November, 1928, the people, by vote, adopted an amendment to this section of the Constitution by adding to the first sentence the words "except that the state may regulate and limit

the use thereof for power purposes."

It is contended and generally conceded that under the provisions of the Constitution as it now stands, the commissioner of reclamation has no discretion with reference to the issuance of permits to divert and appropriate the waters of the state for any beneficial use, except power. This department has adopted that view, and as a result, many applications have been received and permits issued to uninformed or over zealous promoters to appropriate water for unworthy projects or where there was not sufficient water for otherwise meritorious projects, with the result that disappointment and failure have resulted.

In a few instances permits have been issued to unscrupulous promoters who have flourished and blazoned them before the credulous and gullible public as evidence of a water right and that "the State of Idaho was behind them," and many innocent purchasers of worthless securities, based on such permits, have been fleeced out of their hard earned savings and reduced to poverty and distress by the operations of such promoters.

To check and control the activities of such operators, legislation should be enacted or the Constitution amended, if necessary, so as to give the state power to regulate the appropriation of water for irrigation and other beneficial uses, as well as for power.

Eighth Biennial Report of the Department of Reclamation, State of Idaho, 1933-1934, R.W. Faris, Commissioner of Reclamation, pp. 28-29.

After the statute was amended in 1935, the 1935-1936 report of the Commissioner of Reclamation described the legislative action as follows:

The 1935 session of the Idaho Legislature amended Section 41-203 of the Code so as to give the Commissioner of Reclamation authority to reject applications for permit on the following grounds:

(a) Where the proposed use of water is such that it will reduce the quantity of water under existing rights

(b) That the water supply itself is insufficient for the purpose for which it is sought to be appropriated

(c) 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 water involved therein to any beneficial use or purpose.

If this amendment had been in effect during the years when the promotion of Carey Act and other projects was in its heyday, with a competent, honest and alert Commissioner of Reclamation, the State of Idaho would have escaped the severe criticism and odium that has been heaped upon it because of the failure of the many projects without a sufficient water supply or other defects, and thousands of settlers and investors would not have suffered disappointment, sorrow and loss of money.

Ninth Annual Report of the Department of Reclamation, State of Idaho, 1935-1936, R.W. Faris, Commissioner of Reclamation, p. 15.

There is no hint in the discussion contained in the reports of the Department of Reclamation either before or after passage of the 1935 amendment that the legislature intended to impose a requirement that an applicant for a water right permit show that he "then and there" has the financial resources to complete the project.

No Idaho case law has been found directly interpreting the sufficient resources requirement of I.C. § 42-203. Since, however, Idaho shares a water law heritage common to other western states it is proper to look to the law of those sister states for guidance. See, 5 Clark, Waters and Water Rights § 409.1.

In the case of Bullock v. Hanks, 452 P.2d 866 (Utah 1969) the Utah court was reviewing a decision of the state engineer approving a application to appropriate water. At issue was the state

engineer's determination that the proposed water project was economically and physically feasible. The financial ability of the applicant was not at issue. The rationale used by the court does, however, apply equally well to the issue of financial ability.

The court related the testimony of the state engineer at the district court level as follows:

The State Engineer testified that he merely determines if there be a reasonable probability that a dam can be built, that water can be impounded, and that water will be available to be impounded, diverted and placed on the lands; if these requirements be met, the project is considered feasible. The State Engineer stated that on this project he determined whether it could, not would, be feasible. (Emphasis is original).

Id. at 867-868.

In agreeing with the standard applied by the state engineer the court quoted with approval the following language from an earlier Utah case:

* * * The object of the engineer's office is to maintain order and efficiency in the appropriation, distribution and conservation of water and to allow as much water to be beneficially used as possible. So construed, the law provides a period of experimentation during which ways and means may be sought to make beneficial use of more water under the application before the rights of the parties are finally adjudicated. If we were to finally adjudicate applicant's right to change or to appropriate water at the time that such application was rejected or approved, he would get only such rights as he could establish by a preponderance of the evidence that he could use beneficially without interfering with the rights of others and in such hearing he would not have the benefit of any opportunity to experiment and demonstrate what he could do. Such a system would cut off the possibility of establishing many valuable rights without a chance to demonstrate what could be done.

United States v. District Court of Fourth Judicial District, 238 P.2d 1132, 1137 (Utah 1951).

As the Utah court also stated in United States v. District Court, the engineer rejects applications only when it is clear that the applicant can establish no valuable rights thereunder, he does not adjudicate claims but decides only that there is probable cause to believe that applicant may be able to establish rights under his application without impairing the rights of others. Id.

It is similarly asserted that under I.C. § 42-203 the director of DWR need only be convinced that the applicant has a reasonable probability of obtaining necessary financing in order for the permit to issue.

The apparent absence of recorded cases on the issue of an applicant's financial ability tends to support a conclusion that the requirement has been liberally applied by the various prior appropriation states. The financial ability criterion is common but not universal to other prior appropriation states. See e.g., Wy.Stat.Ann. § 41-4-505; Nev. Rev. Stat. § 533.375; Utah Code Ann. § 73-3-11. California is an example of a state without a financial ability provision in its water code.

In contrast to the void of case law addressing the financial ability of an applicant, there is considerable case law concerning whether lack of financial ability is sufficient excuse for failure to proceed with the work necessary to put the water to beneficial use under a permit. See, 2 Kinney, Irrigation &

Water Rights (2d Ed.) § 739; 1 Weil, Water Rights in the Western States (3rd Ed.) (1911) § 383; 1 Hutchins, Water Rights Laws in the Nineteen Western States (1971) p. 376. The rule generally applied is that lack of financial means is not a sufficient excuse for delay. Rio Puerco Irr. Co. v. Jastro, 141 P. 874, (N.M. 1914). Exceptions were made, however, for applicants of limited means who settled on the public domain to make their homes. See, Hall v. Blackman, 8 Idaho 272, 68 P. 19 (1902); Conant v. Jones, 3 Idaho 606, 32 P. 250 (1893).

It appears that DWR and its predecessor agencies have followed a wise policy in liberally construing the financial resources requirement of I.C. § 42-203 when applied to individuals or entities intending to apply the waters of the state to beneficial use on their own behalf. Any concern which may exist about tying up the water to the prejudice of a potential junior applicant is adequately satisfied by other statutory provisions requiring timely commencement, progress and completion of works. I.C. § 42-204 (supp. 1983) provides in pertinent part:

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.

In addition, I.C. § 42-301 provides as follows:

Permits contestable - When and by whom. - 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 canceled 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 canceled.

For those applicants intending to put water to beneficial use on their own behalf, section 42-301 ensures that reasonable diligence will be exercised or else the permit may be canceled.

DWR's interpretation of the financial ability requirement of I.C. § 42-203 is reasonable and consistent with sound public policy. It must be remembered that in Idaho the right to appropriate the unappropriated waters of the state is guaranteed in the constitution. Idaho Const. art. XV, sec. 3. To require "here and now" financing to complete the project before a permit may even be issued is a needless and unsound impediment to this constitutional right.

II. IDAHO LAW DOES NOT REQUIRE THAT FINAL, DETAILED CONSTRUCTION PLANS BE SUBMITTED AT THE TIME OF FILING AN APPLICATION FOR PERMIT TO APPROPRIATE WATER.

The district court ruled as follows regarding the design plans for the water project facilities proposed by the applicant:

The applicant has the burden of proof to show that his project is worthy of the issuance of a permit. This means that the design of the proposed facility should be final, detailed and not schematic. Unless this is the case, the project can not be properly evaluated for financing or effect on the

public interest. The department should not have to issue a permit on conditions that the Department review the final plans. The final plans should be presented to the Department with the application for a permit.

(Ct. R. pp. 68-69).

The district court's holding that final plans must be submitted with the filing of an application for permit to appropriate water is not supported by statute and if affirmed would represent a dramatic change in Idaho law.

I.C. § 42-202 provides as follows regarding the submission of plans:

Such application must set forth:

* * *

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.

* * *

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

It is reasonable to conclude that the plans and maps which are to accompany the application should be of sufficient detail to allow for proper evaluation of the application pursuant to I.C. § 42-203. If additional information is required, DWR is authorized by the provisions of I.C. § 42-204 to request the needed information. Nothing in I.C. § 42-203 or § 42-204, how-

ever, suggests that an applicant is expected to undertake the potentially large expense of having final plans for a project prepared before the application is even filed. Such an expenditure is unmerited, since the application may be disapproved on some ground unrelated to the plans, such as nonavailability of water. Bullock v. Hanks, 452 P.2d 866, 868 (Utah 1969).

In the Bullock case, the applicant argued on appeal that no applicant should be required at the approval stage to expend the money to design completely a dam, spillway, and other works and to dig test holes and expend other substantial amounts of money to assure he has a reservoir site. The Utah court agreed with this contention. Id. at 868.

DWR agrees with the common logic of the position taken by the Utah court in the Bullock case. Prior to the district court decision in this case DWR interpreted Idaho statutory law to arrive at a similar result. This Court is respectfully urged to reverse the holding of the district court that final project plans must be submitted with the filing of an application to appropriate water.

III. THE DECISION OF THE DEPARTMENT OF WATER RESOURCES WAS MADE UPON LAWFUL PROCEDURE.

The district court reversed the decision of DWR in part because of its conclusion that the director's final decision had been made upon unlawful procedure. (Ct. R. pp. 66-68). The procedure to which the district court objected concerned the failure of DWR to schedule a new or additional hearing to allow the protestants to cross-examine the applicant upon its "contemplated

operational criteria" for operation of the proposed Trout Co. fish raising facility. (Ct. R. p. 67).

The applicant's contemplated operational criteria were submitted to DWR to assure the director that the proposed fish raising facility could comply with condition no. 6 of the director's memorandum decision and order issued October 28, 1981 approving the permit subject to conditions. (Agency R. Vol. II. pp. 518-549). Condition no. 6 of the director's memorandum decision and order reads as follows:

6. Water quality:

A. General effluent limitations:

- 1) Un-ionized ammonia shall not exceed 0.02 mg/l in the effluent from the fish farm.
- 2) The suspended matter concentration of the effluent shall not exceed that of the influent except during the cleaning of ponds and/or raceways. Suspended matter concentration of the effluent shall not exceed 15 mg/l during cleaning.

B. Monitoring:

- 1) The permit holder or his agent shall perform the monitoring and provide the department with the results of the monitoring on every first day of the month.
- 2) Influent water shall be sampled at the point of diversion from the creek. Effluent shall be sampled from the discharge before mixing with the Creek.
- 3) Ammonia, suspended matter concentrations, pH, and water temperature shall be sampled three times daily. Sample periods must be two or more hours apart. During the months of July and August, one sampling period shall occur after 5 p.m. but before 8 p.m., MDT. The influent and effluent samples must be collected within the same 10 minute period.
- 4) Analyses must be conducted according to Standard Methods for the Examination of Water and Wastewater (APHA, 1975) or another method approved by the department. Analyses for pH must be completed within 10 minutes after the sample is

collected. Samples for ammonia and suspended solids must be refrigerated if not analyzed immediately. Analyses must be completed within 48 hours after the samples were collected.

- 5) Ammonia shall be determined according to Standard Methods for the Examination of Water and Wastewater (APHA, 1975), and the un-ionized ammonia concentration calculated using the following table taken from Quality Criteria for Water (EPA, 1976):

Table 3.-Percent un-ionized ammonia in aqueous ammonia solutions*

Temperature (°C)	pH Value								
	6.0	6.5	7.0	7.5	8.0	8.5	9.0	9.5	10.0
5 ...	0.013	0.040	0.12	0.39	1.2	3.8	11.	28.	56.
10 ...	0.019	0.059	0.19	0.59	1.8	5.6	16.	37.	65.
15 ...	0.027	0.087	0.27	0.86	2.7	8.0	21.	46.	73.
20 ...	0.040	0.13	0.40	1.2	3.8	11.	28.	56.	80.
25 ...	0.057	0.18	0.57	1.8	5.4	15.	36.	64.	85.
30 ...	0.080	0.25	0.80	2.5	7.5	20.	45.	72.	89.

* [Thurston, et al. (1974)]

C. Violations:

- 1) The weekly (Sunday through Saturday) average suspended matter concentration of the effluent shall not exceed the weekly average suspended matter concentration of the influent. The department will notify Troutco of a violation if the weekly average suspended sediment concentration of the effluent exceeds the weekly average suspended sediment concentration of the influent. A second violation in any six month period will be considered a violation of the conditions of the water right permit and constitute a basis for revocation of said permit.
- 2) Suspended matter concentration in the effluent shall not exceed 15 mg/l during cleaning operations and measurements made during raceway cleaning shall not be figured into the weekly average.
- 3) Un-ionized ammonia shall not, at any time, exceed 0.02 mg/l in the effluent.

The department will notify Troutco if the un-ionized ammonia concentration in the effluent exceeds, at any time, 0.02 mg/l. A second violation in any six month period will be considered a violation of the conditions of the water right permit and constitute a basis for revocation of said permit.

- 4) Failure to comply with the monitoring and reporting requirements, or submitting false information will be considered a violation of the conditions of this permit and constitute a basis for revocation of said permit.

(Agency R. Vol. II, pp. 547-549).

Condition no. 8 of the director's memorandum decision and order of October 28, 1981 read as follows:

8. The design and construction plans of the proposed fish propagation facility must be submitted to the department for review and approval to ensure that the facility will comply with condition no. 6. The applicant must demonstrate to the department how the proposed facility will comply.

(Agency R. Vol. II, p. 549).

On November 5, 1991, protestants Crutchfield et al. filed with DWR a motion for rehearing in response to the director's October 28, 1981 memorandum decision and order. The Crutchfields were represented before DWR by Matthew Mullaney, Esquire, and are no longer active in the case. With respect to condition no. 8, the motion for rehearing stated:

If the Department is not willing to deny the permit for fish propagation, the Order should be amended in the following respects:

* * *

5. Paragraph 8 should be amended to read as follows:

The design and construction plans of the proposed fish propagation facility must be submitted to the department for review and approval to ensure that the facility will comply with conditions contained in paragraphs 1, 2, and 6 of this Order. The applicant must demonstrate to the department how the proposed facility will comply. At the time the applicant submits design and construction plans to the department, the applicant shall serve notice of submittal upon the Protestants. The Protestants may comment in writing to the department with copy to the applicant within 60 days following receipt of notice of submittal.

(Agency R. Vol. II, pp. 552-553).

On November 18, 1981, DWR issued an order denying the Crutchfield request for rehearing and making the following order with respect to condition no. 8 of the memorandum decision and order:

The applicant must now submit suitable plans to the department. Condition no. 8 shall be modified as follows:

The design and construction plans of the proposed facility must be submitted to the department for review and approval to ensure that the facility will comply with conditions 1, 2, and 6. The applicant must demonstrate to the department how the proposed facility will comply. At the time the applicant submits design and construction plans to the department, the applicant shall serve the same upon the protestants. The protestants may comment in writing to the department with copy to the applicant within 60 days following receipt of notice of submittal.

(Agency R. Vol. II, p. 562).

The procedure to be utilized by DWR for review of Trout Co.'s design and construction plans was next raised in a letter to the director dated November 23, 1981, from protestant Shokal and Reed's present counsel. That letter stated in pertinent part as

follows:

2) If, as it appears, the applicant will be allowed to modify their plan to accommodate the conditions of the permit, I believe the Protestants should be involved in that process. Your recent Order indicated involvement only if the Director does not find the initial plan acceptable. We would like to comment on the adequacy of the proposed plan before a decision is made.

(Agency R. Vol. II, p. 570).

On February 12, 1982, DWR received from Trout Co. its contemplated operational criteria for the Trout Co. fish raising facility together with drawings in response to condition no. 8 of the Director's order. (Agency R. Vol. II, p. 588).

Protestants Shokal and Reed filed their objections to the contemplated operational criteria on March 17, 1982. (Agency R. Vol. II, p. 594). The protest of Fish and Game to the contemplated operational criteria was received April 7, 1982. (Agency R. Vol. II, p. 604).

The comments received from the protestants raised numerous objections to the adequacy of the contemplated operational criteria submitted by Trout Co. The comments do not, however, contain a request to modify the procedure being used for the protestants to participate in the evaluation of the adequacy of the contemplated operational criteria. The procedure used by DWR was proposed by the Crutchfield and Shokal and Reed protestants and was not timely objected to by protestant Fish and Game.

Protestant Fish and Game did make the statement in its protest to the operational criteria that, "Protestants have no right to cross examine Trout Co. in regard to the plan or any other

evidence submitted." (Agency R. Vol. II, p. 606). Fish and Game did not object to this procedure, however, when it was proposed by the other protestants or when it was adopted by DWR.

If the protestants found fault with the procedure used by DWR in reviewing the operational criteria of Trout Co., the time to have objected was when the procedure was suggested by protestant Crutchfield and adopted by DWR in its order of November 18, 1981. Protestants should not be allowed to successfully object on appeal to a procedure which they did not timely object to before the agency.

Any objection which the protestants now argue on appeal regarding the procedure utilized before DWR should be considered waived. C.J.S. Trial § 658.

As the above quotations from the agency record indicate, the district court mischaracterizes the nature of the proceedings before DWR when it states:

Protestants had objections or wanted an opportunity to make objections and/or to cross-examine the "Operational Criteria". However, the Director scheduled no new hearing to allow this opportunity.

(Ct. R. p. 67).

It is true that protestants asked for 60 days in which to review and comment upon the operational criteria submitted by Trout Co. This opportunity for comment was provided and no objection to the procedure was made to DWR. Protestant Fish and Game did note in its response to Trout Co.'s operational criteria that there was no right to cross examine under the procedure followed, but did not request that an additional hearing be held

for that purpose. (Agency R. Vol. II, p. 606). It should be remembered that four days of hearings had already been conducted before the agency in May and June of 1981 on the issues of financial ability and local public interest. (Agency R. Vol. I, pp. 206, 238).

The district court erred in holding that the agency decision had been made upon unlawful procedure when the protestants did not make timely objection to the procedure before the agency. It is established law in Idaho that a litigant may not remain silent as to claimed error during a proceeding and later urge his objections thereto for the first time on appeal. Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 655 P.2d 926 (1982); Hoppe v. McDonald, 103 Idaho 33, 644 P.2d 355 (1982); Bradford v. Simpson, 97 Idaho 188, 541 P.2d 612 (1975).

This Court recently stated in its decision in Hoppe, supra, that:

Ordinarily an objection not made at trial will not be considered on appeal, Kock v. Elkins, 71 Idaho 50, 225 P.2d 457 (1950), unless the objection raises a question of jurisdiction, Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976), or that the pleading fails to state a cause of action, Webster v. Potlatch Forests, 68 Idaho 1, 187 P.2d 527 (1947). The instant case falls into none of the exceptions to the rule. Nor is this a case in which the trial court committed "plain" or "fundamental" error so substantial as to result in injustice or to take from the appellant a right essential to her case. Johnson v. Elliot, 112 Ariz. 57, 537 P.2d 927 (1975); Heacock v. Town, 419 P.2d 622 (Alaska 1966); cf. State v. Haggard, 94 Idaho 249, 486 P.2d 260 (1971).

103 Idaho at 35.

It is likewise true that none of the exceptions to the rule

apply in the present case. Nor does the error asserted in the present case constitute "plain" or "fundamental" error so substantial as to result in injustice or to take from the appellants a right essential to their case.

DWR in this case held four days of hearings primarily devoted to receiving evidence upon the issue of local public interest and in particular upon the water quality aspects of local public interest. Relying extensively upon evidence introduced by the protestants at the hearing the permit was issued with a detailed and stringent condition aimed at protecting the existing water quality of the stream. Nothing contained in I.C. § 42-203 provides protestants with the right to a further hearing upon the applicant's efforts to satisfy the director that it can meet the conditions of the permit when opportunity for written comment is provided. This is not to say that DWR would not have scheduled a further hearing if it had been requested to do so. No such request was made. The determination by the district court that the agency acted upon unlawful procedure should be reversed.

IV. IF THE DECISION OF THE DISTRICT COURT IS AFFIRMED,
I.C. § 67-5215(g) REQUIRES THAT THE MATTER BE
REMANDED TO THE AGENCY FOR FURTHER HEARING.

The district court reviewed the agency decision in this case under the provisions of I.C. § 67-5215 (1983 Supp.), a part of the administrative procedure act. (Ct. R., pp. 59-60). I.C. §§ 42-203 and 42-1701A(4) direct that an appeal from a decision of the director of DWR is to be had in accordance with the provisions of I.C. §§ 67-5215 and 67-5216. I.C. § 67-5215(g) sets

forth the standard of review to be followed by the appellate court:

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The protestants on appeal argue that in applying the standards of I.C. § 67-5215(g) the district court erred in remanding the case back to the department for further hearing. DWR's position is that, under the facts of this case, the district court was required by the statutory standard to remand the case to the agency for further hearing once it had reversed the agency decision.

The district court in this case reversed the agency decision in part because it determined that DWR had applied an incorrect standard to determine whether the applicant had satisfied the sufficient financial resources requirement of I.C. § 42-203. (Ct. R., p. 64). The district court also reversed the agency decision because it concluded the decision had been made upon

unlawful procedure in violation of I.C. § 67-5215(g)(3). (Ct. R. p. 67)).

If the district court was correct in reversing the agency decision upon the stated grounds, it was required by the provisions of I.C. § 67-5215(g) to remand the matter to DWR for further proceedings consistent with the decision of the court.

I.C. § 67-5215(g) states that the reviewing court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The district court concluded the agency had applied an incorrect legal standard for evaluating the finances of the applicant. It is clear from the statute that it is not the function of the district court to have reweighed the evidence to determine if it would satisfy the new legal standard announced by the court. That is a function properly left by the statute to the agency upon remand. Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 38-39, 655 P.2d 926 (1982). Where an incorrect standard of proof is applied by an administrative agency it is error for the district court to substitute its own findings. Tappen v. State, Dept. of Health & Welfare, 98 Idaho 576, 578, 570 P.2d 28 (1977). See also Van Orden v. State, Dept. of Health & Welfare, 102 Idaho 663, 667, 637 P.2d 1159 (1981); Mason v. State, Dept. of Law Enforcement, 103 Idaho 748, 751, 653 P.2d 803 (Ct. App. 1982).

Likewise, the district court's conclusion that the agency decision had been made upon unlawful procedure because of the failure to conduct a further hearing required that the court

remand the case back to the agency for further proceedings consistent with the procedure order by the court. Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 655 P.2d 926 (1982).

V. IT WAS WITHIN THE DISCRETION OF THE DISTRICT COURT NOT TO AWARD COSTS TO THE APPELLANTS.

The district court reviewed the agency decision of DWR in this case in its capacity as an appellate court. I.C. §§ 42-203, 42-1701A(4) and 67-5215(g).

I.A.R. 40(a) provides that an appellate court shall allow costs as a matter of course to the prevailing party unless otherwise provided by law or order of the court. I.A.R. 40(a) thus gives an appellate court the authority to order that costs not be awarded in a given case. In the present case the district court elected not to assess costs against DWR or to award costs to any party. (Ct. Tr. p. 102, lines 7-19). This Court has decided numerous recent cases in which it has exercised its authority under I.A.R. 40(a) to order that costs not be allowed. Sheppard v. Sheppard, 104 Idaho 1, 24, 655 P.2d 895 (1982); Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 39 655 P.2d 926 (1982); Langmeyer v. State, 104 Idaho 53, 58, 656 P.2d 114 (1982). The district court sitting in its appellate capacity has the same authority as this Court to deny costs. The district court's order denying costs to appellants should therefore be affirmed.

CONCLUSION

For all the reasons argued herein, and such other reasons as may appear at oral argument on this appeal, the Respondent and

Cross-appellant Department of Water Resources respectfully requests as follows:

(a) That this Court reverse the decision of the district court insofar as it held:

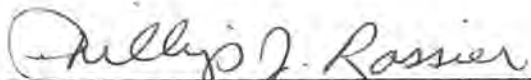
(i) that DWR applied an erroneous standard in determining "sufficient financial resources" under I.C. § 42-203;

(ii) that final, detailed construction plans for a proposed water project need to be filed with an application for permit to appropriate water;

(iii) that the decision of DWR was made upon unlawful procedure; and

(b) That in the event this Court affirms the decision of the district court on the substantive issues recited in (a) above, this Court also affirm the decision of the district court remanding the matter to the agency for further hearing and denying costs to appellants before the district court.

RESPECTFULLY SUBMITTED this 28th day of March, 1984.


PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That the foregoing Respondent And Cross-Appellant's Brief was served upon the parties to this action by mailing two copies of the same to their attorneys at the addresses listed below on March 28th, 1984.

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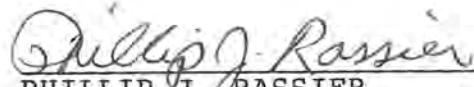

PHILLIP J. RASSIER

EXHIBIT C

fixed by the court, and may at any time be extended or terminated by the court. Such period with any extension thereof shall not exceed ~~five--years;--except--in--cases--in--which--the--defendant--is--charged--with--failure--to--provide--subsistance--to--his--dependents~~ the maximum period for which the defendant might have been imprisoned.

At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Thereupon the court, after summary hearing may revoke the probation and suspension of sentence and cause the sentence imposed to be executed, or may cause the defendant to be brought before it and may continue or revoke the probation, or may impose any sentence which originally might have been imposed at the time of conviction.

Approved April 3, 1986.

CHAPTER 312
(H.B. No. 373)

AN ACT

RELATING TO CRIMINAL PUNISHMENT; AMENDING CHAPTER 1, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-112A, IDAHO CODE, TO PROVIDE A FINE FOR FELONY STATUTES WHEN A FINE IS NOT SPECIFICALLY PROVIDED.

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

SECTION 1. That Chapter 1, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-112A, Idaho Code, and to read as follows:

18-112A. FINE AUTHORIZED. In addition to any other punishment prescribed for felonies in specific statutes of the Idaho Code, the court may also impose a fine of up to five thousand dollars (\$5,000). This section shall not apply if the specific felony statute provides for the imposition of a fine.

Approved April 3, 1986.

CHAPTER 313
(H.B. No. 369, As Amended in the Senate)

AN ACT

RELATING TO ADMINISTRATION OF WATER RIGHTS; AMENDING SECTION 42-108, IDAHO CODE, TO PROVIDE THAT ANY PERMANENT CHANGE IN PERIOD OR NATURE OF USE FOR A QUANTITY OF WATER GREATER THAN FIFTY CFS OR FOR A STORAGE VOLUME GREATER THAN FIVE THOUSAND ACRE FEET SHALL

REQUIRE THE APPROVAL OF THE LEGISLATURE EXCEPT THAT ANY TEMPORARY CHANGE WITHIN THE STATE OF IDAHO FOR A PERIOD OF LESS THAN THREE YEARS MAY BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES WITHOUT LEGISLATIVE APPROVAL; AMENDING SECTION 42-201, IDAHO CODE, TO PROHIBIT ILLEGAL APPLICATION AND USE OF PUBLIC WATERS; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE FOR EXTENSIONS BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES FOR COMPLETION OF WORKS AND APPLICATION OF THE WATER TO FULL BENEFICIAL USE UNDER CERTAIN PERMITS AND TO DELETE ARCHAIC LANGUAGE; AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR RECEIPT OF ALL NOTICES OF APPLICATION WITHIN A DESIGNATED AREA; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE NOTICE OF A PROPOSED CHANGE IN WATER USE, TO PROVIDE CONDITIONS FOR TRANSFER OF THE RIGHT TO STORED WATER FOR IRRIGATION PURPOSES, TO DELETE LANGUAGE RELATING TO CHANGE OF NATURE OF USE OF A WATER RIGHT AND TO PROVIDE NOTICE OF AN APPLICATION FOR AN EXTENSION; REPEALING SECTIONS 42-240 AND 42-311, IDAHO CODE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-311, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS PRIOR TO LICENSURE, TO PROVIDE GROUNDS FOR THE ORDER, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING, TO PROVIDE FOR JUDICIAL REVIEW AND TO DEFINE PERMITTEE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 42-350, 42-351 AND 42-352, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS AFTER LICENSURE, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING, JUDICIAL REVIEW OR RIGHT OF ACTION IN DISTRICT COURT, TO DEFINE LICENSEE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES AUTHORITY TO ISSUE ORDERS FOR ILLEGAL DIVERSION OR USE OF WATER, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING AND JUDICIAL REVIEW AND TO PROVIDE CIVIL PENALTIES; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1778, IDAHO CODE, TO CREATE THE WATER RIGHTS ENFORCEMENT ACCOUNT IN THE AGENCY ASSET FUND; AND AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE THE POWER AND DUTY TO SEEK AN INJUNCTION OR RESTRAINING ORDER PERTAINING TO CERTAIN VIOLATIONS OR ATTEMPTED VIOLATIONS REGARDING WATER LAW.

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

SECTION 1. That Section 42-108, Idaho Code, be, and the same is hereby amended to read as follows:

42-108. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE -- APPLICATION OF ACT. The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or 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 lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district; ~~provided, any.~~ Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature. ~~Any lease,~~ except that any temporary change within the state of Idaho for a term period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code.

SECTION 2. That Section 42-201, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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 -- 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-foot capacity or for the appropriation of water to be impounded in such reservoir of more than two hundred thousand (200,000) acre-foot 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. 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 establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

4. 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.

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

42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations 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 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less \$30.00
2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet \$45.00
3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet \$45.00 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet \$425.00 plus \$10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.
5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet \$1,225.00

plus \$5.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet \$3,225.00 plus \$1.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing application for change of point of diversion, place, period, or nature of use of water of established rights; ~~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 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less \$30.00

2. For all other amounts \$50.00

C. For filing application for amendment of permit \$20.00

D. For filing claim to use right under section 42-243, Idaho Code \$30.00

E. For filing a late claim to use a right under section 42-243, Idaho Code, where the date filed with the department of water resources, or if mailed to the department of water resources the post-mark is:

1. After June 30, 1983, but not later than June 30, 1984..\$100.00

2. After June 30, 1984, but not later than June 30, 1988..\$200.00

F. For readvertising application for permit, change, exchange, or extension to resume use \$20.00

G. For certification, each document \$1.00

H. For making photo copies of office records, maps and documents for public use A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit \$15.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use A reasonable charge as determined by the department.

K. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

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

SECTION 5. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of

all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required by section 42-108, Idaho Code, and if otherwise proper to cause provide notice of the proposed change to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such paper; otherwise in a newspaper of general circulation within the county in the same manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is in the local public interest as defined in section 42-203, Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The director shall not approve such a change in nature of use of a water right if a change has previously been allowed except where the change is back to the original use. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of

five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for non-application to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee. Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to ~~cause notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water has been diverted if there is such a paper, otherwise in a newspaper of general circulation within the county~~ provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension for which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest to the director of the department of water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct hearing thereon as in this chapter provided. The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use. In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section he shall deny same and forward notice of such

action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

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

SECTION 6. That Sections 42-240 and 42-311, Idaho Code, be, and the same are hereby repealed.

SECTION 7. That Chapter 3, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-311, Idaho Code, and to read as follows:

42-311. CANCELLATION OF PERMIT -- GROUNDS -- HEARING -- PERMITTEE DEFINED. (1) If the director of the department of water resources finds, on the basis of available information at any time after a permit is issued but prior to license, that the permittee has wilfully and intentionally failed to comply with any of the conditions in the permit, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not cancel said permit and declare the water subject to appropriation; or (b) an order directing the permittee to cease and desist the activity or activities alleged to be in violation of the conditions of the permit. A cease and desist order may direct compliance with the permit forthwith or may provide for a time schedule to bring the permittee into compliance with the conditions of the permit.

(2) Any order to show cause or order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order of the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the permittee.

(4) The permittee shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

(5) The term "permittee," as used in this chapter, includes the heirs, successors, or assigns of the person to whom the department

issued a water right permit.

SECTION 8. That Chapter 3, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 42-350, 42-351 and 42-352, Idaho Code, and to read as follows:

42-350. REVOCATION OF LICENSE -- GROUNDS -- HEARING -- LICENSEE DEFINED. (1) If the director of the department of water resources finds, on the basis of available information at any time after a license is issued, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years or that the licensee has wilfully and intentionally failed to comply with any of the conditions in the license, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not revoke said license and declare the water subject to appropriation; or (b) an order directing the licensee to cease and desist the activity or activities alleged to be in violation of the conditions of the license. A cease and desist order may direct compliance with the license forthwith or may provide for a time schedule to bring the licensee into compliance with the conditions of the license.

(2) Any order to show cause or order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order of the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the licensee.

(4) The licensee shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

(5) If the director of the department of water resources has issued an order to show cause why the director should not revoke a license, the licensee may, within twenty-one (21) days from the date of service of the order, notify the director in writing of the intent of the licensee to waive the right to an administrative hearing before the department and to file a complaint in the district court for a determination of the validity of the license. The complaint shall name the director of the department of water resources as a defendant and shall be filed either in the county where the point of diversion or the place of use under the license is located, or in the county where the director issued the order to show cause. The complaint shall be filed within forty-two (42) days of the date of service of the order to show cause by the director.

(6) The term "licensee," as used in this chapter, includes the heirs, successors, or assigns of the person to whom the department issued a water right license.

42-351. ILLEGAL DIVERSION OR USE OF WATER -- CEASE AND DESIST ORDERS. (1) If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural watercourse or from a ground water source without having obtained a valid water right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right. A cease and desist order may direct compliance with applicable law and with any existing water right or may provide a time schedule to bring the person's actions into compliance with applicable law and with any existing water right.

(2) Any order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order or the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the person the subject of the cease and desist order.

(4) The person who is the subject of the cease and desist order shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

42-352. CIVIL PENALTIES. (1) Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to impose, assess and recover said civil penalties.

(2) All civil penalties collected by the director of the department of water resources under this section shall be deposited in the state water rights enforcement account established by section 42-1778, Idaho Code.

SECTION 9. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1778, Idaho Code, and to read as follows:

42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT. (1) The water rights enforcement account is hereby created and established in the agency asset fund.

(2) All moneys in the water rights enforcement account are reserved, set aside, appropriated and made available until expended as may be directed by the director of the department of water resources

in carrying out a water rights enforcement program.

SECTION 10. That Section 42-1805, Idaho Code, be, and the same is hereby amended to read as follows:

42-1805. ADDITIONAL DUTIES. In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to interstate and international water rights affecting Idaho water resources; and to cooperate with all agencies, now existing or hereafter to be formed, within the state or within other jurisdictions, in matters affecting the development of the water resources of this state.

(2) To prepare a present and continuing inventory of the water resources of this state, ascertain means and methods of conserving and augmenting these and determine as accurately as possible the most effective means by which these water resources may be applied for the benefit of the people of this state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the administrator, reports and information prepared by him pertaining to water quality programs, and proposed rules and regulations pertaining to water quality programs.

(c) The director shall make available to the administrator and the administrator shall make available to the director all notices of hearings relating to the promulgation of rules and regulations relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notices of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

(8) To promulgate, adopt, modify, repeal and enforce rules and

regulations implementing or effectuating the powers and duties of the department.

(9) To seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate (a) those provisions of law relating to all aspects of the appropriation of water, distribution of water, headgates and measuring devices; or (b) the administrative or judicial orders entered in accordance with the provisions of law.

Approved April 3, 1986.

CHAPTER 314
(H.B. No. 569, As Amended)

AN ACT

RELATING TO SANITARY REGULATIONS FOR PUBLIC EATING PLACES; AMENDING SECTION 39-1611, IDAHO CODE, TO STRIKE REFERENCES TO INDIVIDUAL CLEAN TOWELS AND TO AUTHORIZE OTHER SANITARY DRYING DEVICES; AND AMENDING SECTION 39-1612, IDAHO CODE, TO STRIKE REFERENCES TO CUSPIDORS AND REQUIREMENTS FOR POSTING OF NOTICES.

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

SECTION 1. That Section 39-1611, Idaho Code, be, and the same is hereby amended to read as follows:

39-1611. SLEEPING IN COOK ROOM PROHIBITED -- WASHING FACILITIES AND REQUIREMENTS -- COMMON TOWEL PROHIBITED. No person shall sleep in any room where food is prepared, or cooked. No person in any way connected with the handling, cooking, preparing or serving of food in any kitchen or eating place, shall engage at work following a visit to a toilet room without first thoroughly cleansing his or her hands. Conveniently located washing facilities, including hot and cold running water, soap and individual clean towels or other sanitary drying devices, shall be provided in all such eating places. The use of a common towel is prohibited.

SECTION 2. That Section 39-1612, Idaho Code, be, and the same is hereby amended to read as follows:

39-1612. ~~CUSPIDORS~~---SMOKING, CHEWING, AND SPITTING ---NOTICES. ~~Cuspidors--of--impervious--material--shall--be--provided--for--the--use--of--employees--and--the--public;--and--these--shall--be--cleaned--daily.~~ No employee or other person shall spit or discharge any substance from the mouth or nose on the floor or walls of the kitchen or any other room of an eating place. The smoking, snuffing or chewing of tobacco is prohibited in any part of any eating place, except that smoking will be permitted in ~~the toilet room or rest room; and in the dining room by the public only~~ designated smoking areas. ~~Plain notices--shall be--posted--in--every--eating--place--forbidding--any--person--to--spit--on--the~~

IN THE SENATE
SENATE AMENDMENTS TO H.B. NO. 369

AMENDMENTS TO SECTION 8

On page 9 of the printed bill, following line 30, insert:

"(5) If the director of the department of water resources has issued an order to show cause why the director should not revoke a license, the licensee may, within twenty-one (21) days from the date of service of the order, notify the director in writing of the intent of the licensee to waive the right to an administrative hearing before the department and to file a complaint in the district court for a determination of the validity of the license. The complaint shall name the director of the department of water resources as a defendant and shall be filed either in the county where the point of diversion or the place of use under the license is located, or in the county where the director issued the order to show cause. The complaint shall be filed within forty-two (42) days of the date of service of the order to show cause by the director."

On page 9 of the printed bill, in line 31, delete: "(5)" and insert: "(6)".

CORRECTION TO TITLE

On page 1 of the printed bill, in line 28, delete: "AND JUDICIAL REVIEW" and insert: ", JUDICIAL REVIEW OR RIGHT OF ACTION IN DISTRICT COURT".

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 369

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO ADMINISTRATION OF WATER RIGHTS; AMENDING SECTION 42-108, IDAHO
2 CODE, TO PROVIDE THAT ANY PERMANENT CHANGE IN PERIOD OR NATURE OF USE FOR
3 A QUANTITY OF WATER GREATER THAN FIFTY CFS OR FOR A STORAGE VOLUME GREATER
4 THAN FIVE THOUSAND ACRE FEET SHALL REQUIRE THE APPROVAL OF THE LEGISLATURE
5 EXCEPT THAT ANY TEMPORARY CHANGE WITHIN THE STATE OF IDAHO FOR A PERIOD OF
6 LESS THAN THREE YEARS MAY BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF
7 WATER RESOURCES WITHOUT LEGISLATIVE APPROVAL; AMENDING SECTION 42-201,
8 IDAHO CODE, TO PROHIBIT ILLEGAL APPLICATION AND USE OF PUBLIC WATERS;
9 AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE FOR EXTENSIONS BY THE
10 DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES FOR COMPLETION OF WORKS AND
11 APPLICATION OF THE WATER TO FULL BENEFICIAL USE UNDER CERTAIN PERMITS AND
12 TO DELETE ARCHAIC LANGUAGE; AMENDING SECTION 42-221, IDAHO CODE, TO PRO-
13 VIDE A FEE FOR RECEIPT OF ALL NOTICES OF APPLICATION WITHIN A DESIGNATED
14 AREA; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE NOTICE OF A PROPOSED
15 CHANGE IN WATER USE, TO PROVIDE CONDITIONS FOR TRANSFER OF THE RIGHT TO
16 STORED WATER FOR IRRIGATION PURPOSES, TO DELETE LANGUAGE RELATING TO
17 CHANGE OF NATURE OF USE OF A WATER RIGHT AND TO PROVIDE NOTICE OF AN
18 APPLICATION FOR AN EXTENSION; REPEALING SECTIONS 42-240 AND 42-311, IDAHO
19 CODE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW
20 SECTION 42-311, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF
21 WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS PRIOR TO LICENSURE, TO PRO-
22 VIDE GROUNDS FOR THE ORDER, TO PROVIDE THAT THE ORDER BE SERVED, TO PRO-
23 VIDE FOR A HEARING, TO PROVIDE FOR JUDICIAL REVIEW AND TO DEFINE PERMIT-
24 TEE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF NEW SEC-
25 TIONS 42-350, 42-351 AND 42-352, IDAHO CODE, TO PROVIDE THE DIRECTOR OF
26 THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS AFTER
27 LICENSURE, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO
28 PROVIDE FOR A HEARING AND JUDICIAL REVIEW, TO DEFINE LICENSEE, TO PROVIDE
29 THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES AUTHORITY TO ISSUE
30 ORDERS FOR ILLEGAL DIVERSION OR USE OF WATER, TO PROVIDE GROUNDS, TO PRO-
31 VIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING AND JUDICIAL
32 REVIEW AND TO PROVIDE CIVIL PENALTIES; AMENDING CHAPTER 17, TITLE 42,
33 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1778, IDAHO CODE, TO
34 CREATE THE WATER RIGHTS ENFORCEMENT ACCOUNT IN THE AGENCY ASSET FUND; AND
35 AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE
36 DEPARTMENT OF WATER RESOURCES SHALL HAVE THE POWER AND DUTY TO SEEK AN
37 INJUNCTION OR RESTRAINING ORDER PERTAINING TO CERTAIN VIOLATIONS OR
38 ATTEMPTED VIOLATIONS REGARDING WATER LAW.

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

40 SECTION 1. That Section 42-108, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 42-108. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR
43 NATURE OF USE -- APPLICATION OF ACT. The person entitled to the use of water

or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or 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 lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district;--provided;--any. Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature;--Any lease, except that any temporary change within the state of Idaho for a term period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code.

SECTION 2. That Section 42-201, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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 -- 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 appro-

priation--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. 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 establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

4. 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.

45. 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 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.~~

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

4 SECTION 4. That Section 42-221, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 42-221. FEES OF DEPARTMENT. The department of water resources shall col-
7 lect the following fees which shall constitute a fund to pay for legal adver-
8 tising, the publication of public notices and for investigations required of
9 the department in connection with the issuance of permits and licenses as pro-
10 vided in this chapter:

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

13 1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20
14 acre feet or less \$30.00

15 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or
16 for a storage volume greater than 20 acre feet but not exceeding 100 acre
17 feet \$45.00

18 3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or
19 for a storage volume greater than 100 acre feet but not exceeding 2,000
20 acre feet \$45.00

21 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet or
22 part thereof over the first 1.0 c.f.s. or 100 acre feet.

23 4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s.
24 or for a storage volume greater than 2,000 acre feet but not exceeding
25 10,000 acre feet \$425.00

26 plus \$10.00 for each additional c.f.s. or part thereof or 100 acre feet or
27 part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

28 5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0
29 c.f.s., or for a storage volume greater than 10,000 acre feet but not
30 exceeding 50,000 acre feet \$1,225.00

31 plus \$5.00 for each additional c.f.s. or part thereof or 100 acre feet or
32 part thereof over the first 100 c.f.s. or 10,000 acre feet.

33 6. For a quantity greater than 500 c.f.s., or for a storage volume
34 greater than 50,000 acre feet \$3,225.00
35 plus \$1.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet
36 or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

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

41 1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20
42 acre feet or less \$30.00

43 2. For all other amounts \$50.00

44 C. For filing application for amendment of permit \$20.00

45 D. For filing claim to use right under section 42-243, Idaho Code \$30.00

46 E. For filing a late claim to use a right under section 42-243, Idaho
47 Code, where the date filed with the department of water resources, or if
48 mailed to the department of water resources the postmark is:

49 1. After June 30, 1983, but not later than June 30, 1984.....\$100.00

50 2. After June 30, 1984, but not later than June 30, 1988.....\$200.00

51 F. For readvertising application for permit, change, exchange, or exten-
52 sion to resume use \$20.00

53 G. For certification, each document \$1.00

1 H. For making photo copies of office records, maps and documents for
2 public use A reasonable charge as determined by the department.

3 I. For filing request for extension of time within which to submit proof
4 of beneficial use on a water right permit \$15.00

5 J. For tasks requiring in excess of one (1) hour research or for com-
6 puterized data provided for public use A reasonable charge as determined
7 by the department.

8 K. For receipt of all notices of application within a designated area, a
9 reasonable annual charge as determined by the department.

10 All fees received by the department of water resources under the provi-
11 sions of this chapter shall be transmitted to the state treasurer for deposit
12 in the water administration account.

13 SECTION 5. That Section 42-222, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR
16 NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION --
17 APPEALS. (1) Any person, entitled to the use of water whether represented by
18 license issued by the department of water resources, by claims to water rights
19 by reason of diversion and application to a beneficial use as filed under the
20 provisions of this chapter, or by decree of the court, who shall desire to
21 change the point of diversion, place of use, period of use or nature of use of
22 all or part of the water, under the right shall first make application to the
23 department of water resources for approval of such change. Such application
24 shall be upon forms furnished by the department and shall describe the right
25 licensed, claimed or decreed which is to be changed and the changes which are
26 proposed, and shall be accompanied by the statutory filing fee as in this
27 chapter provided. Upon receipt of such application it shall be the duty of the
28 director of the department of water resources to examine same, obtain any con-
29 sent required by section 42-108, Idaho Code, and if otherwise proper to cause
30 provide notice of the proposed change to-be-published-once-a-week-for-two--(2)
31 consecutive--weeks--in-a-newspaper-published-and-of-general-circulation-within
32 the-county-where-the-water-is-diverted;-if-there-is-such-paper;-otherwise-in-a
33 newspaper-of-general-circulation-within-the--county in the same manner as
34 applications under section 42-203A, Idaho Code. Such notice shall advise that
35 anyone who desires to protest the proposed change shall file notice of
36 protests with the department within ten (10) days of the last date of publi-
37 cation. Upon the receipt of any protest it shall be the duty of the director
38 of the department of water resources to investigate the same and to conduct a
39 hearing thereon. He shall also advise the watermaster of the district in which
40 such water is used of the proposed change and the watermaster shall notify the
41 director of the department of water resources of his recommendation on the
42 application, and the director of the department of water resources shall not
43 finally determine the action on the application for change until he has
44 received from such watermaster his recommendation thereof, which action of the
45 watermaster shall be received and considered as other evidence.

46 The director of the department of water resources shall examine all the
47 evidence and available information and shall approve the change in whole, or
48 in part, or upon conditions, provided no other water rights are injured
49 thereby, the change does not constitute an enlargement in use of the original
50 right, and the change is in the local public interest as defined in section
51 42-203, Idaho Code; except the director shall not approve a change in the
52 nature of use from agricultural use where such change would significantly
53 affect the agricultural base of the local area. ~~The director shall not approve~~

1 ~~such-a-change-in-nature-of-use-of-a-water-right-if-a-change-has-previously~~
 2 ~~been-allowed-except-where-the-change-is-back-to-the-originat-use-~~ The transfer
 3 of the right to the use of stored water for irrigation purposes shall not con-
 4 stitute an enlargement in use of the original right even though more acres may
 5 be irrigated, if no other water rights are injured thereby. A copy of the
 6 approved application for change shall be returned to the applicant and he
 7 shall be authorized upon receipt thereof to make the change and the original
 8 water right shall be presumed to have been amended by reason of such author-
 9 ized change. In the event the director of the department of water resources
 10 determines that a proposed change shall not be approved as provided in this
 11 section, he shall deny the same and forward notice of such action to the
 12 applicant by certified mail, which decision shall be subject to judicial
 13 review as hereafter provided.

14 (2) All rights to the use of water acquired under this chapter or other-
 15 wise shall be lost and forfeited by a failure for the term of five (5) years
 16 to apply it to the beneficial use for which it was appropriated and when any
 17 right to the use of water shall be lost through nonuse or forfeiture such
 18 rights to such water shall revert to the state and be again subject to appro-
 19 priation under this chapter. Provided, further, that upon proper showing
 20 before the director of the department of water resources of good and suffi-
 21 cient reason for nonapplication to beneficial use of such water for such term
 22 of five (5) years, the director of the department of water resources is hereby
 23 authorized to grant an extension of time extending the time for forfeiture of
 24 title for nonuse thereof, to such waters for a period of not to exceed five
 25 (5) additional years. Application for an extension shall be made before the
 26 end of the five (5) year period upon forms to be furnished by the department
 27 of water resources and shall fully describe the right on which an extension of
 28 time to resume the use is requested and the reasons for such nonuse and shall
 29 be accompanied by the statutory filing fee. Upon the receipt of such applica-
 30 tion it shall be the duty of the director of the department of water resources
 31 to examine the same and to ~~cause-notice-to-be-published-once-a-week-for-two~~
 32 ~~(2)-consecutive-weeks-in-a-newspaper--published--and--of--general--circulation~~
 33 ~~within--the-county-where-the-water-has-been-diverted-if-there-is-such-a-paper;~~
 34 ~~otherwise-in-a-newspaper-of-general--circulation--within--the--county~~ provide
 35 notice of the application for an extension in the same manner as applications
 36 under section 42-203A, Idaho Code. The notice shall fully describe the right,
 37 the extension for which is requested and the reason for such nonuse and shall
 38 state that any person desiring to object to the requested extension may submit
 39 a protest to the director of the department of water resources within ten (10)
 40 days of the last date of publication. Upon receipt of a protest it shall be
 41 the duty of the director of the department of water resources to investigate
 42 and conduct hearing thereon as in this chapter provided. The director of the
 43 department of water resources shall find from the evidence presented in any
 44 hearing, or from information available to the department, the reasons for such
 45 nonuse of water and where it appears to the satisfaction of the director of
 46 the department of water resources that other rights will not be impaired by
 47 granting an extension of time within which to resume the use of the water and
 48 good cause appearing for such nonuse, he may grant one (1) extension of five
 49 (5) years within which to resume such use. In his approval of the application
 50 for an extension of time under this section the director of the department of
 51 water resources shall set the date when the use of water is to be resumed.
 52 Sixty (60) days before such date the director of the department of water
 53 resources shall forward to the applicant at his address of record a notice by
 54 certified mail setting forth the date on which the use of water is to be
 55 resumed and a form for reporting the resumption of the use of the water right.

1 If the use of the water has not been resumed and report thereon made on or
2 before the date set for resumption of use such right shall revert to the state
3 and again be subject to appropriation, as provided in this section. In the
4 event the director of the department of water resources determines that a pro-
5 posed extension of time within which to resume use of a water right shall not
6 be approved as provided in this section he shall deny same and forward notice
7 of such action to the applicant by certified mail, which decision shall be
8 subject to judicial review as hereafter provided.

9 (3) Any person or persons feeling themselves aggrieved by the determi-
10 nation of the department of water resources in approving or rejecting an
11 application to change the point of diversion, place, period of use or nature
12 of use of water under an established right or an application for an extension
13 of time within which to resume the use of water as provided in this section,
14 may, if a protest was filed and a hearing held thereon, seek judicial review
15 pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no
16 hearing held, the applicant may request a hearing pursuant to section
17 42-1701A(3), Idaho Code, for the purpose of contesting the action of the
18 director and may seek judicial review of the final order of the director
19 following the hearing pursuant to section 42-1701A(4), Idaho Code.

20 SECTION 6. That Sections 42-240 and 42-311, Idaho Code, be, and the same
21 are hereby repealed.

22 SECTION 7. That Chapter 3, Title 42, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and
24 designated as Section 42-311, Idaho Code, and to read as follows:

25 42-311. CANCELLATION OF PERMIT -- GROUNDS -- HEARING -- PERMITTEE
26 DEFINED. (1) If the director of the department of water resources finds, on
27 the basis of available information at any time after a permit is issued but
28 prior to license, that the permittee has wilfully and intentionally failed to
29 comply with any of the conditions in the permit, then the director of the
30 department of water resources may issue (a) an order to show cause before the
31 director of the department or the director's designee on or before a date
32 therein set, which shall be not less than thirty (30) days from the date of
33 service, why the director of the department should not cancel said permit and
34 declare the water subject to appropriation; or (b) an order directing the per-
35 mittee to cease and desist the activity or activities alleged to be in viola-
36 tion of the conditions of the permit. A cease and desist order may direct
37 compliance with the permit forthwith or may provide for a time schedule to
38 bring the permittee into compliance with the conditions of the permit.

39 (2) Any order to show cause or order to cease and desist shall contain a
40 statement of findings of fact and of conclusions of law that provide a factual
41 and legal basis for the order of the director of the department of water
42 resources.

43 (3) The director of the department of water resources shall serve forth-
44 with, in accordance with the rules for service of a summons and complaint in
45 the Idaho rules of civil procedure, a certified copy of any such order on the
46 permittee.

47 (4) The permittee shall have a right to an administrative hearing before
48 the department and to judicial review, all as provided in section 42-1701A,
49 Idaho Code.

50 (5) The term "permittee," as used in this chapter, includes the heirs,
51 successors, or assigns of the person to whom the department issued a water
52 right permit.

1 SECTION 8. That Chapter 3, Title 42, Idaho Code, be, and the same is
 2 hereby amended by the addition thereto of NEW SECTIONS, to be known and desig-
 3 nated as Sections 42-350, 42-351 and 42-352, Idaho Code, and to read as fol-
 4 lows:

5 42-350. REVOCATION OF LICENSE -- GROUNDS -- HEARING -- LICENSEE DEFINED.

6 (1) If the director of the department of water resources finds, on the basis
 7 of available information at any time after a license is issued, that the
 8 licensee has ceased to put the water to a beneficial use for a period of five
 9 (5) continuous years or that the licensee has wilfully and intentionally
 10 failed to comply with any of the conditions in the license, then the director
 11 of the department of water resources may issue (a) an order to show cause
 12 before the director of the department or the director's designee on or before
 13 a date therein set, which shall be not less than thirty (30) days from the
 14 date of service, why the director of the department should not revoke said li-
 15 cense and declare the water subject to appropriation; or (b) an order direct-
 16 ing the licensee to cease and desist the activity or activities alleged to be
 17 in violation of the conditions of the license. A cease and desist order may
 18 direct compliance with the license forthwith or may provide for a time sched-
 19 ule to bring the licensee into compliance with the conditions of the license.

20 (2) Any order to show cause or order to cease and desist shall contain a
 21 statement of findings of fact and of conclusions of law that provide a factual
 22 and legal basis for the order of the director of the department of water
 23 resources.

24 (3) The director of the department of water resources shall serve forth-
 25 with, in accordance with the rules for service of a summons and complaint in
 26 the Idaho rules of civil procedure, a certified copy of any such order on the
 27 licensee.

28 (4) The licensee shall have a right to an administrative hearing before
 29 the department and to judicial review, all as provided in section 42-1701A,
 30 Idaho Code.

31 (5) The term "licensee," as used in this chapter, includes the heirs,
 32 successors, or assigns of the person to whom the department issued a water
 33 right license.

34 42-351. ILLEGAL DIVERSION OR USE OF WATER -- CEASE AND DESIST ORDERS. (1)

35 If the director of the department of water resources finds, on the basis of
 36 available information, that a person is diverting water from a natural water-
 37 course or from a ground water source without having obtained a valid water
 38 right to do so or is applying water not in conformance with the conditions of
 39 a valid water right, then the director of the department of water resources
 40 may issue an order directing the person to cease and desist the activity or
 41 activities alleged to be in violation of applicable law or of any existing
 42 water right. A cease and desist order may direct compliance with applicable
 43 law and with any existing water right or may provide a time schedule to bring
 44 the person's actions into compliance with applicable law and with any existing
 45 water right.

46 (2) Any order to cease and desist shall contain a statement of findings
 47 of fact and of conclusions of law that provide a factual and legal basis for
 48 the order or the director of the department of water resources.

49 (3) The director of the department of water resources shall serve forth-
 50 with, in accordance with the rules for service of a summons and complaint in
 51 the Idaho rules of civil procedure, a certified copy of any such order on the
 52 person the subject of the cease and desist order.

(4) The person who is the subject of the cease and desist order shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

42-352. CIVIL PENALTIES. (1) Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to impose, assess and recover said civil penalties.

(2) All civil penalties collected by the director of the department of water resources under this section shall be deposited in the state water rights enforcement account established by section 42-1778, Idaho Code.

SECTION 9. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1778, Idaho Code, and to read as follows:

42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT. (1) The water rights enforcement account is hereby created and established in the agency asset fund.

(2) All moneys in the water rights enforcement account are reserved, set aside, appropriated and made available until expended as may be directed by the director of the department of water resources in carrying out a water rights enforcement program.

SECTION 10. That Section 42-1805, Idaho Code, be, and the same is hereby amended to read as follows:

42-1805. ADDITIONAL DUTIES. In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to interstate and international water rights affecting Idaho water resources; and to cooperate with all agencies, now existing or hereafter to be formed, within the state or within other jurisdictions, in matters affecting the development of the water resources of this state.

(2) To prepare a present and continuing inventory of the water resources of this state, ascertain means and methods of conserving and augmenting these and determine as accurately as possible the most effective means by which these water resources may be applied for the benefit of the people of this state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his

1 staff to discuss water quality programs. A copy of the minutes of such
2 meeting shall be transmitted to the governor.

3 (b) The director transmit to the administrator, reports and information
4 prepared by him pertaining to water quality programs, and proposed rules
5 and regulations pertaining to water quality programs.

6 (c) The director shall make available to the administrator and the admin-
7 istrator shall make available to the director all notices of hearings
8 relating to the promulgation of rules and regulations relating to water
9 quality, waste discharge permits, and stream channel alteration, as such
10 directly affect water quality, and notices of any other hearings and meet-
11 ings which relate to water quality.

12 (6) To perform administrative duties and such other functions as the
13 board may from time to time assign to the director to enable the board to
14 carry out its powers and duties.

15 (7) After notice, to suspend the issuance or further action on permits or
16 applications as necessary to protect existing vested water rights or to ensure
17 compliance with the provisions of chapter 2, title 42, Idaho Code, or to pre-
18 vent violation of minimum flow provisions of the state water plan.

19 (8) To promulgate, adopt, modify, repeal and enforce rules and regula-
20 tions implementing or effectuating the powers and duties of the department.

21 (9) To seek a preliminary or permanent injunction, or both, or a tempo-
22 rary restraining order restraining any person from violating or attempting to
23 violate (a) those provisions of law relating to all aspects of the appropri-
24 ation of water, distribution of water, headgates and measuring devices; or (b)
25 the administrative or judicial orders entered in accordance with the provi-
26 sions of law.

STATEMENT OF PURPOSE

RS 11737C1

Amends Title 42, Idaho Code, in several instances providing for better administration, more consideration of permittee making application for water rights, provides for legislative overview, allows for the Director of the Department to permit temporary change in the period of use for less than three years. Provides for an extension of time by the Director to an applicant for the development of a reservoir site and the completion of the work thereof if the applicant has exhibited reasonable diligence in the development of the project.

Provides the Department may make a reasonable charge for Notice of Application to be presented to interested parties. It stipulates that the transfer of a storage right for irrigation does not constitute an enlargement of that original right.

Provides for the cancellation of a permit and for hearings for those individuals who are affected. Allows the Department to issue Cease and Desist orders and provides for civil penalties. Sets up a water right enforcement account to be used by the Director for administration.

FISCAL NOTE

No fiscal impact.

3/3 Pres signed
 3/4 To Governor
 ~3/4 Governor signed
 Session Law Chapter 22
 Effective: 7-1-86

H367..... By State Affairs
 EMPLOYMENT SECURITY LAW - Amends existing law to establish a new rate class of deficit employers under the Employment Security Law and to also establish the contribution rates for such employers.

1/9 House intro - 1st rdg - to printing
 1/10 Rpt prt - to St Aff
 1/30 Rpt out - rec d/p - to 2nd rdg
 1/31 2nd rdg - to 3rd rdg
 2/3 3rd rdg - PASSED - 82-0-2
 NAYS -- none.
 Absent and excused -- Adams, Chadband.
 Title apvd - to Senate
 2/4 Senate intro - 1st rdg - to Comm/Lab
 2/21 Rpt out - rec d/p - to 2nd rdg
 2/24 2nd rdg - to 3rd rdg
 2/26 3rd rdg - PASSED - 40-0-2
 NAYS -- none.
 Absent and excused -- Beitelspacher, McLaughlin.
 Title apvd - to House
 2/27 To enrol
 2/28 Rpt enrol - Sp signed
 3/3 Pres signed
 3/4 To Governor
 3/4 Governor signed
 Session Law Chapter 23
 Effective: 7-1-86

H368..... By Loveland, et al
 ECONOMIC RECOVERY ACT - Amends, repeals and adds to existing law to enact the Idaho Economic Recovery Act of 1986, to raise the sales and use tax to 5%, to allow cities and counties to impose a local sales and use tax, to add state income tax brackets, to provide for the collection of corporate and self-employment income taxes quarterly, to lift the cap on property tax increases, and to appropriate moneys for education, the Permanent Building Account, the Revenue Sharing Account, the Budget Reserve Account, the State Board of Examiners for personnel costs, and the State Tax Commission.

1/10 House intro - 1st rdg - to printing
 1/13 Rpt prt - to Rev/Tax

H369aaS..... By Resources & Conservation
 WATER RIGHTS - Amends, repeals and adds to existing law to establish a system for the marketing of water rights in the state.

1/10 House intro - 1st rdg - to printing
 1/13 Rpt prt - to Res/Con
 1/22 Rpt out - rec d/p - to 2nd rdg
 1/23 2nd rdg - to 3rd rdg
 1/27 3rd rdg - PASSED - 81-0-2
 NAYS -- none.
 Absent and excused -- Kellogg, McDermott.
 Title apvd - to Senate
 1/28 Senate intro - 1st rdg - to Res/Env
 3/18 Rpt out - to 14th Ord
 3/21 Rpt out amen - to 1st rdg as amen
 3/22 1st rdg - to 2nd rdg as amen
 3/24 2nd rdg - to 3rd rdg as amen
 3/24 3rd rdg as amen - PASSED - 33-8-1
 NAYS -- Batt, Beck, Bray, Calabretta, Fairchild, Kiebert, Smyser, Thorne.
 Absent and excused -- Watkins.

--CONTINUED--

Title apvd - to House
 3/25 House concur in Senate amens - to engros
 3/25 Rpt engros - 1st rdg - to 2nd rdg as amen
 3/26 2nd rdg - to 3rd rdg as amen
 3/27 3rd rdg as amen - PASSED - 80-0-4
 NAYS -- none.
 Absent and excused -- Bateman, Crane, Haagenson, Hansen.
 Title apvd - to enrol
 3/27 Rpt enrol - Sp signed - Pres signed
 4/1 To Governor
 4/4 Governor signed
 Session Law Chapter 313
 Effective: 7-1-86

H370..... By Revenue & Taxation
 BEER - WINE - Repeals existing law to eliminate conflicting provisions in law relating to penalties and interest on beer and wine taxes.

1/10 House intro - 1st rdg - to printing
 1/14 Rpt prt - to Rev/Tax
 1/20 Rpt out - rec d/p - to 2nd rdg
 1/21 2nd rdg - to 3rd rdg
 1/22 3rd rdg - PASSED - 78-0-5
 NAYS -- none.
 Absent and excused -- Forrey, Johnson (6), Jones (23), Lucas, McDermott.
 Title apvd - to Senate
 1/23 Senate intro - 1st rdg - to Loc Gov
 3/13 Rpt out - rec d/p - to 2nd rdg
 3/14 2nd rdg - to 3rd rdg
 3/24 3rd rdg - PASSED - 37-3-2
 NAYS -- Risch, Smyser, Staker.
 Absent and excused -- Chapman, Watkins.
 Title apvd - to House
 3/25 To enrol - rpt enrol - Sp signed
 3/26 Pres signed - to Governor
 4/1 Governor signed
 Session Law Chapter 176
 Effective: 7-1-86

H371..... By Revenue & Taxation
 INCOME TAX, STATE - CORPORATIONS - Amends existing law to exempt nonprofit corporations from the minimum corporate state income tax.

1/10 House intro - 1st rdg - to printing
 1/13 Rpt prt - to Rev/Tax
 1/27 Rpt out - rec d/p - to 2nd rdg
 1/28 2nd rdg - to 3rd rdg
 1/29 3rd rdg - PASSED - 72-9-2
 NAYS -- Bayer, Black, Hill, Infanger, Johnson (6), Jones (29), McCann, McDermott, Stoker.
 Absent and excused -- Givens, Hawkins.
 Title apvd - to Senate
 1/30 Senate intro - 1st rdg - to Loc Gov
 2/20 Rpt out - rec d/p - to 2nd rdg
 2/21 2nd rdg - to 3rd rdg
 2/25 3rd rdg - PASSED - 34-0-8
 NAYS -- none.
 Absent and excused -- Anderson, Beck, Calabretta, Crapo, Horsch, Noh, Rydallch, Tominaga.
 Title apvd - to House
 2/26 To enrol
 2/27 Rpt enrol - Sp signed - Pres signed
 2/28 To Governor
 2/28 Governor signed
 Session Law Chapter 18
 Effective: 1-1-86

H372aa..... By Education
 ELECTIONS - SCHOOL - Amends existing law to require that a

--CONTINUED--

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

January 9, 1986

TIME: 1:40 p.m.

PLACE: Room 412 - Statehouse

PRESENT: Chairman Chatburn, Representatives Edwards, Bateman, Crozier, Duffin, Echohawk, Hansen, Hawkins, Jones, Linford, Little, Stanger, Stoicheff Stucki, Sutton and Wood

EXCUSED: Representatives Haagenson and A. Johnson

ABSENT: Representatives Brackett and Winchester

GUESTS: Mr. Kenneth Dunn, Director, Department of Water Resources and Mr. Dick Gardner, Department of Financial Management.

Chairman Chatburn called the meeting to order.

MOTION: Representative Stucki moved and Representative Sutton seconded that the Minutes of January 7, 1986, be approved.

MOTION CARRIED.

→ AMENDS TITLE 42, IDAHO CODE, IN SEVERAL INSTANCES PROVIDING FOR BETTER ADMINISTRATION, MORE CONSIDERATION OF PERMITTEE MAKING APPLICATION FOR WATER RIGHTS, PROVIDES FOR LEGISLATIVE OVERVIEW, ALLOWS FOR THE DIRECTOR OF THE DEPARTMENT TO PERMIT TEMPORARY CHANGE IN THE PERIOD OF USE FOR LESS THAN THREE YEARS. PROVIDES FOR AN EXTENSION OF TIME BY THE DIRECTOR TO AN APPLICANT FOR THE DEVELOPMENT OF A RESERVOIR SITE AND THE COMPLETION OF THE WORK THEREOF IF THE APPLICANT HAS EXHIBITED REASONABLE DELIGENCE IN THE DEVELOPMENT OF THE PROJECT.

PROVIDES THE DEPARTMENT MAY MAKE A REASONABLE CHARGE FOR NOTICE OF APPLICATION TO BE PRESENTED TO INTERESTED PARTIES. IT STIPULATES THAT THE TRANSFER OF A STORAGE RIGHT FOR IRRIGATION DOES NOT CONSTITUTE AN ENLARGEMENT OF THAT ORIGINAL RIGHT.

PROVIDES FOR THE CANCELLATION OF A PERMIT AND FOR HEARINGS FOR THOSE INDIVIDUALS WHO ARE AFFECTED. ALLOWS THE DEPARTMENT TO ISSUE CEASE AND DESIST ORDERS AND PROVIDES FOR CIVIL PENALTIES. SETS UP A WATER RIGHT ENFORCEMENT ACCOUNT TO BE USED BY THE DIRECTOR FOR ADMINISTRATION.

Chairman Chatburn reminded the Committee that the legislation before them does not change the law as it currently stands relative to water marketing, rather it speaks specifically to administrative procedures.

Mr. Dunn and Mr. Gardner were introduced and asked to answer questions posed by the Committee prior to printing and circulation of the legislation. Discussion and clarification on the amendatory matter included:

Section 1

42-108. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, NATURE OF USE -- APPLICATION OF ACT.

The authority given to the Department Director to issue temporary permits for a period of less than three years without legislative approval. Mr. Dunn explained that extensions to the three year period will be allowed but are not beneficial to the user.

Section 2.

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL APPLICATION OF WATER. Mr. Stucki questioned the Chapter number being referred to in this title. Mr. Little referred to the Code Book for clarification of said title and reported to the Committee that the Code reads and is printed exactly as above. It is the Chairman's opinion that the word "this" is implied between the words "under" and "chapter".

Section 2 - Item 2.

The present law states that users must have a permit to appropriate water but it doesn't say it is against the law to appropriate water without the permit. This legislation makes it clear that no person shall divert water without having a permit to do so.

The constitutionality of this language was questioned by Representatives Little but Mr. Dunn explained to the Committee that the State Supreme Court has upheld the appropriation document as constitutional.

Section 3

42-204. EXAMINATION -- PERMIT -- COMMENCEMENT OF WORK -- EXTENSIONS -- APPEAL. - Item 3.

Allows for a person constructing a reservoir of more than 10,000 acre feet capacity, more time for completion of works. The old statute allows for 20,000 acre feet.

Section 3 - Item 5.

Strikes archaic language.

Section 4

42-221. FEES OF DEPARTMENT. Item K.

Allows the Director authorization to set fees annually to recover costs of notification of application within a designated area.

Section 5

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. Provides for consistency of language to comply with Section 42-203A, Idaho Code.

Section 7

42-311. CANCELLATION OF PERMIT -- GROUNDS -- HEARING -- PERMITTEE DEFINED.

Mr. Dunn explained that this section provides for the method of cancellation of permit based on specific grounds and describes the procedure the Director must follow. It provides the method of removing from the files permits that people have not developed and gives the Director the authority to have people comply with the conditions set forth in the permit.

Section 8

42-350. REVOCATION OF LICENSE -- GROUNDS -- HEARING -- LICENSEE DEFINED.

Sets the procedure the Director will follow to revoke a license that has not been used. In response to Mrs. Wood's questions regarding leased water, Mr. Dunn responded that leased water constitutes a use. This legislation does not apply to owners who are leasing their water rights.

Mr. Sutton asked the difference between a "permit" and a "license". Mr. Dunn explained that a permit is issued by the Director to develop the water and a license is the confirmation that the water was put to use.

At this point of the presentation, Mrs. Stanger brought up water rights within an irrigation district and Mr. Dunn explained that these rights are classified as irrigation district rights and operate within a different set of circumstances than everyone else in the State. Irrigation districts describe specific boundaries and for the right to use the water on a specified number of acres within the district. Most irrigation districts have contracts with the Federal Government for storage and those contracts place a lien on that specific piece of property and, therefore, all parties within said boundary are charged. Mr. Dunn said there is a procedure under law which allows property owners to petition out of a district but it is expensive and time consuming and that some districts cooperate but that many do not.

Section 8

42-351. ILLEGAL DIVERSION OR USE OF WATER -- CEASE AND DESIST ORDERS.

Allows the Director the responsibility to stop any person from diverting water without having obtained a valid water right.

Section 9
42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT.

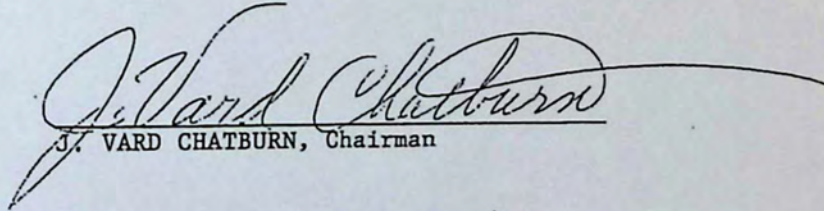
Allows the Director to seek an injunction or temporary restraining order against persons violating the law. Mr. Linford asked about the timing of such injunction or restraining order. Mr. Dunn explained illegal diversion and the fact that people found doing so are informed of its illegality and that most file for water rights. In order to continue to operate for the season they must purchase storage water from the District. If they refuse to cooperate, the pump will be shut off. Full cooperation has always been reached with the Department according to Mr. Dunn.

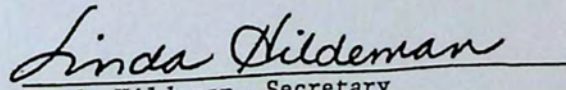
At this point of the presentation, there being no further questions or discussion, the Chairman asked for a motion on the legislation before the Committee.

MOTION: Representative Stucki moved and Representative Edwards seconded that RS 11737C1 be introduced.

MOTION CARRIED.

The meeting was adjourned at 2:20 p.m.


J. VARD CHATBURN, Chairman


Linda Hildeman, Secretary

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

January 21, 1986

TIME: 2 p.m.

PLACE: Room 412 - Statehouse

PRESENT: Chairman Chatburn, Representatives Bateman, Brackett, Duffin, Echohawk, Edwards, Haagenon, Hansen, Hawkins, A. Johnson, Jones, Linford, Little, Stanger, Stoicheff, Stucki, Winchester, Wood.

EXCUSED: Representative Crozier and Sutton.

GUESTS: Mr. Kenneth Dunn, Director, Department of Water Resources, Mr. Dick Gardner, Department of Financial Management, and Mr. Sherl Champan, Executive Director, Idaho Water Users Association, Inc.

Chairman Chatburn called the meeting to order.

MOTION: Representative Stucki moved and Representative Stanger seconded that the Minutes of January 17, be approved.

RS 12018: TO EXPEDITE CONSIDERATION OF WATER RIGHT FILINGS BY CLARIFYING THE LOCATION AND NATURE OF WATER CONSIDERED AS TRUST WATER SUBJECT TO THE PUBLIC INTEREST REVIEW CRITERIA AND BY LIMITING THE REVIEW OF UNDEVELOPED EXISTING PERMITS TO THE PUBLIC INTEREST CRITERIA FOR THOSE PERMITS SEEKING TO DEVELOP TRUST WATER.

Mr. Dunn explained to the Committee that this legislation will change the language that was adopted last year as far as the Swan Falls agreement to make clear exactly what the Legislature intended. It also allows the Director to review only those outstanding undeveloped permits that are going to appropriate trust water. Mr. Jones asked for the definition of trust water and Mr. Dunn replied it was that water which becomes available for appropriation as a result of an agreement reached between the State and a utility that has a water right to make available for appropriation.

MOTION: Mr. Hawkins moved and Mr. Jones seconded that RS 12018 be introduced.

MOTION CARRIED.

RS 12020: TO EXPEDITE WATER RIGHT LICENSING. HOLDERS OF EXISTING PERMITS TO APPROPRIATE WATER WOULD BE REQUIRED TO SUBMIT TO THE DEPARTMENT OF WATER RESOURCES THE INFORMATION NECESSARY FOR CONFIRMING THE DEVELOPMENT ACCOMPLISHED UNDER THE PERMIT TO ALLOW A LICENSE TO BE ISSUED. ENGINEERS AND GEOLOGISTS QUALIFIED TO MAKE THE FIELD EXAMINATIONS WOULD BE CERTIFIED BY THE DEPARTMENT. A BACKLOG EXISTS OF FIELD EXAMINATIONS FOR PERMITS UPON WHICH PROOF OF BENEFICIAL USE HAS BEEN SUBMITTED. THIS REPRESENTS A FOUR YEAR DELAY IN ISSUING LICENSES.

Mr. Dunn told the Committee that this legislation will provide that field examinations for a water right would be done by a consultant hired by the owner of the permit. Currently the State does the exams and has a backlog of approximately 4,000. Mr. Dunn's Department is able to complete between 600 to 700 per year. Exemptions are made in the legislation for single-family, domestic and stock watering permits and the State will continue to do the small exams. Individuals qualified to complete exams would be certified by the Department and registered in the State.

MOTION: Representative Winchester moved and Mrs. Wood seconded that RS 12020 be returned to sponsor.

SUBSTITUTE

MOTION: Representative Johnson moved and Mr. Hansen seconded that RS 12020 be introduced.

SUBSTITUTE MOTION CARRIED.

MINUTES
RESOURCES & CONSERVATION COMMITTEE
January 21, 1986
Page 2

RS 12017C1: THE PURPOSE OF THIS LEGISLATION IS TO KEEP THE STATE'S WATER RIGHT RECORDS CURRENT AND CORRECT. HOLDERS OF WATER RIGHTS WOULD BE REQUIRED TO NOTIFY THE DEPARTMENT OF WATER RESOURCES OF CHANGES IN OWNERSHIP OF WATER RIGHTS AND CHANGES OF ADDRESS OF WATER RIGHTS OWNERS.

Mr. Dunn explained that this legislation was drafted in response to comments received from legislators last year. Presently there is no requirement for people to notify the Department of a change of address or ownership changes. A fee up to \$25.00 would be required when filing a change. Both Mrs. Stanger and Mr. Hansen told the Committee that their counties are in the process of re-numbering and all residents would be issued a new address. They asked if, in these cases, it would be necessary to file a change of address and Mr. Dunn applied in the affirmative.

Representative Johnson moved and Mrs. Edwards seconded that RS 12017C1 be returned to sponsor.

MOTION CARRIED.

H369:

PROVIDES FOR BETTER ADMINISTRATION, MORE CONSIDERATION OF PERMITTEE MAKING APPLICATION FOR WATER RIGHTS, PROVIDES FOR LEGISLATIVE OVERVIEW, ALLOWS FOR THE DIRECTOR OF THE DEPARTMENT TO PERMIT TEMPORARY CHANGE IN THE PERIOD OF USE FOR LESS THAN THREE YEARS. PROVIDES FOR AN EXTENSION OF TIME BY THE DIRECTOR TO AN APPLICANT FOR THE DEVELOPMENT OF A RESERVOIR SITE AND THE COMPLETION OF THE WORK THEREOF IF THE APPLICANT HAS EXHIBITED REASONABLE DELIGENCE IN THE DEVELOPMENT OF THE PROJECT.

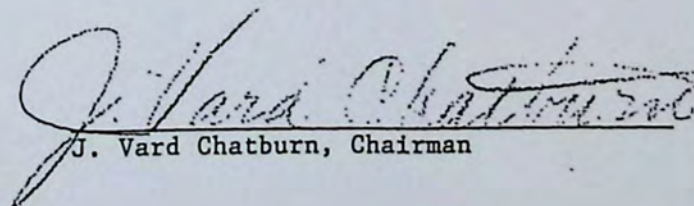
Mr. Gardner told the Committee this bill will give the Director the tools to better enforce the water rights we now have. Long term leasing language is clarified and Mr. Gardner encourages a "Do Pass" recommendation.

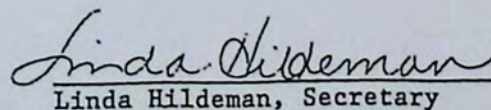
Mr. Dunn reviewed the changes in the bill as previously covered in the January 9, 1986 minutes.

MOTION: Representative Johnson moved and Mr. Stucki moved that H369 be sent to the floor with a DO PASS recommendation.

MOTION CARRIED. Representative Johnson will sponsor.

The meeting adjourned at 4:10 p.m.


J. Vard Chatburn, Chairman


Linda Hildeman, Secretary

MINUTES
RESOURCES AND ENVIROMENT COMMITTEE

MARCH 12, 1986

Rm 433, 1:30 pm

PRESENT: All members of the committee were present.

Chairman Noh called the meeting to order.

MOTION: Senator Little moved and Senator Beitelspacher seconded the minutes be approved.

Chairman Noh called the Committee's attention to the latest letter in their file from the Bergs on the Coeur d'Alene property.

SB 1404 REQUIRE F&G COMMISSION TO SET ASIDE A CERTAIN NUMBER OF NONRESIDENT DEER AND ELK TAGS FOR LICENSED OUTFITTERS AND GUIDES

Senator Beitelspacher explained the legislation and presented an amendment to the bill which is basicly the context of the legislation. The amendment would enable the Commission to set aside 25% of the nonresident deer and elk tags to be sold on a first-come, first-served basis. These tags would be only for people who have entered into an agreement for that year to utilize the services of an outfitter who is licensed. This 25% is established after the F&G Commission has established the number of nonresident tags for the year. If there are some tags not sold by July 1, they will be sold to the general public. The Outfitters and Guides marketing season is later in the year and often by this time, the deer and elk tags have been sold out for the season.

Senator Ringert asked what would happen to a tag if the client of an outfitter backed out of his committment and is there getting to be "traffic" in these tags?

Ken Norrie, F&G, said in cases where a person does not use a tag, he still has to pay for them so no loss monetarily. The individual may turn the tag back to the F&G Department and designate someone to use the tag or the tag is offered for sale to the next one on the list. There really isn't a way to make sure they aren't sold again as there always seems to be a way to get around something. It is hoped the wording in the bill will prevent this from happening.

Senator Beitelspacher commented this problem has existed for sometime and whether this bill exists or not, it will not add to the problem we already have.

A discussion followed on where these extra tags that have been set aside would go if they are not all used. The bill does specify that they are then to be made available to the nonresidents who may be on a waiting list.

Grant Simonds, Executive Director, Outfitters and Guides Asso., spoke in favor of the legislation. He said he had talked to many of the outfitters in the association and nonmembers and F&G, and all concur in the amendments presented today. Deer tags were sold out by March 5 and it is expected the elk tags will be sold out in a few weeks. This severely limits the marketing season for the outfitters and guides.

MOTION: Senator Peavey moved and Senator Beitelspacher seconded the bill be sent to the 14th order. Motion carried after more testimony and discussion.

Jeff Bitten and Jenny Hopfenbeck from the outfitting industry spoke in favor of the legislation.

SB 1420 RELATING TO THE OUTFITTERS AND GUIDES BOARD

Senator Beitelspacher explained the legislation would provide that each appointment made by the F&G Commission to the Outfitters and Guides Board shall be for a term of three years and to provide that all appointments to the Outfitters and Guides Board made after July 1, 1986 shall be subject to the advice and consent of the Senate.

Senator Budge noted there is legislation being introduced to do away with so many confirmations by the Legislature.

A short discussion on this revealed the suggested legislation would not pertain to this bill.

Chairman Noh sees this Board facing some very serious problems and is governing an industry that is growing and perhaps the Legislature does need to keep a close eye on the appointments to the Board.

Grant Simonds, Director of the Outfitters and Guide Association, stated they support the legislation.

MOTION: Senator Sverdsten moved and Senator Carlson seconded the bill go out with a "do pass" recommendation. Motion carried.

HB 357 HUNTING FROM A MOTORIZED VEHICLE BY CERTAIN PHYSICALLY HANDICAPPED PERSONS

This legislation would provide for an opportunity for disabled persons to participate in hunting.

Ken Norrie, F&G, stated the sponsor had come to them and asked for their input on the legislation. He said they did have some question about how the individual would take care of the game once killed, but assume someone would be along with them to take care of the game.

MOTION: Senator Peavey moved and Senator Beitelspacher seconded the bill go out with a "do pass" recommendation. Motion carried.

Representative Winchester, sponsor in the House, briefly spoke to the bill and how it had come about.

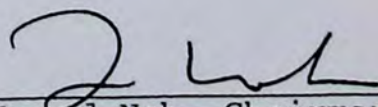
A short discussion followed on just "who" could hunt. The bill stipulates F&G will have the latitude to decide this after a person is determined to be physically handicapped.

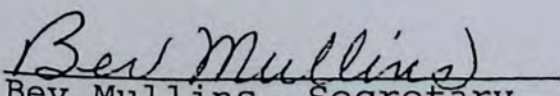
HB 369 ADMINISTRATION OF WATER RIGHTS

The legislation would provide for better administration, more consideration of permittee making application for water rights, provides for legislative overview, allows for the Director of the Department to permit temporary change in the period of use for less than three years. Also provisions for an extension of time by the Director to an applicant for the development of a reservoir site and the completion of the work thereof if the applicant has exhibited reasonable diligence in the development of the project. There are provisions for the Department to make a reasonable charge for Notice of Application to be presented to interested parties. It stipulates that the transfer of a storage right for irrigation does not constitute an enlargement of that original right. Provides for the cancellation of a permit and for hearings for those individuals who are affected. Allows the Department to issue Cease and Desist orders and provides for civil penalties. Sets up a water right enforcement account to be used by the Director for administration.

Ken Dunn, Director, Water Resources, went through the bill explaining the changes and additions. The bill is the result of an interim committee making changes to a bill that was before the House last year.

Senator Ringert asked unanimous consent this bill be held until Friday for further discussion due to the Committee's time being up for the day. HB 369 will be first on the agenda for Friday.


Laird Noh, Chairman


Bev Mullins, Secretary

MINUTES
RESOURCES AND ENVIRONMENT COMMITTEE

MARCH 14, 1986

Rm 433, 1:30 pm

PRESENT: All members were present except Senator Beitelspacher
Chairman Noh called the meeting to order.

MOTION: Senator Little moved and Senator Budge seconded the minutes of the last meeting be approved. Motion carried.

HB 369 ADMINISTRATION OF WATER RIGHTS

Ken Dunn, Water Resources, briefly summarized the intent of the legislation, which was before the committee for the second time.

A short discussion took place on the right to use stored water for irrigation purposes. The question was asked if this provided for the sale of this water. Mr. Dunn said a person could sell the water or lease it. Whichever he desired to do, but probably most of this would be done on a lease basis.

Senator Crapo wanted to know what was to stop someone with money from coming in and buying storage rights and taking water out of agriculture? Mr. Dunn replied that would mean a change of use. In the legislation this has to have approval of the Department and it is hoped this will take care of that situation.

Senator Ringert asked what was the Department's reasons for the Section 8 of the legislation?

Mr. Dunn, said it provides for cancelling a license after five years of continuous non-use. The Walker case, which was before the Supreme Court, spoke to this issue. They said the right was there and it was the duty of the Director to take some action. This section sets up a very precise procedure for revoking a license. It makes sure the Director of the Department does things as set up by the statutes.

Senator Ringert said he did not recall all of the Walker case but did not believe it gave this power to the Director.

Chairman Noh asked Senator Crapo if the Interim Committee addressed this point. Senator Crapo said he shared Senator Ringert's concerns of the Director having this power. The committee did consider the matter and decided to keep this section in the bill, though it was not a unanimous decision.

Mr. Dunn believes since the Jenkins case, the Director can by forfeiture cancel a license and that is the way the Department has operated.

Senator Crapo commented the question seems to be, do we want the Department to adjudicate the question or have the court determine this?

Senator Ringert commented there does seem to be a difference in philosophies here on Section 8.

Mr. Dunn stated he did not see Section 7 & 8 as changing the Department's authority but merely sets up a procedure for them to follow if action is needed.

Senator Crapo asked if a farmer sets aside some land for longer than five years, how would the five year continuous use point come into action?

Mr. Dunn replied there is a statute that allows another five years if a person asks for an extension before the first five year period is up.

A discussion followed on if lines 40-44 were in conflict with the Constitution. Mr. Dunn does not believe so, but Senator Ringert feels it may and that some of the language may be questioned.

Sherl Chapman, Water Users, said they have reviewed the concerns expressed here but do not know what the solution is. They do feel the section pertaining to the water bank needs to be taken care of. Above Milner there have been problems of water being diverted during low water. These concerns can be settled with some language in the bill and it is a situation that is badly in need of settlement. This legislation could be useful to the water using community.

Senator Crapo said there is much in this bill that is good and is needed. He noted there were two things he had a problem with when working on the legislation; the creation of a special account and solving problems in the Department rather than through the court system. However, he said he was voted down on both issues in the Interim Committee.

Chairman Noh suggested this be held over until Monday so Senators Crapo, Ringert and Horsch could work with Mr. Dunn on amendments for the Committee to consider. This was agreed to by the committee.

SB 1440 VOTING ON THE ACREAGE BASIS IN IRRIGATION DISTRICT ELECTIONS

Senator Ringert explained the bill would allow irrigation districts electors, either at the time of organizing the district or by special election in an organized district, to adopt the acreage basis of voting. A 2/3 majority would be required to adopt the acreage basis. He noted there were some technical concerns with the bill as well as the language, so would like for it to go to the 14th order.

MOTION: Senator Ringert moved and Senator Crapo seconded the bill go to the 14th order. Motion carried.

SB 1443 RELATING TO SUBDIVISIONS LOCATED WITHIN AN IRRIGATION DISTRICT: PROVIDE REQUIREMENTS FOR SUBDIVISIONS LOCATED ENTIRELY OR PARTIALLY WITHIN AN IRRIGATION DISTRICT FOR PLATING PURPOSES

Senator Ringert asked this bill be held until next Wednesday.

HB 671 RELATING TO LICENSING OF WATER RIGHTS

Representative Linford explained the legislation would expedite the licensing of water rights. Holders of existing permits would be required to pay a fee at the time proof of beneficial use is submitted to pay the state's cost in making the field examination upon which the license is based. A backlog of field examinations exists for permits. At present there are over 4,000 field examinations that need to be done. There is an emergency clause in the bill so action could be started on this backlog this summer if the bill passes.

There was discussion on whether any consideration was given to utilizing private consultants if a water user wanted to in order to expedite the examination of a water right. It was felt by the Department that this should be done by either the Department of Water Resources or a private concern but not either/or. Some members of the committee felt like with over 4,000 applications to be done, there should be the option to use a private consultant.

Mr. Dunn said his initial suggestion was to have these done by a private concern. However, he feels with either/or he would be involved in competition with price and doesn't feel the Department needs this. He noted at the rate these examinations are going, it could be years before they will be done. This has been an ongoing problem but he has been unable to secure funding to hire additional people to do the applications, and this legislation is just a way to go. If this bill were to pass, the Department would be able to hire people as fees come in, for a 4 or 5 month period or as long as the money lasts to work on the field examinations.

More discussion followed and centered around if a person should have the choice of having a private party do the examination as well as the state. This bill covers anyone who has not had the field examination, which is over 4,000 at the present time.

Sherl Chapman, Water Users, said they have reviewed the legislation and feel it should be amended with an option feature to the water user to have a qualified person do it. He believes the water users are losing part of their water right by waiting so long and it could also cause a person some financial loss.

MOTION: Senator Ringert moved and Senator Kiebert seconded the bill go to the 14th order. Motion carried.

HB 629 RELATING TO RESIDENCE REQUIREMENTS TO APPROPRIATE WATER FOR POWER PURPOSES

This legislation allows for the addition of a partnership to those individuals who are qualified to do business in and under the laws of the State of Idaho relative to power purposes. The sponsor from the House was not present so Mr. Dunn spoke to the legislation briefly. The bill is not one from the Department.

Sherl Chapman, Water Users, said the Users believe the word "partnership" is too broad and believe it should be "limited partnership."

A short discussion followed and the committee agreed the bill needed some clarification.

MOTION: Senator Ringert moved and Senator Budge seconded the bill be held. Motion carried.

HB 631 RELATING TO LOG SCALING

Mr. Hamilton, Director, Department of Lands, explained this bill had been initiated by the Log Scaling Board and is a little "housekeeping" bill. It would eliminate the extensive paperwork now required by recommending that the scaler exam and license fee of \$25.00 be non-refundable.

MOTION: Senator Sverdsten moved and Senator Kiebert seconded the bill go out with a "do pass" recommendation. Motion carried.

HB 672 LOG SCALING: PROVIDE FOR CIVIL ENFORCEMENT & PENALTIES

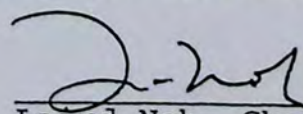
Mr. Hamilton, explained the bill deals with amendments to two sections of the scaling law. One provides for enforcement and penalty adding new dimensions to the current law. The other includes the provision for commencement of civil enforcement actions and also criminal actions and authorized penalties.

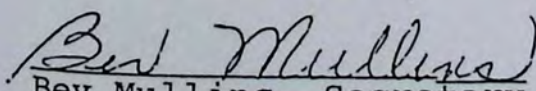
Senator Sverdsten commented the number of cases that have come before the Board have been very minor and it seems the civil penalties are rather severe.

Senator Kiebert noted the Board needs some teeth and feels it would not be enforced very often, but when there is need to enforce it, then this bill would be good.

MOTION: Senator Kiebert moved and Senator Sverdsten seconded the bill go out with a "do pass" recommendation. Motion carried.

There being no further business before the committee, it adjourned.


Laird Noh, Chairman


Bev Mullins, Secretary

MINUTES
RESOURCES AND ENVIRONMENT COMMITTEE

MARCH 17, 1986

Rm 433, 1:30 PM

PRESENT: All members of the committee were present.

Chairman Noh called the meeting to order.

MOTION: Senator Ringert moved and Senator Chapman seconded the minutes of the last meeting be approved as written. Motion carried.

HB 369 ADMINISTRATION OF WATER RIGHTS

Chairman Noh said he had talked to the Co-Chairman of the Interim Committee, Mr. Chatburn, regarding this legislation and he would like to see the bill left as is as the majority of the committee did vote to support this bill as is and the issues raised in our committee had been discussed in the Interim Committee.

Senator Chapman, Co-Chairman of the Committee that worked on the legislation agreed with Mr. Chatburn that this bill was a compromise and concern was expressed in the Interim Committee regarding the Director having so much authority, but the majority of the subcommittee did vote for that concept.

Senator Ringert said there was talk about the Jenkins decision on Friday and that he felt the decision was limited to transfer proceedings and after reading it again, he still feels that way. He does not feel the Director has been told to undertake a survey to see what licenses might be in forfeiture and believes this bill goes far beyond his authority and for this reason, he strongly opposes this legislation. He also said he had some problems with 42-351, line 3 of the bill. He would like to see something added to make an exception when vested water rights are at issue. He would like the issue to go through administrative procedures but if the user is not satisfied with the administrative hearing, it should be spelled out that he has a evidentiary hearing in the court.

Mr. Dunn believes a better decision would be reached by the Department than before the court as they have more experience in dealing with matters concerning water. He would recommend the bill in its present form without amendments.

Sherly Chapman, Water Users, commented that some water users have some concerns with the Director having the power to deny a right. This issue is of lesser importance to the users than the storage water section in the bill and the illegal diversion of water.

Senator Crapo remarked there is a definite difference in philosophies. People in the private sector do have concerns with the Director having this power. He sees two ways to go; (1) directly to court or (2) go through administrative procedures first, and then to court with provision that new evidence could not be presented in court without strict justification.

Senator Ringert wanted to clarify that he was speaking only to existent or non-existence of a property right.

MOTION: Senator Beitelspacher moved and Senator Little seconded the bill go to the 14th order. Motion carried.

HB 673 PROVIDE A NONRESIDENT THREE DAY FISHING LICENSE

Mr. Barton, F&G, explained the legislation is to provide a three day nonresident fishing license entitling a person to fish in the waters of the state for a period of 3 consecutive days. The fee for this license would be \$10. He said the private vendors had requested this legislation as presently they feel there is alot of unnecessary paper work.

A short discussion followed on the fee and how it was arrived at for this license.

MOTION: Senator Beitelspacher moved and Senator Sverdsten seconded that this bill to go the floor with a "do pass" recommendation. Motion carried.

HB 555 PROVIDE FOR THE PAYMENT OF TRANSFER & INHERITANCE TAX
REFUNDS FROM THE STATE REFUND ACCOUNT

Dave Bivens, Farm Bureau, explained the legislation would create a funding source for the revolving fund to implement the Resource Conservation and Rangeland Development program. A diversion of 10% from the inheritance tax collection will generate an amount adequate to finance some pilot projects which qualify under the provisions of the program. He said approximately \$150,000 would go into this revolving fund. He feels a conservation dollar invested in these areas will return many times that amount in prevention of erosion and pollution downstream and still have the initial dollar left to invest again.

Senator Sverdsten noted the interest rate on these loans was only 6%. He feels the rate should reflect the current rates.

Wayne Faude, Dept of Lands, said this interest rate came about as a result of the depressed conditions. The rate would be set through administrative procedures by the Commission.

In answer to a question of what this money would be used for, Mr. Faude replied it could be used for terracing, water diversions, water quality practices, water development, riparian habitat, etc.

Senator Carlson commented with the maximum loan going to be \$50,000, there isn't going to be alot of work done.

MOTION: Senator Beitelspacher moved and Senator Carlson seconded the bill go to the floor with a "do pass." Motion carried on a roll call vote of 6-5 and after more discussion.

ROLL CALL VOTE Senators Beitelspacher, Carlson, Chapman, Horsch, Noh and Peavey voted yes. Senators Budge, Crapo, Little, Ringert and Sverdsten voted no.

Al Murray, H&W, explained the money to support this bill would come from the Water Pollution Fund and would take a very small sliver from that fund and he does not feel this would hurt the fund. They had no problems with the bill.

Senator Budge expressed his concern with this money coming from the Water Pollution Fund as feels there isn't money available now for some projects.

Robert Braun, H&W, replied there is no one asking for funding at this time, that there isn't money in the fund to take care of.

Sveral committee members expressed some concerns with taking money out of the Water Pollution Fund.

Senator Carlson noted the money made available is a loan so comes back to the Fund. Some of the projects may help to alleviate some of the water pollution

Mr. Clem, Soil Conservation Commission, believes these projects benefit all of society and this is a small sliver, but a start in the right direction and supports HB 555.

Stan Boyd, Cattlemens Asso., also said they support the legislation.

HB 642 ADJUDICATION OF WATER RIGHTS

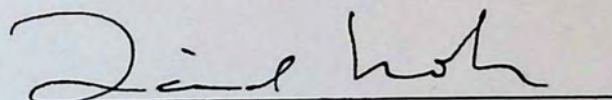
Clive Strong, AG office, explained the purposes of the bill are to provide a statutory procedure for incorporating a negotiated agreement between a federal reserved water right claimant and the state of Idaho into an adjudication, to prove a more efficient method for adjudications, to assure that state laws and procedures provide a fair and impartial forum for the adjudication of the rights of all claimants, and to assure that state laws and procedures are adequate as a matter of federal law to adjudicate the rights of all federal reserved water right claimants. He said the bill had numerous

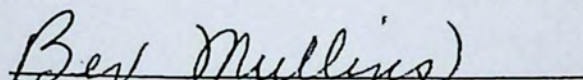
people involved with their input; Idaho Power, water users, Water Resources, the Indian tribes and 12 attorneys.

Sherl Chapman, Water Users, said the Association has looked at this legislation and concur with it.

Howard Funke, representing the Indian tribes, feels Idaho has done something unique with this legislation and Section 28 of the bill. By negotiating with the Shoshone-Bannock Tribes it has saved the state alot of money rather than going to court. It makes good sense to sit down and negotiate with the Tribes as none of the parties have the money that it could cost them. He also believes this bill is a much more streamlined one than the one in place last year.

The meeting was adjourned at this point as members of the committee had to leave for other committee meetings. The bill will be discussed further on Wednesday, March 19.


Laird Noh, Chairman


Bev Mullins, Secretary

HOUSE BILL NO. 369**BY RESOURCES AND CONSERVATION COMMITTEE
AN ACT**

RELATING TO ADMINISTRATION OF WATER RIGHTS; AMENDING SECTION 42-108, IDAHO CODE, TO PROVIDE THAT ANY PERMANENT CHANGE IN PERIOD OR NATURE OF USE FOR A QUANTITY OF WATER GREATER THAN FIFTY CFS OR FOR A STORAGE VOLUME GREATER THAN FIVE THOUSAND ACRE FEET SHALL REQUIRE THE APPROVAL OF THE LEGISLATURE EXCEPT THAT ANY TEMPORARY CHANGE WITHIN THE STATE OF IDAHO FOR A PERIOD OF LESS THAN THREE YEARS MAY BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES WITHOUT LEGISLATIVE APPROVAL; AMENDING SECTION 42-201, IDAHO CODE, TO PROHIBIT ILLEGAL APPLICATION AND USE OF PUBLIC WATERS; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE FOR EXTENSIONS BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES FOR COMPLETION OF WORKS AND APPLICATION OF THE WATER TO FULL BENEFICIAL USE UNDER CERTAIN PERMITS AND TO DELETE ARCHAIC LANGUAGE; AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR RECEIPT OF ALL NOTICES OF APPLICATION WITHIN A DESIGNATED AREA; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE NOTICE OF A PROPOSED CHANGE IN WATER USE, TO PROVIDE CONDITIONS FOR TRANSFER OF THE RIGHT TO STORED WATER FOR IRRIGATION PURPOSES, TO DELETE LANGUAGE RELATING TO CHANGE OF NATURE OF USE OF A WATER RIGHT AND TO PROVIDE NOTICE OF AN APPLICATION FOR AN EXTENSION; REPEALING SECTIONS 42-240 AND 42-311, IDAHO CODE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-311, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS PRIOR TO LICENSURE, TO PROVIDE GROUNDS FOR THE ORDER, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING, TO PROVIDE FOR JUDICIAL REVIEW AND TO DEFINE PERMITTEE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 42-350, 42-351 AND 42-352, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS AFTER LICENSURE, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING AND JUDICIAL REVIEW, TO DEFINE LICENSEE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES AUTHORITY TO ISSUE ORDERS FOR ILLEGAL DIVERSION OR USE OF WATER, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING AND JUDICIAL REVIEW AND TO PROVIDE CIVIL PENALTIES; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1778, IDAHO CODE, TO CREATE THE WATER RIGHTS ENFORCEMENT ACCOUNT IN THE AGENCY ASSET FUND; AND AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE THE POWER AND DUTY TO SEEK AN INJUNCTION OR RESTRAINING ORDER PERTAINING TO CERTAIN VIOLATIONS OR ATTEMPTED VIOLATIONS REGARDING WATER LAW.

HOUSE BILL NO. 370**BY REVENUE AND TAXATION COMMITTEE
AN ACT**

RELATING TO PENALTIES AND INTEREST ON BEER AND WINE TAX; REPEALING SECTIONS 23-1050 AND 23-1321, IDAHO CODE.

HOUSE BILL NO. 371**BY REVENUE AND TAXATION COMMITTEE
AN ACT**

RELATING TO THE CORPORATE INCOME TAX; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3025C, IDAHO CODE, EXEMPTING CORPORATIONS NOT ORGANIZED FOR PROFIT FROM THE MINIMUM TAX UNLESS SUCH CORPORATIONS RECEIVE UNRELATED BUSINESS INCOME; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

HOUSE BILL NO. 372**BY EDUCATION COMMITTEE
AN ACT**

RELATING TO SCHOOL ELECTIONS; AMENDING SECTION 33-405, IDAHO CODE, TO REQUIRE VOTERS IN SCHOOL ELECTIONS TO REGISTER; AMENDING SECTION 34-404, IDAHO CODE, TO REQUIRE VOTERS IN SCHOOL ELECTIONS TO REGISTER.

HOUSE BILL NO. 373**BY JUDICIARY, RULES & ADMINISTRATION COMMITTEE
AN ACT**

RELATING TO CRIMINAL PUNISHMENT; AMENDING CHAPTER 1, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-112A, IDAHO CODE, TO PROVIDE A FINE FOR FELONY STATUTES WHEN A FINE IS NOT SPECIFICALLY PROVIDED.

HOUSE BILL NO. 374**BY JUDICIARY, RULES & ADMINISTRATION COMMITTEE
AN ACT**

RELATING TO PROBATION; AMENDING SECTION 20-222, IDAHO CODE, TO PROVIDE THAT A PERSON MAY BE PLACED ON PROBATION FOR A PERIOD OF TIME EQUAL TO THE PERIOD OF TIME HE MIGHT HAVE BEEN IMPRISONED.

H 368, H 369, H 370, H 371, H 372, H 373 and H 374 were introduced, read the first time by title and referred to the Judiciary, Rules and Administration Committee for printing.

There being no objection, the House advanced to the Eleventh Order of Business.

Third Reading of Bills and Joint Resolutions

HR 5 was read the third time at length and placed before the House for final consideration.

The question being, "Shall **HR 5** be adopted?"

Roll call resulted as follows:

AYES — Adams, Antone, Bateman, Bayer, Bengson, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Crane, Crow, Crozier, Davis, Duffin, EchoHawk, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Hale, Hansen, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Johnson (6), Jones (23), Jones (29), Judd, Kellogg, Kenneville, Linford, Little, Loveland, Lucas, Martens, McDermott, Montgomery, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stone, Strasser, Stucki, Sutton, Winchester, Wood, Mr. Speaker. Total — 74.

NAYS — none.

Absent and excused — Allan, Black, Childers, Edwards, Haagenon, Keeton, McCann, Neibaur, Stoker, Tucker. Total — 10.

Total — 84.

SEIZURE, AND TO PROVIDE FOR DESTRUCTION OF DRUG AND NONDRUG EVIDENCE ON-SITE; AMENDING CHAPTER 27, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-2744A, IDAHO CODE, TO PROVIDE AUTHORITY TO THE DEPARTMENT OF LAW ENFORCEMENT TO RECEIVE DONATIONS FROM FEDERAL ENFORCEMENT AGENCIES AND OTHER PERSONS OR ENTITIES FOR DEPOSIT INTO THE DRUG ENFORCEMENT DONATION ACCOUNT IF THE ACCEPTANCE OF THE DONATIONS IS LAWFUL; AND PROVIDING SEVERABILITY.

HOUSE BILL NO. 489
BY REVENUE AND TAXATION COMMITTEE
AN ACT

RELATING TO SNOWMOBILES AND ALL TERRAIN VEHICLES; AMENDING SECTION 49-2603, IDAHO CODE, TO DEFINE ALL TERRAIN VEHICLES; AMENDING SECTION 49-2605, IDAHO CODE, TO INCREASE CERTAIN FEES REGARDING REGISTRATION OF SNOWMOBILES, TO STRIKE LANGUAGE RELATING TO RENEWAL FOR A CERTIFICATE OF NUMBER, AND TO PROVIDE THAT THE ANNUAL FEES FOR CERTIFICATES OF NUMBER ISSUED TO DEALERS SHALL BE TEN DOLLARS; AMENDING SECTION 49-2608, IDAHO CODE, TO PROVIDE THAT AUTHORIZED AGENTS AND COUNTY ASSESSORS SHALL BE ENTITLED TO CHARGE AN ADDITIONAL ONE DOLLAR HANDLING FEE PER REGISTRATION FOR THE DISTRIBUTION OF CERTIFICATES OF NUMBER; AMENDING SECTION 49-2613, IDAHO CODE, TO INCREASE THE AMOUNT OF ESTIMATED PROPERTY DAMAGE INCURRED IN A SNOWMOBILE ACCIDENT BEFORE A PROPER LAW ENFORCEMENT AGENCY MUST BE NOTIFIED REGARDING THE FACTS OF THE ACCIDENT; AND AMENDING CHAPTER 26, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-2616, IDAHO CODE, TO PROVIDE THAT ANY ALL TERRAIN VEHICLES OPERATING ON GROOMED SNOWMOBILE TRAILS DURING THE WINTER SNOWMOBILING SEASON SHALL BE REGISTERED, AND TO PROVIDE THAT COUNTIES SHALL HAVE THE OPTION TO ALLOW ALL TERRAIN VEHICLES, IF REGISTERED, TO USE SNOWMOBILE TRAILS IN THE COUNTY.

HOUSE BILL NO. 490
BY REVENUE AND TAXATION COMMITTEE
AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3024, IDAHO CODE, TO PROVIDE A SCHEDULE OF RATES AND BRACKETS FOR INCOME TAX ON INDIVIDUALS, TRUSTS AND ESTATES; DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

H 485, H 486, H 487, H 488, H 489 and H 490 were introduced, read the first time by title and referred to the Judiciary, Rules and Administration Committee for printing.

There being no objection, the House advanced to the Tenth Order of Business.

Second Reading of Bills and Joint Resolutions

H 403, by Business Committee, was read the second time by title and filed for third reading.

H 420, by State Affairs Committee, was read the second time by title and filed for third reading.

Third Reading of Bills and Joint Resolutions

H 369 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 369** pass?"

Roll call resulted as follows:

AYES — Adams, Allan, Antone, Bateman, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crane, Crow, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Haagenson, Hale, Hansen, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Johnson (6), Jones (23), Jones (29), Judd, Keeton, Kenneville, Linford, Little, Loveland, Lucas, Martens, McCann, Meline, Montgomery, Neibaur, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Strasser, Stucki, Sutton, Tucker, Winchester, Wood, Mr. Speaker. Total — 81.

NAYS — none.

Absent and excused — Kellogg, McDermott. Total — 2.

Total — 83.

Whereupon the Speaker declared **H 369** passed the House. Title was approved and the bill ordered transmitted to the Senate.

Mr. Chatburn asked unanimous consent that the following letter of legislative intent be printed in the House Journal and that the legislative intent is expressed as the decision of the House of Representatives. There being no objection, it was so ordered.

LETTER OF INTENT
H 369

It is the intent of the Legislature that the historical use of the flood waters of any stream for irrigation is a beneficial use and may not be denied, provided no other water rights are injured thereby.

It is the intent that the five-year forfeiture statute for non-use of a water right shall not apply in the event the water is not available or the season is such that the water cannot be applied beneficially.

H 377 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 377** pass?"

Roll call resulted as follows:

AYES — Adams, Allan, Antone, Bateman, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crane, Crow, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Haagenson, Hale, Hansen, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Johnson (6), Jones (23), Jones (29), Judd, Keeton, Kenneville, Linford, Little, Loveland, Lucas, Martens, McCann, Meline, Montgomery, Neibaur, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Strasser, Stucki, Sutton, Tucker, Wood, Mr. Speaker. Total — 80.

NAYS — Winchester. Total — 1.

Absent and excused — Kellogg, McDermott. Total — 2.

Total — 83.

Whereupon the Speaker declared **H 377** passed the House. Title was approved and the bill ordered transmitted to the Senate.

H 500, as amended in the Senate, was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 500**, as amended in the Senate, pass?"

Roll call resulted as follows:

AYES — Adams, Antone, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crow, Crozier, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Haagenson, Hale, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Jones (23), Jones (29), Judd, Keeton, Kellogg, Kenneville, Linford, Little, Loveland, Lucas, Martens, Montgomery, Parks, Reid, Reynolds, Robbins, Scates, Scott, Sessions, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Stone, Strasser, Stucki, Sutton, Winchester, Wood, Mr. Speaker. Total — 71.

NAYS — Allan, Bayer, Brocksome, McDermott, Schaefer, Simpson. Total — 6.

Absent and excused — Bateman, Crane, Hansen, Johnson (6), McCann, Neibaur, Tucker. Total — 7.
Total — 84.

Whereupon the Speaker declared **H 500**, as amended in the Senate, passed the House. Title was approved and the bill referred to the Judiciary, Rules and Administration Committee for enrolling.

H 358, as amended in the Senate, was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 358**, as amended in the Senate, pass?"

Roll call resulted as follows:

AYES — Adams, Allan, Antone, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crow, Crozier, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Haagenson, Hale, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Jones (23), Jones (29), Keeton, Kellogg, Kenneville, Linford, Little, Loveland, Lucas, Martens, McDermott, Montgomery, Parks, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Stone, Strasser, Stucki, Winchester, Wood, Mr. Speaker. Total — 74.

NAYS — Judd, Reid, Sutton. Total — 3.

Absent and excused — Bateman, Crane, Hansen, Johnson (6), McCann, Neibaur, Tucker. Total — 7.
Total — 84.

Whereupon the Speaker declared **H 358**, as amended in the Senate, passed the House. Title was approved and the bill referred to the Judiciary, Rules and Administration Committee for enrolling.

H 693, as amended, was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 693**, as amended, pass?"

Roll call resulted as follows:

AYES — Adams, Allan, Antone, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chatburn, Childers, Crane, Crow, Crozier, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Haagenson, Hale, Harris, Hawkins, Hay,

Hill, Hoagland, Infanger, Johnson (27), Johnson (6), Jones (23), Jones (29), Judd, Kellogg, Kenneville, Linford, Little, Loveland, Lucas, Martens, McDermott, Montgomery, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoker, Stone, Stucki, Sutton, Winchester, Wood, Mr. Speaker. Total — 72.

NAYS — Chadband, Herndon, Hooper, Horvath, Keeton, Stoicheff, Strasser. Total — 7.

Absent and excused — Bateman, Hansen, McCann, Neibaur, Tucker. Total — 5.
Total — 84.

Whereupon the Speaker declared **H 693**, as amended, passed the House. Title was approved and the bill ordered transmitted to the Senate.

H 706, as amended, was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 706**, as amended, pass?"

Roll call resulted as follows:

AYES — Adams, Allan, Antone, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crane, Crow, Crozier, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Givens, Gurnsey, Haagenson, Hale, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Horvath, Infanger, Johnson (27), Johnson (6), Jones (23), Judd, Keeton, Kellogg, Linford, Little, Loveland, Lucas, Martens, McDermott, Montgomery, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Stone, Stucki, Sutton, Tucker, Winchester, Wood, Mr. Speaker. Total — 74.

NAYS — Hooper, Kenneville, Slater, Strasser. Total — 4.

Absent and excused — Bateman, Geddes, Hansen, Jones (29), McCann, Neibaur. Total — 6.
Total — 84.

Whereupon the Speaker declared **H 706**, as amended, passed the House. Title was approved and the bill ordered transmitted to the Senate.

Mr. Haagenson asked unanimous consent that **H 622**, as amended, as amended, be returned to the State Affairs Committee. There being no objection, it was so ordered.

H 369, as amended in the Senate, was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 369**, as amended in the Senate, pass?"

Roll call resulted as follows:

AYES — Adams, Allan, Antone, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crow, Crozier, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Hale, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Johnson (6), Jones (23), Jones (29), Judd, Keeton, Kellogg, Kenneville, Linford, Little, Loveland, Lucas, Martens, McCann, McDermott, Montgomery, Neibaur, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Stone, Strasser, Stucki, Sutton, Tucker, Winchester, Wood, Mr. Speaker. Total — 80.

NAYS — none.

Absent and excused — Bateman, Crane, Haagenson, Hansen. Total — 4.

Total — 84.

Whereupon the Speaker declared **H 369**, as amended in the Senate, passed the House. Title was approved and the bill referred to the Judiciary, Rules and Administration Committee for enrolling.

H 586, as amended in the Senate, was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 586**, as amended in the Senate, pass?"

Roll call resulted as follows:

AYES — Adams, Allan, Antone, Bayer, Bengson, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crane, Crow, Crozier, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Hale, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Johnson (6), Jones (29), Judd, Keeton, Kellogg, Kenneville, Linford, Little, Loveland, Lucas, Martens, McDermott, Montgomery, Neibaur, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Stone, Strasser, Stucki, Sutton, Tucker, Winchester, Wood, Mr. Speaker. Total — 78.

NAYS — none.

Absent and excused — Bateman, Black, Haagenson, Hansen, Jones (23), McCann. Total — 6.

Total — 84.

Whereupon the Speaker declared **H 586**, as amended in the Senate, passed the House. Title was approved and the bill referred to the Judiciary, Rules and Administration Committee for enrolling.

H 723 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 723** pass?"

Roll call resulted as follows:

AYES — Adams, Allan, Antone, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crane, Crow, Crozier, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Haagenson, Hale, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Johnson (6), Jones (29), Judd, Keeton, Kellogg, Kenneville, Linford, Little, Loveland, Lucas, Martens, McDermott, Montgomery, Neibaur, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stone, Strasser, Stucki, Sutton, Tucker, Winchester, Wood, Mr. Speaker. Total — 79.

NAYS — none.

Absent and excused — Bateman, Hansen, Jones (23), McCann, Stoker. Total — 5.

Total — 84.

Whereupon the Speaker declared **H 723** passed the House. Title was approved and the bill ordered transmitted to the Senate.

H 757 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 757** pass?"

Roll call resulted as follows:

AYES — Adams, Bengson, Black, Boyd, Brackett, Brimhall, Brown, Burt, Chatburn, Crozier, Edwards, Field, Fry, Givens, Gurnsey, Haagenson, Harris, Hay, Herndon, Hill, Horvath, Infanger, Johnson (27), Johnson (6), Judd, Keeton, Kellogg, Linford, Loveland, Lucas, Martens, McDermott, Montgomery, Parks, Reid, Reynolds, Robbins, Scates, Sessions, Smock, Sorensen, Speck, Strasser, Stucki, Sutton, Tucker. Total — 46.

NAYS — Allan, Antone, Bayer, Braun, Brocksome, Callen, Chadband, Childers, Crane, Crow, Davis, Duffin, EchoHawk, Forrey, Geddes, Hale, Hawkins, Hoagland, Hooper, Jones (29), Kenneville, Little, Neibaur, Schaefer, Scott, Simpson, Slater, Stanger, Stoicheff, Stone, Winchester, Wood, Mr. Speaker. Total — 33.

Absent and excused — Bateman, Hansen, Jones (23), McCann, Stoker. Total — 5.

Total — 84.

Whereupon the Speaker declared **H 757** passed the House. Title was approved and the bill ordered transmitted to the Senate.

There being no objection, the House returned to the Fourth Order of Business.

Consideration of Messages from the Governor and the Senate

March 27, 1986

Mr. Speaker:

I transmit herewith enrolled **S 1456**, **S 1412**, **S 1251**, as amended, **S 1406**, **S 1413**, **S 1422**, **S 1279**, as amended, **S 1374**, as amended, **S 1431**, as amended, **S 1365**, as amended, **S 1425**, **S 1368**, **S 1361**, as amended, **S 1420**, **S 1404**, as amended, **S 1263** and **SCR 121** for the signature of the Speaker and I return herewith enrolled **H 503**, as amended in the Senate, **H 462**, as amended, as amended in the Senate, **H 685**, as amended in the Senate, **H 671**, as amended in the Senate, **H 539**, as amended in the Senate, **H 535**, **H 524**, **H 568**, **H 521**, **H 560**, **H 659**, **H 631**, **H 672**, **H 359**, **H 673**, **H 555**, **H 496**, as amended, **H 454**, **H 455**, **H 660**, **H 489**, as amended, **H 647**, **H 648**, as amended, **H 651**, **H 561**, **H 612**, **H 598**, as amended, **H 569**, as amended, **H 630** and **H 632** which have been signed by the President.

BAXTER, Secretary

The Speaker announced he was about to sign enrolled **S 1456**, **S 1412**, **S 1251**, as amended, **S 1406**, **S 1413**, **S 1422**, **S 1279**, as amended, **S 1374**, as amended, **S 1431**, as amended, **S 1365**, as amended, **S 1425**, **S 1368**, **S 1361**, as amended, **S 1420**, **S 1404**, as amended, **S 1263** and **SCR 121** and, when so signed, ordered them returned to the Senate.

Enrolled **H 503**, as amended in the Senate, **H 462**, as amended, as amended in the Senate, **H 685**, as amended in the Senate, **H 671**, as amended in the Senate, **H 539**, as amended in the Senate, **H 535**, **H 524**, **H 568**, **H 521**, **H 560**, **H 659**, **H 631**, **H 672**, **H 359**, **H 673**, **H 555**, **H 496**, as amended, **H 454**, **H 455**, **H 660**, **H 489**, as amended, **H 647**, **H 648**, as amended, **H 651**, **H 561**, **H 612**, **H 598**, as amended, **H 569**, as amended, **H 630** and **H 632** were referred to the Judiciary, Rules and Administration Committee for delivery to the Governor.

Report of Standing Committees

March 27, 1986

Mr. Speaker:

We, your COMMITTEE ON STATE AFFAIRS, report that we have had under consideration **SJR 110** and **S 1441**, as amended, and recommend that they do pass.

LITTLE, Chairman

SJR 110 and **S 1441**, as amended, were filed for second reading.

A better solution to problems created by short deadlines between filing deadlines, filling candidate vacancies, and the printing of primary ballots is to place the names of those candidates on the general election ballot, instead of the primary ballot.

This is the net effect of the current system. This would not hold up printing ballots and would insure voters have a choice of candidates in our election process.

For these reasons, I withhold my approval, disapprove and veto House Bill No. 491.

Sincerely,
/s/ JOHN V. EVANS
Governor

OFFICE OF THE GOVERNOR
Boise

April 3, 1986

The Honorable T.W. Stivers
Speaker of the House

Dear Mr. Speaker:

I have the honor to advise you that I have transmitted to the Secretary of State without my approval, disapproved, and vetoed the following House Bill, to wit:

HOUSE BILL 711, as amended in the Senate

within the time limited by law, the same having arrived in the Office of the Governor at the hour of 8:33 a.m. on April 1, 1986.

Many legislators apparently believed that passage of this bill would reduce the incidence of litigation over forest management plans. I, too, believe that our forest products industries and other users of our National Forest lands would be best served if forest management plans could be finalized with as few appeals as possible. While I therefore agree with the end sought by supporters of this bill, I disagree with the means embodied in this bill. This bill would make a significant change in state water quality standards. Such a change would require approval of the U.S. Environmental Protection Agency. We have just recently gone through a six-year controversy over EPA disapproval of our state water quality standards relating to dissolved oxygen levels below dams. If this bill were enacted we could look forward to another such lengthy period of contention between Idaho and the EPA over water quality standards. In the interim, the lack of an effective state water quality standard by which to evaluate forest management plans would lead to great uncertainty and, no doubt, much unnecessary litigation. In short, I would expect more appeals from forest management plans based on water quality concerns if this bill were enacted than would otherwise be the case.

It would be particularly inappropriate to enact a bill to weaken our water quality standards at this time. Many outstanding fisheries throughout Idaho have been damaged in recent years to the point where their ability to support the native and anadromous fish populations for which Idaho is justly famous has been substantially eroded. Idaho sportsmen, as well as our tourism, recreation and outfitting and guide industries are understandably alarmed. They have a right to insist on effective action to protect Idaho's pristine waters and outstanding fisheries. Last week's report by the Center for Disease Control which indicated that fish in Lake Coeur d'Alene contained lead and cadmium is just the most recent example of this threat to Idaho fisheries. Idahoans will not tolerate anything less than a total commitment by our state agencies to maintain the quality of our waterways.

My second major concern with this bill is that it would give the Department of Lands the responsibility to enforce water quality standards with respect to forest management plans and other proposed forest practices. At present, the Department of Lands has neither the expertise nor the resources to carry out this responsibility. If the legislature should decide again in the future that a shift of this responsibility to the Department of Lands is desirable, it should at the same time provide the necessary resources to the Department to carry out this responsibility.

Finally, it is most inappropriate to include an emergency clause in a bill which would make such a fundamental change in the way the state administers its water quality protection programs. The affected agencies should be afforded ample transition time to effect such a transfer of authority.

Although I cannot approve this bill, I am mindful of the frustration on the part of the forest products industry and others over the definition of "serious injury" within our water quality regulations. I am, therefore, ordering the directors of the Departments of Health and Welfare and of Lands to establish an interagency working group to formulate a "serious injury" definition by no later than September 15, 1986. I am convinced that this is a more positive and responsible approach to resolving this problem than that which this bill would impose.

For all of these reasons, I have withheld my approval, disapproved, and vetoed House Bill 711, as amended in the Senate.

Sincerely,
/s/ JOHN V. EVANS
Governor

Attachment: Letter from Ralph R. Bauer, Acting Regional Administrator, U.S. Environmental Protection Agency.

OFFICE OF THE GOVERNOR
Boise

April 4, 1986

The Honorable T.W. Stivers
Speaker of the House

Dear Mr. Speaker:

I have the honor to inform you that today I have signed and am transmitting to the Secretary of State the following signed House Bills, to wit:

H 480	H 568
H 473	H 560
H 462, as amended,	H 552
as amended in the Senate	H 539, as amended
	in the Senate
H 459	H 535
H 455	H 500, as amended
H 454	in the Senate
H 450	H 496, as amended
H 442, as amended	H 494
H 438	H 489, as amended
H 421	H 660
H 420	H 659
H 419	H 651
H 405	H 648, as amended
H 386	H 647
H 385	H 632
H 380, as amended	H 631
H 374	H 598, as amended
H 373	H 595, as amended
H 369, as amended in the Senate	H 503, as amended
H 569, as amended	in the Senate

Sincerely,
/s/ JOHN V. EVANS
Governor

S 1291**BY LOCAL GOVERNMENT AND TAXATION COMMITTEE****AN ACT**

RELATING TO ELECTION OF THE BOARD OF A WATER AND SEWER OR A RECREATIONAL WATER AND SEWER DISTRICT; AMENDING CHAPTER 32, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-3211B, IDAHO CODE, TO PROVIDE THAT NO ELECTION IS REQUIRED WHEN ONLY ONE QUALIFIED CANDIDATE HAS BEEN NOMINATED FOR EACH POSITION TO BE FILLED.

S 1292**BY LOCAL GOVERNMENT AND TAXATION COMMITTEE****AN ACT**

RELATING TO AD VALOREM TAXATION; AMENDING SECTION 63-112, IDAHO CODE, TO CLARIFY THE STATUTORY DEFINITION OF LAND ACTIVELY DEVOTED TO AGRICULTURE; DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

S 1293**BY STATE AFFAIRS COMMITTEE****AN ACT**

RELATING TO THE PERSONNEL SYSTEM; AMENDING SECTION 67-5302, IDAHO CODE, TO DESCRIBE AS "NONCLASSIFIED" ALL EMPLOYEES DEFINED AS EXEMPTED FROM THE PERSONNEL SYSTEM, TO STRIKE THE DEFINITION OF "EXEMPT" AND REDEFINE IT IN ACCORDANCE WITH EXEMPTIONS UNDER THE FAIR LABOR STANDARDS ACT, AND TO DEFINE "NONCLASSIFIED EMPLOYEE"; AMENDING SECTIONS 67-5303, 67-5305, 67-5309 AND 67-5311, IDAHO CODE, TO CHANGE THE REFERENCE FROM "EXEMPT" TO "NONCLASSIFIED"; AMENDING SECTION 67-5328, IDAHO CODE, TO PROVIDE THAT COMPENSATION FOR OVERTIME BE MADE SUBJECT TO THE RESTRICTIONS OF APPLICABLE FEDERAL LAW; AMENDING SECTION 67-5329, IDAHO CODE, TO PROVIDE THAT COMPENSATION FOR OVERTIME BE MADE SUBJECT TO THE RESTRICTIONS OF APPLICABLE FEDERAL LAW, AND TO PROVIDE THAT ALL EMPLOYEES QUALIFIED FOR A COMPLETE EXEMPTION WILL RECEIVE STRAIGHT COMPENSATORY TIME OFF FOR OVERTIME; AMENDING SECTION 67-5331, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 59-1601, IDAHO CODE, TO CHANGE THE REFERENCE FROM "EXEMPT" TO "NONCLASSIFIED" EMPLOYEES; AMENDING SECTION 59-1607, IDAHO CODE, TO STRIKE THE EXEMPTION FROM OVERTIME COMPENSATION FOR EMERGENCY OR PICK UP FIREFIGHTERS, TO PROVIDE THAT COMPENSATION FOR OVERTIME BE MADE SUBJECT TO THE RESTRICTIONS OF APPLICABLE FEDERAL LAW, AND TO PROVIDE THAT ALL EMPLOYEES QUALIFIED FOR A COMPLETE EXEMPTION WILL RECEIVE STRAIGHT COMPENSATORY TIME OFF FOR OVERTIME; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

S 1294**BY STATE AFFAIRS COMMITTEE****AN ACT**

RELATING TO ALCOHOLIC BEVERAGES; AMENDING SECTION 23-902, IDAHO CODE, TO EXPAND THE DEFINITION OF PREMISES, TO CHANGE NOMENCLATURE, AND TO STRIKE AN OBSOLETE DEFINITION.

S 1295**BY STATE AFFAIRS COMMITTEE****AN ACT**

RELATING TO THE PERSONNEL SYSTEM; AMENDING SECTION 67-5304, IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONNEL ACTIONS REQUIRE THE APPROVAL OF THE ADMINISTRATOR OF THE DIVISION OF FINANCIAL MANAGEMENT; REPEALING SECTION 67-5315, IDAHO CODE, AMENDING SECTION 67-5309A, IDAHO CODE, TO REDESIGNATE AS SECTION 67-5315, IDAHO CODE, AND TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 67-5316, IDAHO CODE, TO PROVIDE PROCEDURES FOR APPEAL TO THE PERSONNEL COMMISSION AND ITS HEARING OFFICER; REPEALING SECTION 67-5317, IDAHO CODE; AMENDING CHAPTER 53, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5317, IDAHO CODE, TO PROVIDE PROCEDURES FOR A PETITION OF REVIEW; AMENDING CHAPTER 53, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5318, IDAHO CODE, TO PROVIDE FOR APPEAL TO THE DISTRICT COURT; AND AMENDING SECTION 67-429, IDAHO CODE, TO PROVIDE FOR ADDITIONAL POWERS AND DUTIES OF THE LEGISLATIVE COUNCIL.

S 1296**BY STATE AFFAIRS COMMITTEE****AN ACT**

RELATING TO POLITICAL CAMPAIGN CONTRIBUTIONS; AMENDING SECTION 67-6605, IDAHO CODE, TO PROVIDE THAT A POLITICAL TREASURER SHALL NOT ACCEPT CONTRIBUTIONS OF MORE THAN TWO HUNDRED DOLLARS FROM A POLITICAL COMMITTEE NOT DOMICILED IN THE STATE OF IDAHO AND NOT OTHERWISE REQUIRED TO REPORT UNDER THE STATE'S CAMPAIGN DISCLOSURE LAW UNLESS THE CONTRIBUTION IS ACCOMPANIED BY A WRITTEN STATEMENT SETTING FORTH THE NAME AND ADDRESS OF PERSONS WHO CONTRIBUTED MORE THAN TWO HUNDRED DOLLARS TO THE NONREPORTING COMMITTEE DURING THE PRECEDING TWELVE MONTH PERIOD, TO REQUIRE A POLITICAL TREASURER TO FILE THE WRITTEN STATEMENT WITH THE SECRETARY OF STATE AT A TIME CERTAIN, TO PROVIDE DUTIES OF A POLITICAL TREASURER AND THE SECRETARY OF STATE, TO PROVIDE THAT ALL CONTRIBUTIONS OF MORE THAN TWO HUNDRED DOLLARS FROM A NONREPORTING COMMITTEE UNACCOMPANIED BY A WRITTEN STATEMENT SETTING FORTH REQUIRED INFORMATION REGARDING THE CONTRIBUTIONS SHALL BE RETURNED TO THE NONREPORTING COMMITTEE, AND TO REQUIRE A POLITICAL TREASURER TO FILE A REPORT WITH THE SECRETARY OF STATE REGARDING THE RETURNED CONTRIBUTIONS; AND AMENDING SECTION 67-6607, IDAHO CODE, TO REQUIRE WINNING AND LOSING CANDIDATES AND POLITICAL COMMITTEES TO FILE A STATEMENT OF CONTRIBUTIONS RECEIVED AND EXPENDITURES OR ENCUMBRANCES MADE WITH THE SECRETARY OF STATE NO MORE THAN THIRTY DAYS AFTER THE DATE OF A PRIMARY ELECTION IN WHICH THE CANDIDATE OR POLITICAL COMMITTEE WAS INVOLVED, AND TO PROVIDE A TIME SCHEDULE FOR REPORTS FOR ALL CANDIDATES FOLLOWING A PRIMARY ELECTION; AND PROVIDING AN EFFECTIVE DATE.

S 1289, S 1290, S 1291, S 1292, S 1293, S 1294, S 1295, and S 1296 were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

H 369, by Resources and Conservation Committee, was introduced, read the first time at length, and referred to the Resources and Environment Committee.

On request by Senator Ricks, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

On motion by Senator Ricks, seconded by Senator Kiebert, the Senate recessed until 1:15 p.m. of this day.

RECESS AFTERNOON SESSION

The Senate reconvened at 1:15 p.m., pursuant to recess, President Pro Tempore Risch presiding.

Roll call showed all members present except Senators Anderson, Bilyeu, Bray, Fairchild, Kiebert, Peavey, and Tominaga, absent and excused.

Prior to recess the Senate was at the Fourteenth Order of Business, General Calendar.

There being no objection, the Senate returned to the Sixth Order of Business.

Reports of Standing Committees

March 21, 1986

The JUDICIARY AND RULES Committee reports that **S 1463** and **S 1472** have been correctly printed.

FAIRCHILD, Chairman

S 1463 was referred to the Commerce and Labor Committee.

S 1472 was referred to the Resources and Environment Committee.

On request by Senator Ricks, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions and Memorials

S 1473 BY FINANCE COMMITTEE

AN ACT
EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 1987, AND DESIGNATING PROGRAM LIMITS; AND REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES TO THE DEPARTMENT OF LANDS.

S 1474 BY FINANCE COMMITTEE

AN ACT
APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE COMMISSION FOR THE BLIND, FOR FISCAL YEAR 1987.

S 1475 BY FINANCE COMMITTEE

AN ACT
APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE MILITARY DIVISION FOR FISCAL YEAR 1987.

S 1473, S 1474, and S 1475 were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

On request by Senator Ricks, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

The President Pro Tempore declared the Senate dissolved into the Committee of the Whole and called Senator Ricks to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the President Pro Tempore called the Senate to order.

Report of the Committee of the Whole

Senator Ricks, Chairman of the Committee of the Whole, reported out **H 369, S 1450, H 586, and S 1427** without recommendation, amended as follows:

Senate Amendments to H 369

Amendments to Section 8

On page 9 of the printed bill, following line 30, insert:

"(5) If the director of the department of water resources has issued an order to show cause why the director should not revoke a license, the licensee may, within twenty-one (21) days from the date of service of the order, notify the director in writing of the intent of the licensee to waive the right to an administrative hearing before the department and to file a complaint in the district court for a determination of the validity of the license. The complaint shall name the director of the department of water resources as a defendant and shall be filed either in the county where the point of diversion or the place of use under the license is located, or in the county where the director issued the order to show cause. The complaint shall be filed within forty-two (42) days of the date of service of the order to show cause by the director."

On page 9 of the printed bill, in line 31, delete: "(5)" and insert: "(6)".

Correction to Title

On page 1 of the printed bill, in line 28, delete: "AND JUDICIAL REVIEW" and insert: ", JUDICIAL REVIEW OR RIGHT OF ACTION IN DISTRICT COURT".

Senate Amendment to S 1450

Amendment to Section 1

On page 1 of the printed bill, in line 14, following "person", insert: ", individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties,".

Senate Amendments to H 586

Amendment to Section 1

On page 1 of the printed bill, delete lines 10 through 27 and insert:

"9-335. EXEMPTIONS FROM DISCLOSURE — CONFIDENTIALITY. (1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law

Motion to Suspend Rules

Moved by Senator Ricks, seconded by Senator Sweeney, that all rules of the Senate interfering with the immediate passage of **H 369**, as amended in the Senate, be suspended; that the portions of Section 15, Article 3, of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that **H 369**, as amended in the Senate, be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES—Anderson, Batt, Beck, Beitelspacher, Bilyeu, Bray, Budge, Calabretta, Carlson, Chapman, Crapo, Crystal, Darrington, Dobler, Fairchild, Gilbert, Horsch, Kiebert, Lacy, Lannen, Little, Marley, McLaughlin, McRoberts, Noh, Parry, Peavey, Rakozzy, Reed, Ricks, Ringert, Risch, Rydalc, Smyser, Staker, Sverdsten, Sweeney, Thorne, Tominaga, Twiggs, Yarbrough. Total - 41.

NAYS—None.

Absent and excused—Watkins. Total - 1.

Total - 42.

More than two-thirds having voted in the affirmative, the President declared the rules suspended.

H 369, as amended in the Senate, was read the first time by title, second time by title, and the third time at length, section by section, and placed before the Senate for final consideration, the question being, "Shall the bill pass?"

Senator Fairchild moved that **H 369**, as amended in the Senate, be referred to the Fourteenth Order of Business, General Calendar.

The motion died for lack of a second.

The question being, "Shall **H 369**, as amended in the Senate, pass?"

Roll call resulted as follows:

AYES—Anderson, Beitelspacher, Bilyeu, Budge, Carlson, Chapman, Crapo, Crystal, Darrington, Dobler, Gilbert, Horsch, Lacy, Lannen, Little, Marley, McLaughlin, McRoberts, Noh, Parry, Peavey, Rakozzy, Reed, Ricks, Ringert, Risch, Rydalc, Staker, Sverdsten, Sweeney, Tominaga, Twiggs, Yarbrough. Total - 33.

NAYS—Batt, Beck, Bray, Calabretta, Fairchild, Kiebert, Smyser, Thorne. Total - 8.

Absent and excused—Watkins. Total - 1.

Total - 42.

Whereupon the President declared **H 369**, as amended in the Senate, passed, title was approved, and the bill ordered returned to the House.

Motion to Suspend Rules

Moved by Senator Ricks, seconded by Senator Sweeney, that all rules of the Senate interfering with the immediate passage of **H 586**, as amended in the Senate, be suspended;

that the portions of Section 15, Article 3, of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that **H 586**, as amended in the Senate, be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES—Anderson, Batt, Beck, Beitelspacher, Bilyeu, Bray, Budge, Calabretta, Carlson, Chapman, Crapo, Crystal, Darrington, Dobler, Fairchild, Gilbert, Horsch, Kiebert, Lacy, Lannen, Little, Marley, McLaughlin, McRoberts, Noh, Parry, Peavey, Rakozzy, Reed, Ricks, Ringert, Risch, Rydalc, Smyser, Staker, Sverdsten, Sweeney, Thorne, Tominaga, Twiggs, Yarbrough. Total - 41.

NAYS—None.

Absent and excused—Watkins. Total - 1.

Total - 42.

More than two-thirds having voted in the affirmative, the President declared the rules suspended.

H 586, as amended in the Senate, was read the first time by title, second time by title, and the third time at length, section by section, and placed before the Senate for final consideration, the question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Anderson, Batt, Beck, Beitelspacher, Bilyeu, Bray, Budge, Calabretta, Carlson, Chapman, Crapo, Crystal, Darrington, Dobler, Fairchild, Gilbert, Horsch, Kiebert, Lacy, Lannen, Little, Marley, McLaughlin, McRoberts, Noh, Parry, Peavey, Rakozzy, Reed, Ricks, Ringert, Risch, Rydalc, Smyser, Staker, Sverdsten, Sweeney, Thorne, Tominaga, Twiggs, Yarbrough. Total - 41.

NAYS—None.

Absent and excused—Watkins. Total - 1.

Total - 42.

Whereupon the President declared **H 586**, as amended in the Senate, passed, title was approved, and the bill ordered returned to the House.

Motion to Suspend Rules

Moved by Senator Ricks, seconded by Senator Kiebert, that all rules of the Senate interfering with the immediate passage of **S 1450**, as amended, be suspended; that the portions of Section 15, Article 3, of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that **S 1450**, as amended, be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES—Anderson, Batt, Beck, Beitelspacher, Bilyeu, Bray, Budge, Calabretta, Carlson, Chapman, Crapo, Crystal, Darrington, Dobler, Fairchild, Gilbert, Horsch, Kiebert, Lacy,

amended, **S 1365**, as amended, **S 1425**, **S 1368**, **S 1361**, as amended, **S 1420**, **S 1404**, as amended, and **S 1263** were delivered to the Office of the Governor at 3:15 p.m., Thursday, March 27, 1986.

FAIRCHILD, Chairman

The report was ordered filed in the office of the Secretary.

March 27, 1986

The LOCAL GOVERNMENT AND TAXATION Committee reports out **H 721** with the recommendation that it do pass.

WATKINS, Chairman

H 721 was filed for second reading.

March 27, 1986

The RESOURCES AND ENVIRONMENT Committee reports out **H 629** with the recommendation that it do pass.

NOH, Chairman

H 629 was filed for second reading.

March 27, 1986

The FINANCE Committee reports out **H 759**, **H 760**, and **H 761** with the recommendation that they do pass.

LITTLE, Chairman

H 759, **H 760**, and **H 761** were filed for second reading.

Messages from the House

March 27, 1986

Mr. President:

I transmit herewith Enrolled **H 556**, as amended, as amended in the Senate, **H 500**, as amended in the Senate, **H 358**, as amended in the Senate, **H 369**, as amended in the Senate, **H 586**, as amended in the Senate, **HCR 59**, and **HCR 63** for the signature of the President.

WATSON, Chief Clerk

The President announced he was about to sign Enrolled **H 556**, as amended, as amended in the Senate, **H 500**, as amended in the Senate, **H 358**, as amended in the Senate, **H 369**, as amended in the Senate, **H 586**, as amended in the Senate, **HCR 59**, and **HCR 63**, and when so signed, ordered them returned to the House.

March 27, 1986

Mr. President:

I return herewith **S 1357**, **S 1476**, **S 1477**, **S 1480**, **S 1481**, **S 1482**, **S 1483**, **S 1377**, as amended, **S 1428**, **S 1301**, **S 1465**, and **S 1419**, as amended, which have passed the House.

WATSON, Chief Clerk

S 1357, **S 1476**, **S 1477**, **S 1480**, **S 1481**, **S 1482**, **S 1483**, **S 1377**, as amended, **S 1428**, **S 1301**, **S 1465**, and **S 1419**, as amended, were referred to the Judiciary and Rules Committee for enrolling.

On request by Senator Ricks, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Ricks, seconded by Senator Kiebert, the Senate adjourned until 8:30 a.m., Friday, March 28, 1986.

DAVID H. LEROY, President

Attest: DOROTHEA BAXTER, Secretary

EIGHTY-SECOND LEGISLATIVE DAY FRIDAY, MARCH 28, 1986

Senate Chamber

President Leroy called the Senate to order at 8:30 a.m.

Roll call showed all members present except Senators Beitelspacher, Bilyeu, Calabretta, Lannen, McLaughlin, Peavey, Smyser, and Watkins, absent and excused.

Prayer was offered by Chaplain Williams.

On request by Senator Ricks, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

March 27, 1986

Mr. President:

I transmit herewith **H 764** which has passed the House.

WATSON, Chief Clerk

H 764 was filed for first reading.

March 27, 1986

Mr. President:

I return herewith **SCR 122** which has failed to pass the House.

WATSON, Chief Clerk

SCR 122 was ordered filed in the office of the Secretary.

March 27, 1986

Mr. President:

I return herewith **S 1341**, as amended in the House, which has passed the House.

WATSON, Chief Clerk

On request by Senator Fairchild, granted by unanimous consent, **S 1341**, as amended in the House, was referred to the Tenth Order of Business, Motions and Resolutions, for consideration as to possible concurrence in the House amendments.

Motions and Resolutions

The President announced that **SCR 127** was before the Senate for final consideration.