MEMORANDUM

TO: **DISTRIBUTION LIST**

FROM: **NORM YOUNG** NCY

RE: **FURTHER GUIDANCE ON SB 1337, AMENDING SECTION 42-221, IDAHO CODE. (AUGMENTING THE GUIDANCE MEMORANDUM, DATED JUNE 26, 2000, ISSUED UNNUMBERED BY GLEN SAXTON)**

DATE: **January 2, 2001**

Application Processing No.: 66
Permit Processing No.: 19
Transfer Processing No. 23

Senate Bill 1337 enacted by the 2000 Legislature and effective on July 1, 2000 revised the fee schedule for filing applications for permits to appropriate water and for applications to transfer existing water rights. Initial guidance for determining transfer fees was provided in a memorandum from Glen Saxton dated June 26, 2000. Experience applying the new fee schedule indicates that additional consideration needs to be given to determine the appropriate fee for an application proposing to change the use of only a part of a water right(s).

Section 42-221, Idaho Code, provides for basing the filing fee upon the "quantity" of water being transferred. Thus, if an application proposes a change to an entire water right, the fee should be based upon the quantity of the right. However, if the application for transfer involves a change to only a part of a water right, the filing fee should be determined by the quantity of the part to be changed. One variation of a change that only affects a part of a right is if the right is to be split into one or more parts and a separate diversion and delivery system is used for each part. The June 26, 2000 memorandum describes the procedure for determining an appropriate fee when the right is split.

A second variation is if the change does not split the right even though the change affects the use of only a part of a right. This memorandum provides additional guidance to be used to determine the appropriate fee in this case. This variation can occur under several scenarios including the following examples:

a. The point of diversion is to be changed to divert a part of the quantity authorized under the right from a new location with the remainder of the right to be diverted without change. For example, one of several wells listed as points of diversion

on a water right is to be relocated to a different 40-acre subdivision with no other changes to the use of the right. In this case, the applicant should identify as additional information on Part 1 of the application the maximum quantity to be diverted at the new location and the fee should be based upon this quantity. If the application is approved, the approval should be conditioned to limit the quantity of water allowed to be diverted at the new point to no more than the amount indicated on the application.

b. A part of the place of use is to be changed to a new location. For example, a specific 40 acre tract of a 1000 acre place of use is to be switched to another 40 acre tract without a change to the remaining 960 acres in the place of use and the diversion/distribution system will otherwise be unchanged. The filing fee should be based upon the proportionate quantity of water appurtenant to the part of the place of use that is being changed. If the applicant proposes a change in the quantity different than the proportionate share, the application should be filed reflecting a split in the right.

c. The nature of use of a part of a right is proposed to be changed. For example, 10 cfs of a 50 cfs irrigation right is proposed to be changed to recharge purposes. The filing fee should be based upon the 10 cfs proposed to be changed assuming no other changes are proposed.

d. If changes are proposed to both the place of use and the point of diversion which involve only a part of the right, the fee should be based upon the larger of the two changes assuming that the two changes can appropriately be shown on the same application; i.e., still use in a common system and ownership is not split.

The need to advertise a transfer application statewide should be based upon the quantity of water being changed by the transfer rather than the full quantity represented by the right(s) being changed. Legal notices should be streamlined to avoid duplicate and unnecessary information.

Applicants should be advised early in the process that staff time spent researching an application involving multiple rights will be recorded. When appropriate, the applicant will be billed for cost of researching the rights in accordance with Section 42-221(J), Idaho Code.

I anticipate that these examples will not cover all of the possible scenarios. I encourage you to bring to the attention of Water Rights Permit Section situations, as they arise, that do not fit the available guidance.

MEMORANDUM

To: Distribution List

From: L. Glen Saxton

RE: **GUIDANCE ON SB 1337 AMENDING SECTION 42-221, I.C.**

Date: June 26, 2000

Senate Bill 1337 was enacted by the legislature during the last session and becomes effective on July 1, 2000. The bill which amended section 42-221, Idaho Code, provides for increased filing fees for applications for permits and for applications for transfer. The total fee for filing an application for transfer should be based on the summation of the diversion rates for the rights shown on the application. As an example, if an application for transfer proposes to change three rights, one in the amount of 0.8 cfs, a second in the amount of 0.3 cfs and the third in the amount of 0.2 cfs, the total filing fee should be $290 based on the summation of 0.8 cfs, 0.3 and 0.2 cfs = 1.3 cfs.

As a variation of this example, assume the same three rights above are conditioned to not exceed a combined rate of diversion of 0.8 cfs. In this case, the fee should be based on the combined rate of diversion of 0.8 cfs and should equal $250.

If an application for transfer proposes a change to part of a water right, the filing fee should be based on the part to be changed, if a separate diversion and distribution system will be used for the part to be changed and the right will be split. A change to part of a water right with a separate diversion will require a split.

A transfer accompanied by evidence of a change in ownership of the water right(s) will <u>not</u> require a separate filing of a change in ownership as required by Section 42-248, I.C. or Section 42-1409 (6), I.C.

Per section 42-240(2) Idaho Code, filing fees for water right exchanges are the same as for transfers.

The state office will issue appropriate press releases after July 1, 2000. The state office will also provide new instructions reflecting the changes. Old transfer instructions can be used after July 1 as long as the old fee amount is removed and the new fee schedule is inserted into the instructions. Inserts will be provided by the state office.

Attached is a copy of the senate bill in underlined, struck-out format and new instructions for filing an application for permit and an application for transfer.