

AN ACT

RELATING TO WATER; AMENDING SECTION 42-202, IDAHO CODE, TO ELIMINATE AN UNNECESSARY PROVISION REGARDING MUNICIPAL WATER RIGHTS EXISTING PRIOR TO JULY 1, 1996; AMENDING SECTION 42-202B, IDAHO CODE, TO UPDATE THE DEFINITIONS OF MUNICIPAL PROVIDER, PLANNING HORIZON AND REASONABLY ANTICIPATED FUTURE NEEDS; AMENDING SECTION 42-203A, IDAHO CODE, REQUIRING THE DIRECTOR TO CONDITION MUNICIPAL PERMITS SO THAT THE PLACE OF USE SHALL NOT BE AMENDED OUTSIDE THE SERVICE AREA NOR SHALL AMOUNTS HELD FOR REASONABLY ANTICIPATED FUTURE NEEDS BE CHANGED TO A NEW NATURE OF USE; AMENDING SECTION 42-204, IDAHO CODE, REQUIRING MUNICIPAL PROVIDERS HOLDING PERMITS FOR REASONABLY ANTICIPATED FUTURE NEEDS TO SUBMIT PROOF OF BENEFICIAL USE AT PERIODIC INTERVALS; AMENDING SECTION 42-207, IDAHO CODE, ESTABLISHING REQUIREMENTS FOR CHANGING THE OWNERSHIP OF A PERMIT HELD FOR REASONABLY ANTICIPATED FUTURE NEEDS; AMENDING SECTION 42-208, IDAHO CODE, REQUIRING THE DIRECTOR TO PRINT ON PERMITS TO APPROPRIATE WATER FOR REASONABLY ANTICIPATED FUTURE NEEDS THAT THEY SHALL COMPLY WITH THE PROVISIONS OF THIS CHAPTER; AMENDING SECTION 42-209, IDAHO CODE, REQUIRING THAT PERMITS FOR REASONABLY ANTICIPATED FUTURE NEEDS SHALL BE CANCELED IF THEIR SALE, TRANSFER, OR ASSIGNMENT DOES NOT COMPLY WITH THIS CHAPTER; AMENDING SECTION 42-211, IDAHO CODE, PROVIDING THAT THE DEPARTMENT SHALL NOT APPROVE AN AMENDMENT OF A PERMIT TO ESTABLISH A PLANNING HORIZON TO HOLD THE PERMIT FOR REASONABLY ANTICIPATED FUTURE NEEDS; AMENDING SECTION 42-217, IDAHO CODE, ELIMINATING THE NEED FOR A MUNICIPAL PROVIDER TO SUBMIT A REVISED PLANNING HORIZON IN CONNECTION WITH ITS STATEMENT OF COMPLETION FOR BENEFICIAL USE AND ELIMINATING OUTDATED LANGUAGE CONCERNING THE SUBMITTAL OF A BENEFICIAL USE EXAMINATION FEE; AMENDING SECTIONS 42-218 AND 42-218A, IDAHO CODE, CLARIFYING THAT PROOF OF BENEFICIAL USE FILINGS MUST INCLUDE A STATEMENT OF COMPLETION; AMENDING SECTION 42-219, IDAHO CODE, REQUIRING THE DIRECTOR TO ISSUE A WATER RIGHT LICENSE FOR THE AMOUNT THAT HAS BEEN BENEFICIALLY USED FOR REASONABLY ANTICIPATED FUTURE NEEDS DURING THE REPORTING PERIOD AND REQUIRING THE RELINQUISHMENT OF A PORTION OF A PERMIT TO APPROPRIATE WATER FOR REASONABLY ANTICIPATED FUTURE NEEDS THAT IS NOT BENEFICIALLY USED DURING THE PLANNING HORIZON; AMENDING SECTION 42-223, IDAHO CODE, CLARIFYING THAT A WATER RIGHT HELD BY A MUNICIPAL PROVIDER FOR REASONABLY ANTICIPATED FUTURE NEEDS SHALL NOT BE FORFEITED FOR NONUSE UNLESS IT IS NO LONGER NEEDED FOR REASONABLY ANTICIPATED FUTURE NEEDS.

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

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

42-202. Application to appropriate water -- Contents -- Filing fees -- Disposition of fees -- Record of receipts. (1) For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation. Provided however, if 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 or managed by an irrigation district, no such application may be approved by the director of the department of water resources without the consent of such corporation or irrigation district. Such application must set forth:

- (a) The name and post-office address of the applicant.
- (b) The source of the water supply.
- (c) The nature of the proposed use or uses and the period of the year during which water is to be used for such use or uses.
- (d) 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.
- (e) The time required for the completion of construction of such works and application of the water to the proposed use.

(2) An application proposing an appropriation of water by a municipal provider for reasonably anticipated future needs shall be accompanied by sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

(3) Whenever it is desired to appropriate and store flood or winterflow waters, the applicant shall specify in acre feet the quantity of such flood or winterflow waters which he intends to store, but for irrigation purposes he shall not claim more than five (5) acre feet of stored water per acre of land to be irrigated, nor, in the event of the filing of an application claiming both normal flow and flood water and winterflow water, shall the total amount of water claimed exceed the equivalent of a continuous flow during the irrigation season of more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated, or more than five (5) acre feet of stored water for each acre of land to be irrigated.

(4) 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.

(5) If the application involves more than twenty-five (25) cubic feet per second of water or the development of more than five hundred (500) theoretical horsepower, or impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre feet, the applicant may be required by the director of the department of water resources to furnish a statement of the financial resources of the corporation, association, firm or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided, and the estimated cost of construction; and if such application is made by a corporation, the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors; and if for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be returned to the stream, and if so, at what point on the stream.

(6) In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of the land proposed to be irrigated, with the total acreage to be reclaimed as near as may be; provided, that no one shall be authorized to divert for irrigation purposes more than one (1) cubic foot of water per second of the normal flow for each fifty (50) acres of land to be so irrigated, or more than five (5) acre feet of stored water per annum for each acre of land to be so irrigated, unless it can be shown to the satisfaction of the department of water resources that a greater amount is necessary. Provided further, that the plan of irrigation submitted shall provide for the distribution of water to within not more than one (1) mile of each legal subdivision of the land proposed to be reclaimed by the use of such water; provided also, that in the case of all ditches designed to have a capacity of ten (10) cubic feet per second or less, such map showing the location of such ditch, and the place of use of such water, or the location of the lands to be irrigated, may be upon blanks furnished by the department of water resources.

(7) No application shall be accepted and filed by the department of water resources until the applicant shall have deposited with the department a filing fee as in this chapter provided.

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

(9) Such expense shall be paid by the state controller in the manner provided by law, upon vouchers duly approved by the state board of examiners, for the work performed under the direction of the department of water resources. The department of water resources shall keep a record of all filing fees received in connection with applications for permits to appropriate public waters.

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

~~——(11) Provided further, that water rights held by municipal providers prior to July 1, 1996, shall not be limited thereby.~~

SECTION 2. That Section 42-202B, Idaho Code, be, and the same is hereby amended to read as follows:

42-202B. Definitions. Whenever used in this title, the term:

(1) "Consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use is not an element of a water right. Consumptive use does not include any water that falls as precipitation directly on the place of use. Precipitation shall not be considered to reduce the consumptive use of a water right. "Authorized consumptive use" means the maximum consumptive use that may be made of a water right. If the use of a water right is for irrigation, for example, the authorized consumptive use reflects irrigation of the most consumptive vegetation that may be grown at the place of use. Changes in consumptive use do not require a transfer pursuant to section [42-222](#), Idaho Code.

(2) "Digital boundary" means the boundary encompassing and defining an area consisting of or incorporating the place of use or permissible place of use for a water right prepared and maintained by the department of water resources using a geographic information system in conformance with the national standard for spatial data accuracy or succeeding standard.

(3) "Local public interest" is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

(4) "Municipality" means a city incorporated under section [50-102](#), Idaho Code, a county, or the state of Idaho acting through a department or institution.

(5) "Municipal provider" means:

(a) A municipality that provides water for municipal purposes to its residents and other users within its service area;

(b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or

(c) A corporation or association which supplies water for municipal purposes through an integrated water distribution system with multiple connections, and regulated by the state of Idaho as a "public water supply" as described in section [39-103](#)(12), Idaho Code.

(6) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

(7) "Planning horizon" refers to the length of time that the department determines is reasonable for a municipal provider to hold water rights to meet reasonably anticipated future needs. The length of the planning horizon may vary according to the needs of the particular municipal provider, but shall be consistent with the planning period employed in the comprehensive land use plan for projected growth and associated municipal services of the municipality or municipalities within the service area. If there are no municipalities within the service area of the municipal provider seeking a water right for reasonably anticipated future needs, the planning horizon shall be consistent with the planning periods employed in the comprehensive land use plans of the municipality or municipalities nearest the service area of the municipal provider. A planning horizon for a municipal provider seeking a water right for reasonably anticipated future needs greater than the planning periods for the comprehensive land use plans of municipalities within the service area or those surrounding the service area of the

municipal provider can only be established by clear and convincing proof of the basis and need for a longer planning horizon.

(8) "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of competent evidence about population, employment growth rates, water consumption, and other appropriate planning data, are reasonably expected to be required within the municipal provider's planning horizon of each municipality within the service area ~~not inconsistent~~ consistent with comprehensive land use plans approved by each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting ~~comprehensive land use plans~~ areas of city impact.

(9) "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

SECTION 3. That Section 42-203A, Idaho Code, be, and the same is hereby amended to read as follows:

42-203A. Notice upon receipt of application -- Protest -- Hearing and findings -- Appeals. (1) Upon receipt of an application to appropriate the waters of this state, the department of water resources shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; and (h) the point of use. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies or, in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of ten (10) c.f.s. or one thousand (1,000) acre feet, the director shall cause the notice to be published in a newspaper or newspapers sufficient to achieve statewide circulation. Any notice shall be published at least once each week for two (2) successive weeks.

(3) The director of the department shall also cause notice of the application to be accessible from the department's internet homepage beginning on or before the date the application is first published in the newspaper as described in subsection (2) of this section, and ending no sooner than the deadline for protesting the application, consistent with subsection (1) of this section. Notice accessible from the internet homepage may be represented by an abstract, summary, or other such representation that includes all the information required by subsection (1) of this section for notice of an application. The notice published in the newspaper pursuant to

subsection (2) of this section shall be the official notice. Errors or omissions in the notices accessible from the internet homepage shall not invalidate the published notice.

(4) Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest, together with the statutory filing fee as provided in section [42-221](#), Idaho Code, against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

(5) Such hearing shall be conducted in accordance with the provisions of section [42-1701A](#)(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such: (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section [42-202B](#), Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. Provided however, that minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to [chapter 15, title 42](#), Idaho Code. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant. Provided further, that in connection with the issuance of a permit held by a municipal provider, the director shall condition the permit to prohibit any change of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

(6) Any person or corporation who has formally appeared at the hearing, aggrieved by the judgment of the director of the department of water resources, may seek judicial review thereof in accordance with section [42-1701A](#)(4), Idaho Code.

SECTION 4. That Section 42-204, Idaho Code, be, and the same is hereby amended to read as follows:

42-204. Examination -- Permit -- Commencement of work -- Extensions -- Appeal. (1) On receipt of the application, which shall be of a form prescribed by the department of water resources, it shall be the duty of that department to make an 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~~issue a permit for a lesser quantity of water than applied for, or may ~~grant~~issue a permit upon conditions as provided in the preceding section.

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

(3) Except as otherwise provided in this section regarding permits held by municipal providers for reasonably anticipated future needs, ~~the~~ department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit the permit to a less period than is named in the application, and the permit shall set forth the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant 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~~ statement of completion for proof of beneficial use or a request for an extension of time on or before said date; Provided that:

(a) 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.

(b) The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for 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 diversion (including expenditures for the purchase of rights of way and property in connection therewith) at least one hundred thousand dollars (\$100,000).

(c) 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.

(d) 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.

(e) 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.

(4) For permits held by municipal providers for reasonably anticipated future needs, the department shall require that actual construction work and application of the water to full beneficial use be complete within the planning horizon authorized by the permit with periodic reporting intervals as further described in this section. During the permit development period, the municipal provider shall submit a statement of completion for proof of beneficial use to the department at periodic intervals not to exceed ten (10) years, describing the extent of construction work and application of water to beneficial use during the reporting period. The department may limit the reporting period to less than ten (10) years and the permit shall set forth the dates when the periodic report shall be submitted. Sixty (60) days before the date set for each statement of the completion of the appropriation of water under the permit, the department shall forward a notice to the municipal provider by certified mail at his address of record of the date for such statement of completion, which said notice shall advise the municipal provider of the necessity of submitting a statement of completion in accordance with section 42-217, Idaho

Code, before said date. The department shall not grant any extensions of time for the reporting periods or planning horizon set forth in the permit. Periodic report must be accompanied with a licensing filing fee as set forth in section 42-221, Idaho Code.

(5) Any applicant feeling himself aggrieved by the decision of the department of water resources regarding his application may request a hearing before the director in accordance with section [42-1701A\(3\)](#), Idaho Code, for the purpose of contesting the decision if the opportunity for a hearing has not previously been afforded 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 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 5. That Section 42-207, Idaho Code, be, and the same is hereby amended to read as follows:

42-207. Sale, transfer, assignment or mortgage of permit. (1) Whenever the holder of a permit to appropriate water for power purposes within the state of Idaho, desires to sell, assign, transfer or mortgage such permit so held by him, he shall file with the director of the department of water resources a copy of the deed, bill of sale, assignment, mortgage or other document of transfer, together with such proof as the director of the department of water resources may require that the new owner, holder or assignee of such permit, or the mortgagee, or one or more of the trustees under any mortgage trust indenture, possesses the qualifications set forth in section [42-206](#), [Idaho Code,] and that such transfer is made in good faith, and not for purposes of speculation or delay; and the sale, transfer, assignment or mortgaging of any such permit except as herein provided shall be void, it being the express intention of the legislature to prohibit the transfer of permits to appropriate water for power purposes by mortgaging the same or otherwise, except in accordance with the provisions of this act.

(2) Whenever a municipal provider holding a permit to appropriate water for reasonably anticipated future needs desires to sell, assign, transfer or mortgage such permit so held by him, he shall file with the director of the department of water resources a copy of the deed, bill of sale, assignment, mortgage or other document of transfer, together with such proof as the director of the department of water resources may require that the new owner, holder or assignee of such permit, or the mortgagee is a municipal provider obligated to use the water diverted under such permit to serve the same service area, or portion thereof, as that being served by the municipal provider making the conveyance, assignment, or mortgage.

SECTION 6. That Section 42-208, Idaho Code, be, and the same is hereby amended to read as follows:

42-208. Cancellation or revocation for noncompliance. Every permit to appropriate water for power purposes or reasonably anticipated future needs hereafter issued by the director of the department of water resources shall have plainly printed thereon, that the same is issued subject to the provisions of this ~~act~~chapter and in the event of its sale, transfer, assignment or of its being mortgaged without a compliance with the provisions of this ~~act~~chapter, such permit shall be immediately canceled and revoked by the director of the department of water resources.

SECTION 7. That Section 42-209, Idaho Code, be, and the same is hereby amended to read as follows:

42-209. Effect of illegal transfer. Every permit to appropriate water for power purposes or reasonably anticipated future needs that shall be sold, transferred, assigned or mortgaged in violation of the provisions of this act shall be immediately canceled, and the transfer thereof shall not be binding on the state of Idaho.

SECTION 8. That Section 42-211, Idaho Code, be, and the same is hereby amended to read as follows:

42-211. Amended application or permit -- Appeals. Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms to be furnished by the department of water resources together with the statutory fee for filing and recording same, and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder. The director of the department of water resources shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny same. Provided however, that the department shall reject and shall not approve an application to amend a permit to establish a planning horizon to hold the permit for reasonably anticipated future needs. Nothing in this chapter shall prohibit a municipal provider from transferring and changing its water rights to establish a planning horizon to hold the water rights for reasonably anticipated future needs pursuant to section 42-222, Idaho Code. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

In connection with any application on which permit has not been issued, amendments may be made by ~~indorsement~~endorsement by the applicant or his agent on the original application, which ~~indorsement~~endorsement shall be initialed and dated. If the amendment will result in the use of more water than originally asked, or if the amendment will establish or extend a planning horizon to hold the permit, if approved, for reasonably anticipated future needs, the priority of the right shall be changed to the date of said amendment. The applicant shall also be required to pay any additional filing fee as a result of an amendment of the rate of diversion or

volume of storage requested in such amended application. If amendment is made after publication of notice of the original application, said notice shall be republished following amendment, upon payment by the applicant of the statutory fee for republication as in this act provided.

The notice shall be published in the same manner as provided by section [42-203](#), Idaho Code, for publication of notice of an application for permit. Protests to the application for amendment may be filed with and heard by the director in the same manner as provided by section [42-203](#), Idaho Code, for protests to an application for a permit.

If a protest is filed and a hearing on the protest held, any person aggrieved by the final decision of the director following the hearing may seek judicial review thereof pursuant to section [42-1701A](#)(4), Idaho Code.

If no protest is filed and the director grants the amendment in part or on conditions or rejects the amendment without a hearing, 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 following the hearing and the issuance of a final decision by the director may seek judicial review thereof pursuant to section [42-1701A](#)(4), Idaho Code.

SECTION 9. That Section 42-217, Idaho Code, be, and the same is hereby amended to read as follows:

42-217. Proof of application to beneficial use. On or before the date set for the submittal of a statement of completion for the beneficial use of waters appropriated under the provisions of this chapter, the permit holder shall submit a statement that he has used such water for the beneficial purpose allowed by the permit. The statement shall include:

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

Such written ~~proof~~statement as may be required to be submitted by such user shall be upon forms furnished by the department of water resources and shall include fees as provided in subsection K. of section [42-221](#), Idaho Code, or a field examination report prepared by a certified water right examiner.

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

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

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

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

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

SECTION 10. That Section 42-218, Idaho Code, be, and the same is hereby amended to read as follows:

42-218. Proof of application to beneficial use -- Extension of time. Whenever a less period of time than the maximum prescribed in section [42-204](#) has been granted by the department of water resources for ~~making~~filing a statement of completion for proof of beneficial use, upon a satisfactory showing being made by the permit holder, the department can extend the time for ~~making~~filing such proof of beneficial use statement, but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in section [42-204](#). The department shall grant no extension unless the application therefor be filed with it prior to the date upon which the ~~proof of beneficial use~~statement of completion was required to be made under the original terms of the permit.

SECTION 11. That Section 42-218a, Idaho Code, be, and the same is hereby amended to read as follows:

42-218a. Lapse of application for failure to request extension or submit statement of completion for proof of application to beneficial use -- Notice of lapsing. A permit upon which the statement of completion for proof of beneficial use, including the appropriate fees or field examination report, has not been submitted, or a request for extension of time, if authorized in this chapter, has not been received on or before the date set for such ~~proof~~statement of completion, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the permit holder at the address of record by regular mail.

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

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

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

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

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

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

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

SECTION 12. That Section 42-219, Idaho Code, be, and the same is hereby amended to read as follows:

42-219. Issuance of license -- Priority. (1) Upon receipt by the department of water resources of all the evidence in relation to such ~~final proof~~ statement of completion for proof of beneficial use, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall state the name and post-office address of such user, the purpose for which such water is used and the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. In connection with a permit held by a municipal provider for reasonably anticipated future needs, a license may shall be issued to at the municipal provider for an amount up to the full capacity of the system constructed or used not to exceed the amount that has been beneficially used during the reporting period to which the statement of completion applies in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses ~~and reasonably anticipated future needs~~ within the service area, when considered with other water rights for the same uses within the service area, and otherwise satisfies the definitions and requirements specified in this chapter for such use. ~~The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section [42-202B](#), Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate~~

(2) If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water, except that the general description of a place of use described in accordance with subsection (5) or (6) of this section may be described using a digital boundary, as defined in section [42-202B](#), Idaho Code. If the use is for municipal

purposes, the license shall describe the service area and shall state the planning horizon for that portion of the right, if any, to be used for reasonably anticipated future needs.

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

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

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

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

(7) Subject to other governing law, the location of the acreage irrigated within a generally described place of use, as defined in accordance with subsections (5) and (6) of this section and as filed with the department pursuant to section [43-323](#), Idaho Code, may be changed without approval under the provisions of section [42-222](#), Idaho Code. However, the change shall not result in an increase in either the rate of flow diverted or in the total number of acres irrigated under the water right and shall cause no injury to other water rights. If the holder of any water right seeks to challenge such a change, the challenge may only be brought as an action initiating

a contested case before the department, pursuant to the administrative procedure act, [chapter 52, title 67](#), Idaho Code. Nothing in this section shall be construed to grant, deny or otherwise affect an irrigation district's authority to deliver water to areas outside the boundaries of such district.

(8) In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit. In connection with a permit held by a municipal provider, where at the end of the planning horizon a municipal provider's actual water needs are shown to be less than the amount held in the permit for reasonably anticipated future needs, the remainder of the permit shall be considered relinquished. Notice of such action shall be forwarded to the permit holder by certified mail. The applicant may contest such action by the department pursuant to section [42-1701A\(3\)](#), Idaho Code.

SECTION 13. That Section 42-223, Idaho Code, be, and the same is hereby amended to read as follows:

42-223. Exceptions or defenses to forfeiture. A right to the use of water shall not be lost by forfeiture pursuant to the provisions of section [42-222](#), Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section. The legislature does not intend through enactment of this section to diminish or impair any statutory or common law exception or defense to forfeiture existing on the date of enactment or amendment of this section, or to preclude judicial or administrative recognition of other exceptions or defenses to forfeiture recognized in Idaho case law or other provisions of the Idaho Code. No provision of this section shall be construed to imply that the legislature does not recognize the existence or validity of any common law exception or defense to forfeiture existing on the date of enactment or amendment of this section.

(1) A water right appurtenant to land contracted in a federal cropland set-aside program shall not be lost or forfeited for nonuse during the contracted period. The running of any five (5) year period of nonuse for forfeiture of a water right shall be tolled during the time that the land remains in the cropland set-aside program.

(2) A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the ~~license~~water right has expired and the quantity of water authorized for use under the ~~license~~water right is no longer needed to meet reasonably anticipated future needs.

(3) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to, discharge from dairy lagoons used in combination with or substituted for water diverted under the water right.

(4) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the reason for the nonuse of the water is to comply with the provisions of a ground water management plan approved by the director of the department of water resources pursuant to section [42-233a](#) or [42-233b](#), Idaho Code.

(5) A water right shall not be lost or forfeited by a failure of the owner of the right to divert and apply the water to beneficial use while the water right is placed in the water supply bank or is retained in or rented from the water supply bank pursuant to sections [42-1761](#) through

[42-1765A](#), Idaho Code, or while the water right is leased pursuant to sections [43-335](#) through [43-342](#), Idaho Code, or sections [42-2501](#) through [42-2509](#), Idaho Code, or while use of the water is made under any other provision of law authorizing the rental or lease of water rights.

(6) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

(7) No portion of a water right held by an irrigation district, a Carey Act operating company, or any other company, corporation, association, or entity which holds water rights for distribution to its landowners, shareholders or members shall be lost or forfeited due to nonuse by such landowners, shareholders or members, unless the nonuse is subject to the control of such entity.

(8) No portion of a water right held by an irrigation district shall be lost, forfeited or subject to forfeiture as a result of the exclusion of land from the district pursuant to [chapter 11, title 43](#), Idaho Code, so long as any five (5) year period of nonuse following the exclusion does not result from circumstances over which the district has control.

(9) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from a water conservation practice, which maintains the full beneficial use authorized by the water right, as defined in section [42-250](#), Idaho Code.

(10) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from the water right being used for mitigation purposes approved by the director of the department of water resources including as a condition of approval for a new water right appropriation approved pursuant to section [42-203A](#), Idaho Code, a water right transfer approved pursuant to section [42-222](#), Idaho Code, a water exchange approved pursuant to section [42-240](#), Idaho Code, or a mitigation plan approved in accordance with rules promulgated pursuant to section [42-603](#), Idaho Code.

(11) No portion of any water right with a beneficial use related to mining, mineral processing or milling shall be lost or forfeited for nonuse, so long as the nonuse results from a closure, suspension or reduced production of the mine, processing facility or mill due in whole or in part to mineral prices, if the mining property has a valuable mineral, as defined in section [47-1205](#), Idaho Code, and the water right owner has maintained the property and mineral rights for potential future mineral production.