

RAFN-Amendments1

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. A municipal provider also may apply to establish its reasonably anticipated future needs and a planning horizon without simultaneously seeking a permit for a water right, in which case

these elements may be established by order of the director after publication and opportunity for hearing pursuant to the same procedures as apply to water permit applications. Upon the issuance of such an order, the municipal provider shall be entitled to hold and rely on such reasonably anticipated future needs amount and the planning horizon, and then may acquire, appropriate, or transfer water rights to hold in the municipal provider's portfolio and place to beneficial use to meet such future needs in accordance with the requirements or this chapter. Once acquired, such water rights will be entitled to be held and used for such municipal purposes as if they were initially appropriated for future needs.

(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.

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 a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(12), Idaho Code. Nothing in this definition shall prohibit a qualified municipal provider from contracting with any entity to apply for or acquire water rights or construct a municipal water supply system on behalf of or in partnership with the municipal provider,

provided that the municipal provider will be the owner of the water right, permit or license involved.

(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, and also may vary from, but shall not conflict with, the planning period set forth in the comprehensive land use plan of any municipality within the service area. No planning horizon shall be approved for a period greater than 75 years without a clear and convincing showing of the basis and need for such a period.

(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 and employment growth rates, water consumption, and other appropriate planning data, are reasonably expected to be required within the such provider's planning horizon of each municipality within the service area not inconsistent 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.

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, ~~t~~The department shall require, as a permit condition, 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~~ shorter 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 of completion or a request for an extension of time on or before said date; Provided that the following conditions (a) through (e) shall apply to the requirements of subsection:

~~1.~~ (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.

~~2.~~ (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).

~~3.~~ (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.

4. (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.

5. (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) Because of the showings a municipal provider must make to prove reasonably anticipated future needs and a planning horizon, the conditions and limitations this chapter places on permits and licenses held for reasonably anticipated future needs, the municipal provider's obligation to serve consumers within its service area, and the fact that a municipal provider may not complete actual construction work and application of the water to full beneficial use until the end of the planning horizon, where a permit is held by a municipal provider for reasonably anticipated future needs, the requirements in subsection (3) of this section shall not apply with regard to the time for completion of the works and application of the water to full beneficial use.

~~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 and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.~~

(5) Every holder of a permit, other than one held in a portfolio by a municipal provider that has established a planning horizon and reasonably anticipated future needs for that portfolio, which shall be issued under the terms and conditions of an application filed hereafter appropriating authorizing the

appropriation of twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

(6) The holder of any permit who shall fail 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.

(7) Any applicant aggrieved by the decision of the department of water resources regarding his application may request a hearing before the director in accordance with section 42-01701A(3), Idaho Code, for the purpose of contesting the decision and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing. The deadlines or beginning dates established in this chapter for commencing construction, placing water to beneficial use, the commencement of a planning horizon, or other purposes, shall be extended by the amount of time consumed in any administrative or judicial proceeding resulting from the hearing and judicial review process set forth in this section 42-204.

42-207. Sale, transfer, assignment or mortgage of permit. 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. A permit or license held by a municipal provider for reasonably anticipated future needs shall be void if it is conveyed, assigned, or mortgaged to any other person or appropriator, including another municipal provider, except in the case where such conveyance, assignment, or mortgage is to a

person or entity obligated to use the water diverted under such permit or license to serve the same service area, or portion thereof, as that being served by the municipal provider making the conveyance, assignment, or mortgage, in which case the receiving entity shall include the right in its existing future needs portfolio. Nothing in this chapter shall prohibit a municipal provider from transferring and changing its water rights into water rights held for reasonably anticipated future needs within such municipality's approved planning horizon as provided in Idaho Code § 42-222(1).

42-217. Proof of application to beneficial use. Except in the case of a permit held by a municipal provider for reasonably anticipated future needs, on or before the date set 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.~~

~~(4) The source of the water used.~~

(5) Such other information as shall be required by the blank form furnished by the department.

Such written proof as may be required to be submitted by such user shall be upon forms furnished by the department of water resources and 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.

(6) Upon receipt of such proof 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:

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

(b) The capacities of the ditches, ~~or~~ canals, pipelines, reservoirs 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.

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

(8) 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.

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

42-218a. Lapse of application for failure to request extension or submit proof of application to beneficial use -- Notice of lapsing. A permit upon which the proof of beneficial use has not been submitted as specified in section 204 of this chapter, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing

shall be sent by the department to the 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.

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

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

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

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

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

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

42-219. Issuance of license -- Priority. (1) Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such 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.

(2) Where a municipal provider holding a permit for reasonably anticipated future needs has, within five years after permit issuance, begun construction on any portion of the water system necessary to divert and place to beneficial use water under such permit, the director shall issue a license may be issued to a municipal provider for an the full amount of the permit up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. The director shall condition the each such municipal license to:

(a) 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, or to any other person or entity except as provided in section 207 of this chapter; of amounts held for reasonably anticipated future needs

(b) require that during the planning horizon the municipal provider periodically report the extent of water use under all permits, licenses and decreed rights in its future needs portfolio, the extent of construction of the water diversion and delivery system for such portfolio, and the amount of any other water rights transferred or appropriated to serve such reasonably anticipated future needs, such reports to be delivered on a schedule that is no more frequent than every eight years; and

(c) impose such other conditions as the director may deem appropriate that are consistent with the requirements of this chapter.

(3)(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.

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

~~(5)(4)~~—The date of priority confirmed by the license shall be the date of the application for the permit for the construction of the works from which the water is taken, and to which the right relates, provided there has been no loss of priority under the provisions of this chapter. Whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, the proof shall be taken, if received by the department within the sixty (60) days prescribed in the preceding section. If the proof taken is satisfactory to the department of water resources, a license shall be issued by the department the same as though proof had been made before the date fixed for such beneficial application. The priority of the right established by the proof shall not date back to the date of the application for the permit to which the right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of the application, a time equal to the difference between the date set in the permit, or extension thereof, for such beneficial application of water and the date of proof.

~~(6)(5)~~ For irrigation projects where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or within irrigation districts organized and existing as such under the laws of the state of Idaho, the license issued shall be issued to the persons, association, company, corporation or irrigation district owning the project, and final proof may be made by such owners for the benefit of the entire project. It shall not be necessary to give a description of the land by legal subdivisions but a general description of the entire area under the canal system shall be sufficient. The water diverted and the water right acquired thereby shall relate to the entire project and the diversion of the water for the beneficial use under the project shall be sufficient proof of beneficial use without regard as to whether each and every acre under the project is irrigated or not.

~~(7)(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.

~~(8)(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.

~~(9)(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. 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.

(10) Where a municipal provider holds a portfolio of licenses, decrees, or permits used or intended for current and reasonably anticipated future needs, the director, after considering information the municipal provider submits periodically pursuant to section 42-219(2)(b), shall advise the municipal provider of any facts the department has regarding the question whether the municipal provider is likely to need less water during the planning horizon than that authorized under the licenses, permits and other entitlements in the portfolio due to the pace of growth in the service area, the implementation of conservation measures, or other factors. At any time during the planning horizon, the director may hold a hearing and take testimony and evidence pursuant to the department's rules to consider a petition from the municipal provider to enlarge the planning horizon. If it is shown by a preponderance of the evidence that the municipal provider is proceeding diligently and in good faith to fully develop the system and place to beneficial use water to serve its reasonably anticipated future needs, and that this is likely to be accomplished within an enlarged planning horizon, the director shall enlarge the planning horizon accordingly.

(11) Where, at the end of the planning horizon or any extension thereof, the municipal provider's water needs are less than the

amount held in the portfolio, the director may issue an order requiring the licensee to show cause why the extra amount show not be relinquished. If, after conducting a hearing on such order pursuant to the department's rules, the director determines that the municipal provider's actual diversion needs, including any need to meet any reasonably anticipated instantaneous peak demand, are less than the amount held in the portfolio, the director shall reduce the licensed amount, beginning with the most junior license, but shall retain in the licensed diversion rate no less than five not more than ten percent of the extra amount to provide the municipal provider reasonable flexibility to cover severe droughts, unanticipated increases in customer usage, or similar contingencies.

42-220. Effect of license. Such license shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein according to law and pursuant to the conditions specified in the license, and shall be prima facie evidence as to such right; and all rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted. The right to continue the beneficial use of such waters shall never be denied nor prevented for any cause other than the failure, on the part of the user or holder of such right, to pay the ordinary charges or assessments which may be made or levied to cover the expenses for the delivery or distribution of such water, or for other reasons set forth in this title: provided, that when water is used for irrigation, no such license or decree of the court allotting such water shall be issued confirming the right to the use of more than one second foot of water for each fifty (50) acres of land so irrigated, unless it can be shown to the satisfaction of the department of water resources in granting such license, and to the court in making such decree, that a greater amount is necessary, and neither such licensee nor any one claiming a right under such decree, shall at any time be entitled to the use of more water than can be beneficially applied on the lands for the benefit of which such right may have been confirmed, and the right to the use of such water confirmed by such license shall always be held subject to the local or community customs, rules and regulations which may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules or regulations have for their object the economical use of such water; and provided further, that where at the end of a planning horizon a municipal provider's actual water needs are shown to be less

than the amount held in a portfolio for reasonably anticipated future needs within that planning horizon, the director may declare an unused portion of the water right relinquished as provided in subsection 42-219(10) of this chapter.

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 in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar 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, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, 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. For applications proposing to change only the point of diversion or place of use of a water right in a manner that will not change the effect on the source for the right and any other hydraulically-connected sources from the effect resulting under the right as previously approved, and that will not affect the rights of other water users, the director of the

department of water resources shall give only such notice to other users as he deems appropriate.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department 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. In authorizing a water right or portion thereof to be transferred or changed to a municipal purpose to serve reasonably anticipated future needs, the director shall ensure that the transfer or change comports with the requirements of this subsection.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

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, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not 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, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. 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 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 set forth. Provided however, 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.

(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; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

(3) Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication 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.

(4) 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; provided that water rights protected from forfeiture under the provisions of section 42-223, Idaho Code, are exempt from this requirement.

(a) 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 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 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, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, to the director of the department of water resources within ten (10) days of the last date of publication.

(b) Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided.

(c) 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.

(d) 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.

(e) 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.

(5) 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.