



State of Idaho
DEPARTMENT OF WATER RESOURCES

322 E Front St, Ste. 648 • PO Box 83720 • Boise ID 83720 • www.idwr.idaho.gov
P: (208) 287-4800 • F: (208) 287-6700 • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

May 20, 2019

Re: NFIP Irrigation and Drainage Permit Guidance

Dear Community Floodplain Administrator,

Idaho has a long history of implementing a National Flood Insurance Program (“NFIP”) to protect lives and property in the state by ensuring that development activities in special flood hazard areas (“SFHA”) do not increase the level of flood risk. Dating back to the late 1970s, local Idaho communities like yours have joined the NFIP and adopted floodplain ordinances and implemented local programs. While the NFIP is governed by 44 Code of Federal Regulations – Emergency Management and Assistance and overseen by FEMA, state wide coordination of the NFIP in Idaho is carried out by the Idaho Department of Water Resources (“IDWR”) under the direction of the Floodplain Coordinator. IDWR’s coordination efforts include outreach, education, technical assistance, and development of state-wide guidance.

The purpose of this correspondence is to notify you of the attached *NFIP Irrigation and Drainage Permit Guidance* (“Guidance”) from the Deputy Director of IDWR. This Guidance addresses permitting of irrigation and drainage “development” activities in FEMA SFHAs.¹

Eligibility for enrollment and continued participation in the NFIP require communities to adopt and implement regulations to permit development within the SFHA. Idaho Code § 46-1022 authorizes local governments to adopt floodplain management ordinances to regulate floodplain development within their jurisdiction. The term “development” is defined broadly and similarly in both federal NFIP regulations and Idaho law. However, Idaho Code § 46-1021(1) states that “the term ‘development’ does not include the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works.” Further, Idaho Code § 46-1022 specifies that local “floodplain zoning ordinances shall not regulate the operation, cleaning, maintenance or repair” of irrigation and drainage ditches and works. Federal law does not similarly exclude the operation, cleaning, maintenance, or repair (“OCMR”) of irrigation and drainage ditches and works from the definition of development activities.

FEMA has advised the State of Idaho that its statutory definition of “development” is not consistent with Federal law, and that a blanket exclusion of OCMR related activities could result in some development activity going un-permitted. The attached Guidance clarifies permitting requirements for irrigation and drainage development activities in SFHAs by discussing:

¹ The SFHA or area of special flood hazard is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. 44 CFR § 59.1

- Definitions for the terms “operation, cleaning, maintenance and repair”;
- Examples of irrigation and drainage OCMR non-development activities that do not require any NFIP permit, examples of low-to-no impact OCMR development activities that qualify as *General Irrigation Floodplain Development* (“GIFD”) under a GIFD permit; and examples of irrigation and drainage development activities that may require an individual permit; and
- Description of the GIFD permit that local communities can use to collectively permit a group of GIFD activities or projects under a single permit for a defined multi-year period of time, not to exceed five years.

A GIFD permit is really nothing more than a letter or notice from the local Floodplain Administrator (“FPA”) to an irrigation/drainage entity documenting the activities or projects that qualify as GIFD. Issuance of a GIFD permit requires coordination between the irrigation entity and the FPA. A GIFD permit can ensure a community complies with both FEMA’s NFIP regulations and its own ordinances while reducing the administrative burden of permitting irrigation and drainage activities deemed as development under the NFIP. Some examples of GIFD permit activities and projects are identified in the Guidance.

The GIFD permit process is exemplified in the attached flow chart and is summarized as follows:

- **Review:** FPA and irrigation/drainage entity collaborate to review all irrigation and drainage activities or projects **only** within the SFHA or floodway. The FPA may meet with individual irrigation entities, or entities may submit a written description of activities to the FPA. The list of activities or projects may be annual or ongoing and may extend up to five years;
- **Assess:** FPA assesses activities and determines what level of floodplain permitting, if any, may be needed for the described activities; and
- **Document:** FPA sends a notice of determination to the entity advising which activities require no permit, a GIFD permit, or an individual permit. Activities that can be covered by a GIFD permit are simply noted and approved in the notice of determination. The notice of determination therefore becomes the GIFD permit for those qualifying activities. The FPA shall maintain a copy of all proposed project activities, notice of determinations/GIFD permits, and any related documents and correspondence.

Also attached to this letter are:

- Frequently asked questions and responses to assist FPAs and water users with implementation of the Guidance, and;
- A list of training opportunities to assist communities and irrigation/drainage entities with Guidance implementation. IDWR and FEMA will conduct the training events.

IDWR encourages FPAs to share and discuss this Guidance with appropriate community officials and staff, including elected officials. IDWR further encourages FPAs and irrigation entities to implement this guidance immediately or as soon as practicable. Implementation should not require any change to community floodplain ordinances.

Questions concerning this Guidance may be directed to Maureen O’Shea, IDWR State Floodplain Coordinator, or Tim Luke, Water Compliance Bureau Chief, at 208-287-4800.

A copy of this correspondence has been sent via email to all FPAs from communities participating in the NFIP. A hard copy of this correspondence and enclosed information has been sent to county commissions and city mayors whose communities participate in the NFIP. FPA's are encouraged to share this information with appropriate community officials and any irrigation and drainage entities within their communities for which the Guidance may apply.

A similar letter and the enclosed information will be sent on May 30, 2019 to most irrigation districts, drainage districts, irrigation companies, and canal and ditch companies in the state that may be located within NFIP participating communities. Some of the irrigation entities receiving this correspondence may not have any irrigation facilities located within a SFHA or mapped flood zone. Irrigation entities that do not have irrigation and drainage works or facilities within a SFHA do not need to be concerned with this Guidance.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Luke". The signature is fluid and cursive, with a large initial "T" and "L".

Tim Luke
Water Compliance Bureau Chief

Encl: IDWR-FEMA Training Opportunities – Venues, Dates and Times
NFIP Irrigation and Drainage Permit Guidance Administrative Memo
NFIP Irrigation and Drainage Permit Process Flow Chart
Frequently Asked Questions and Answers
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Dear Gentlemen,

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The purpose of this correspondence is to notify you of the attached *NFIP Irrigation and Drainage Permit Guidance* (“Guidance”) from the Deputy Director of IDWR. This Guidance addresses permitting of irrigation and drainage “development” activities in FEMA SFHAs¹ or regulatory floodways² only.

Eligibility for enrollment and continued participation in the NFIP require communities to adopt and implement regulations to permit development within the SFHA. Idaho Code § 46-1022 authorizes local governments to adopt floodplain management ordinances to regulate floodplain development within their jurisdiction. The term “development” is defined broadly and similarly in both federal NFIP regulations and Idaho law. However, Idaho Code § 46-1021(1) states that “the term ‘development’ does not include the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works.” Further, Idaho Code § 46-1022 specifies that local “floodplain zoning ordinances shall not regulate the operation, cleaning, maintenance or repair” of irrigation and drainage ditches and works. Federal law does not similarly exclude the operation, cleaning, maintenance, or repair (“OCMR”) of irrigation and drainage ditches and works from the definition of development activities.

¹ The SFHA, or special flood hazard area, is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. 44 CFR § 59.1

² Floodway or regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FEMA has advised the State of Idaho that its statutory definition of “development” is not consistent with Federal law, and that a blanket exclusion of OCMR related activities could result in some development activity going un-permitted. The attached Guidance clarifies permitting requirements for irrigation and drainage development activities in SFHAs by discussing:

- Definitions for the terms “operation, cleaning, maintenance and repair”;
- Examples of irrigation and drainage OCMR non-development activities that do not require any NFIP permit, examples of low-to-no impact OCMR development activities that qualify as *General Irrigation Floodplain Development* (“GIFD”) under a GIFD permit; and examples of irrigation and drainage development activities that may require an individual permit; and
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The GIFD permit process is exemplified in the attached flow chart and is summarized as follows:

- **Review:** FPA and irrigation/drainage entity collaborate to review all irrigation and drainage activities or projects **only within the SFHA or floodway. No review or permitting is required for irrigation activities outside the SFHA or floodway.** The FPA may meet with individual irrigation entities, or entities may submit a written description of activities to the FPA. The list of activities or projects may be annual or ongoing and may extend up to five years;
- **Assess:** FPA assesses activities within the SFHA or floodway only, and determines what level of floodplain permitting, if any, may be needed for the described activities; and
- **Document:** FPA sends a notice of determination to the entity advising which activities require no permit, a GIFD permit, or an individual permit. Activities that can be covered by a GIFD permit are simply noted and approved in the notice of determination. The notice of determination, therefore, becomes the GIFD permit for those qualifying activities. The FPA shall maintain a copy of all proposed project activities, notice of determinations/GIFD permits, and any related documents and correspondence.

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IDWR encourages irrigation and drainage delivery entities to review this Guidance with local FPAs and any appropriate community officials or staff, including elected officials. IDWR further encourages FPAs and irrigation entities to implement this guidance immediately or as soon as practicable. Implementation should not require any change to community floodplain ordinances. A copy of this correspondence has been sent to most irrigation districts, drainage districts, irrigation companies, and canal and ditch companies in the state that may be located within NFIP participating communities. **Some of the irrigation entities receiving this correspondence may not have any irrigation facilities located within a SFHA or floodway. Irrigation entities that do not have irrigation and drainage works or facilities within a SFHA or floodway do not need to be concerned with this Guidance.**

A similar letter and the enclosed information was sent via email on May 20, 2019 to all FPAs from communities participating in the NFIP. A hard copy of this correspondence and enclosed information has also been sent to county commissions and city mayors whose communities participate in the NFIP. IDWR encouraged local FPAs to share this information with appropriate community officials and any irrigation and drainage entities within their communities for which the Guidance may apply. A list of NFIP participating communities and FPA contacts is available on IDWR's website at: <https://idwr.idaho.gov/files/floodplain-mgmt/FP-list.pdf>

Questions concerning this Guidance may be directed to Maureen O'Shea, IDWR State Floodplain Coordinator, or Tim Luke, Water Compliance Bureau Chief, at 208-287-4800.

Sincerely,



Tim Luke
Water Compliance Bureau Chief

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