

ADMINISTRATOR'S MEMORANDUM

To: Regional Offices
Water Allocation Bureau

Miscellaneous No. 19

From: Jeff Peppersack



RE: **PROCESSING EXEMPT HYDROPOWER USES IN CANALS OR CONDUITS**

Date: June 23, 2016

BACKGROUND

In 2016, the Idaho Legislature passed Senate Bill 1278 creating Idaho Code §42-201(9). The new law exempts anyone conveying water through a canal or conduit for irrigation or other authorized beneficial uses from having to obtain an additional water right for the incidental use of that same water to generate hydroelectricity in the canal or conduit. The new statute becomes effective on July 1, 2016.

To qualify for the exemption, the power generation must not increase the rate of water diverted, it must be non-consumptive, and it must be authorized by another federal, state, or local authority, such as the Federal Energy Regulatory Commission (FERC). The incidental hydropower use shall be junior to and fully subordinated to all existing and future water uses.

The power producer must also submit a written notice to the Idaho Department of Water Resources and, if the diversion occurs in a water district, to the watermaster. The notice must include the following:

- A description of the hydropower use.
- The location of the project.
- The capacity of the project.
- A copy of the government order or document authorizing the project.
- Certification that the incidental use of water for hydropower generation meets all the requirements of the Idaho Code § 42-201(9).

PROCESSING THE NOTICE OF EXEMPT USE

Notices of incidental hydropower generation are not required to be submitted on Department forms. However, the Department has created a checklist to help hydropower producers organize their submittals and to help Department staff verify compliance with the statutory requirements. The checklist will be available from the Department's website.

Notices Received at Regions

Regional staff should date stamp the notice and send it to the state office to review and file. Regional staff should encourage anyone requesting assistance in completing a notice to use the Department's checklist.

Notices Received at the State Office

The notice will be date stamped at the state office and sent to the staff designated to review, scan, and file these notices. The person reviewing the notice should use the checklist to ensure that all of the information required to be submitted is included in the notice. If the information required to be submitted is not complete, the person reviewing the notice should send a letter describing the deficiency and asking for the required information. A blank copy of the Department's checklist may also be enclosed. If the necessary information is not provided within 60 days, the incomplete notice should be returned to the power producer with another letter describing the deficiency. The Department should keep and file a copy of the deficiency letter. Once the notice has met the requirements set forth in the statute, the Department should send a letter acknowledging receipt of the complete submittal.

Recordkeeping

Scanning and profiling will follow current standards except for the following areas:

- a. Document Name – Hydropower Notice Documents – Company Name
- b. Function ID – WTR-WR
- c. Process ID – HYDNOTICE
- d. Document Type – Notice or Correspondence
- e. Record Series – WRGT

State office staff will file the paper notices in an indexed filing system for ease of retrieval.

When an incomplete notice is returned to the power producer, the Department should scan and profile the deficiency letter.

No GIS layer is contemplated at this time, though one may be created in the future if a need arises.

NOTICES CORRESPONDING TO EXISTING LICENSES, DECREES, PERMITS, AND APPLICATIONS FOR PERMIT

Some power generators may wish to replace their existing licenses, decrees, permits, or applications for permit with the notice. When the law has become effective, Department staff processing qualifying applications for permit may correspond with the applicant to determine whether to continue processing the application. A similar approach may be

taken with permits to be licensed. When a water right filing will be replaced with a notice, the following steps should be taken:

1. Request a signed statement from the water right holder stating the intention to replace the water right filing with the hydropower notice. The statement should include the water right number and the signature of an individual who has the legal authority to sign for the water right holder or applicant. The statement may be may be in the form or a letter or affidavit, or it may be on one of the following Department forms:
 - a. Notice of Abandonment of Water Right
 - b. Relinquishment of Permit
 - c. Withdrawal of Application of Permit.
2. Review the notice using the Department checklist to ensure it is complete.
3. Once the notice is complete, follow standard Department practices to close the water right records.
4. Send a letter acknowledging receipt of the complete notice and confirming that the water right has been removed from the Department's records.