

ADMINISTRATOR'S MEMORANDUM

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

To: Regional Offices and Water Allocation Bureau
From: Jeff Peppersack JP
Date: October 18, 2017

RE: GUIDELINES FOR CALCULATING FILING FEES FOR APPLICATIONS FOR PERMIT AND APPLICATIONS FOR TRANSFER

I. Introduction

It is critical that the methods used to calculate application filing fees be consistent throughout the entire department. This memo is intended to help staff determine how to calculate filing fees for certain categories of applications to ensure consistency.¹

II. Relevant Legal Provisions

Idaho Code § 42-221 sets forth the filing fees for various functions of the Department, including applications for permit and applications for transfer. For both application types, the fee schedule is tiered, with greater filing fees for larger amounts of water.

III. Applications for Permit

The tiered fee structure for applications for permit is based on the total rate to be appropriated (in cfs) or the total storage volume to be appropriated (in acre-feet). The volume amounts listed in Idaho Code § 42-221 only apply to applications proposing water storage. They are not to be used to calculate filing fees for the volume of water associated with direct-flow use for irrigation, hydropower, recreation or other non-storage beneficial uses.

Generally, calculating the appropriate filing fee for an application for permit is straightforward. Occasionally, an application will propose a diversion rate and a storage volume that would end up on different fee tiers. For example, an application for permit may propose a diversion rate of 0.18 cfs (diversion to storage) and a storage volume of 50 acre-feet (recreation storage). If the filing fee were calculated based on the diversion rate, it would be \$100. If the filing fee were calculated based on the storage volume, it would be \$250. Whenever the diversion rate and storage volume elements of an application for permit lead to different filing fees, Department staff should always require an applicant to pay the higher amount to ensure all uses are covered by the fee.

¹ This memo does not provide guidance on whether an application is complete or approvable. It only provides guidance on how to calculate filing fees. Some of the examples in this memo could give rise to injury/enlargement concerns. Department staff must still perform a detailed evaluation of an application according to statutory guidelines.

IV. Applications for Transfer

Similar to applications for permit, the tiered fee structure for applications for transfer is based on the total rate associated with the proposed change (in cfs) or the total storage volume associated with the proposed change (in acre-feet). There is an additional fee for changes in nature of use that must be added to the fee based on the tiered fee structure. The tiered fee structure for flow versus storage should be applied to applications for transfer the same as described above for applications for permit. The difference is that the fee for a transfer application is based on the rate/volume proposed for change in the transfer application rather than the total rate/volume proposed for appropriation for a single right in an application for permit. The rate/volume proposed for change in a transfer application is not necessarily the total authorized diversion rate of the water right, or the sum of all water rights, proposed for change in the application.²

Example: A water user proposes to change the place of use for two overlapping water rights (a surface water right for 2.00 cfs, 100 acres and a supplemental ground water right for 2.00 cfs, 100 acres with a combined limit of 2.00 cfs, 100 acres). The entire place of use is being changed to a new location limited to 100 acres for the two rights. The place of use change would result in a filing fee based on 2.00 cfs because the two rights are limited to 2.00 cfs when used in combination.

The filing fee for a transfer application proposing to change only a portion of a water right, whether or not the right will be split, should be based on the portion of the water right being changed. Idaho Code § 42-221 does not provide any guidance on how to determine what portion of a water right is being changed in a transfer application. The guidance below is intended to help staff determine the amount of water proposed to be changed so the applicable fee can be calculated.

a. Multiple Changes

If a transfer application proposes multiple changes, the filing fee associated with each type of change should be calculated first and then applied as described below.

If the changes overlap, such as a change to a point of diversion and part of the place of use, then the higher filing fee is selected.

Example: A water user proposes to add a point of diversion and rearrange the place of use for an irrigation water right (1.00 cfs, 50 acres). The number of acres being rearranged is 45. The place of use change would result in a filing fee based on 0.90 cfs, (45 acres / 50 acres x 1.00 cfs = 0.90 cfs). The point of diversion change would result in a filing fee based on 1.00 cfs. The total filing fee should be based on 1.00 cfs.

² Note that transfer application fees do not apply to associated rights as those rights are described in Transfer Processing Memo No. 24.

If the changes do not overlap, such as a change to the nature of use for part of the system and rearrangement of the place of use for the remaining part (assuming a split is not required), then the individual quantities of water should be added together.

Example: A water user proposes to change the nature of use for part of an irrigation water right for use at a dairy and to rearrange the remaining place of use for irrigation (3.00 cfs, 150 acres). The dairy will continue to use the point of diversion associated with the irrigation use, so the right will not be split. The number of acres dried up for the dairy is 20. The number of acres being rearranged is 30. The nature of use change would result in a filing fee based on 0.40 cfs, $(20 \text{ acres} / 150 \text{ acres} \times 3.00 \text{ cfs} = 0.40 \text{ cfs})$. The place of use change would result in a filing fee based on 0.60 cfs, $(30 \text{ acres} / 150 \text{ acres} \times 3.00 \text{ cfs} = 0.60 \text{ cfs})$. The total filing fee should be based on 1.00 cfs, $(0.40 \text{ cfs} + 0.60 \text{ cfs} = 1.00 \text{ cfs})$ plus the additional fee for proposing to change the nature of use of a water right.

b. Consolidation of Acres

If a water user proposes to consolidate an irrigation water right onto a smaller number of acres, without reducing the diversion rate, the filing fee should be based on the number of acres removed from the right.

Example: An irrigator proposes to consolidate her 100-acre irrigation water right (1.50 cfs) onto 80 acres. The 80-acre proposed place of use is already covered by the existing water right and will not change as part of the transfer. The filing fee should be based on 0.30 cfs, $(20 \text{ acres} / 100 \text{ acres} \times 1.50 \text{ cfs} = 0.30 \text{ cfs})$.

c. Creation of PPU or Combined Place of Use

If a water user proposes to create a permissible place of use ("PPU") for irrigation, each water right or stacked group of water rights should be evaluated independently to determine how many acres can physically be moved. The filing fee should be based on the number of acres added to the place of use under each right, or stacked group, up to the maximum number of acres authorized under each right or group. The proportionate diversion rate should be calculated for each right, or stacked group, and then added together.

Example: An irrigator proposes to create a PPU for two water rights. Right no. 1 is for 2.00 cfs for irrigation of 100 acres. Right no. 2 is for 3.00 cfs for irrigation of 150 acres. The proposed PPU is for the 250 acres covered under both rights. The filing fee should be based on 4.00 cfs, $[(100 \text{ acres} / 100 \text{ acres} \times 2.00 \text{ cfs}) + (100 \text{ acres} / 150 \text{ acre} \times 3.00 \text{ cfs})]$. Note that right no. 1 can be moved to a new 150 acres, but is limited to 100 acres in a season and right no. 2 can only be moved in part to a new 100 acres.

d. Service Boundary Changes

If a canal company proposes to change its service boundary to rearrange or add acres to the boundary, filing fees should be based on the proportionate rate being rearranged or added. The proportionate rate is calculated by comparing the total number of acres being changed or added to the service area, up to the maximum number of acres authorized by the company's rights, to the total irrigated acres authorized by the company's rights, and then multiplied by the total rate authorized under the company's rights. The same method should be used when a water user proposes to change or add acres to a PPU.

Example: Canal Company proposes to add 160 acres to its service boundary. Its existing water rights authorize the diversion of 300.00 cfs and the irrigation of 10,000 acres. Canal Company's existing service area covers 12,000 acres. The filing fee should be based on 4.80 cfs, (160 acres / 10,000 acres x 300.00 cfs = 4.80 cfs).

Example: An irrigator proposes to increase a PPU from 500 acres to 1,200 acres for two water rights. Each water right authorizes irrigation of 250 acres and 5.00 cfs for a total of 500 acres and 10.00 cfs. The filing fee should be based on 10.00 cfs, (500 acres / 500 acres x 10.00 cfs = 10.00 cfs). Note that even though the PPU is increasing by 700 acres, the maximum number of acres that could be irrigated within an irrigation season is limited to 500 acres.

e. New Point of Diversion with Limited Rate

If a water user proposes to add or change a point of diversion for a water right and the proposed point of diversion will be limited to a specific diversion rate, the filing fee should be based on the diversion rate at the new point of diversion.

Example: Irrigator proposes adding a second well to his system. The existing water right authorizes the diversion of 8.00 cfs and describes a single point of diversion. Irrigator believes the new well will only produce 2.00 cfs and agrees to an approval condition limiting the new point of diversion to 2.00 cfs. The filing fee should be based on 2.00 cfs.

f. Ownership Changes

If a transfer proposes to update the ownership of one or more rights, the filing fees associated with the ownership changes should be added to the filing fee for the transfer application. The ownership change filing fees are calculated per water right, not per quantity. See Idaho Code §§ 42-248 and 42-1409(6).

V. Unique Applications

There may be applications that do not fit cleanly into any of the categories or examples described above. For those applications, Department staff should use their judgment to calculate the appropriate filing fees, keeping in mind the following general principles:

(1) The Department relies, in part, on filing fees to pay its employees and perform its statutory duties. By authorizing the Department to collect fees from water users for certain activities, the legislature intended to fund the Department, in part, through collection of those fees. The Department does not have discretion to waive or reduce filing fees.

(2) Most filing fees do not cover the full cost of processing an application. Even the simplest application for transfer requires staff time to update the water rights database, create shapes in ArcMap, prepare and mail approval documents, and scan and file the permanent water right records.

(3) Staff should consult with their supervisor for unusual or complex filing fee questions.

VI. Refunds

Filing fees collected by the Department are used “to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the department in the performance of its statutory duties.” Idaho Code § 42-221. Once an application has been entered into the Department’s database and advertised, a refund of the filing fee is no longer possible. Refunds may be issued if an application is withdrawn prior to the notice being sent to the newspaper and if significant investigation of the application proposal has not yet occurred. Refunds may also be issued, in part, if it is determined that an applicant paid more than is required.