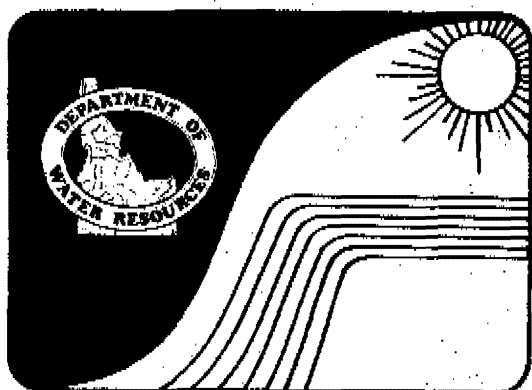


Signed this 4th day of January, 2008

Ray Spackman



Currents

A publication of energy and water information published by the Idaho Department of Water Resources, A. Kenneth Dunn, Director - John V. Evans, Governor

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Special Water Allocation Rules Edition II

Statehouse, Boise, Idaho 83720

December, 1985

After public meetings

IDWR proposes water allocation rules

In early October, 1985, the Department of Water Resources mailed a special edition of **Currents** to approximately 5,000 persons, associations and entities in order to seek input on the department's draft Water allocation Rules and Regulations. Based on public input received at the information meetings which the department conducted in Lewiston, Coeur d'Alene, Boise and Idaho Falls together with written comment received, the department has revised the draft Water Allocation Rules and Regulations.

These rules are proposed for adoption to implement the provisions of Section 42-203, **Idaho Code** which was amended during the first regular session of the 48th Idaho Legislature. The thrust of the proposed rules is to define in more detail how the State of Idaho, through the Department of Water Resources, will consider applications to appropriate "trust water" made available through the Swan Falls settlement agreement signed in October 1984, as well as applications for unappropriated water.

This special edition of **Currents** includes the text of rules as proposed for promulgation by the department.

In order to facilitate review of revised rules from the October 1, 1985 edition of **Currents**, the following rules are those with significant changes; although some other rules have been edited to clarify language.

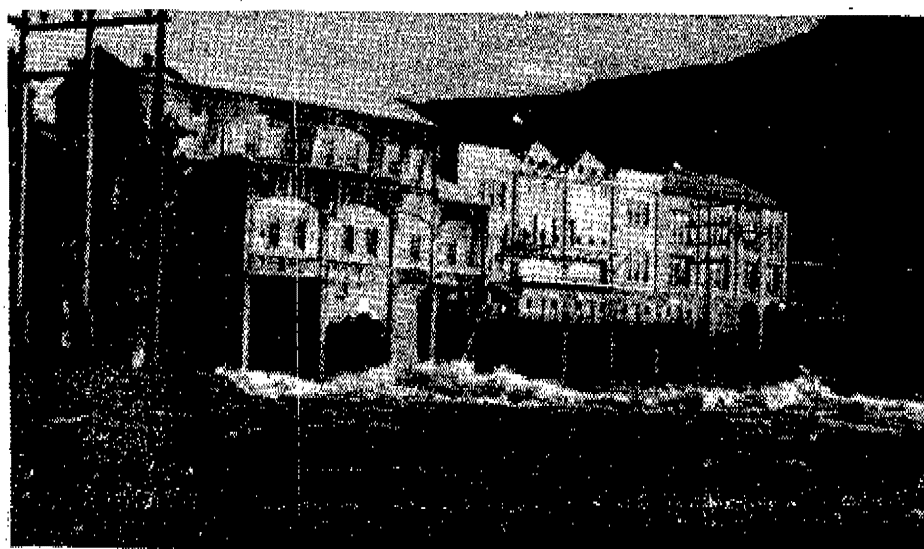
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4,5,2.	5,1,3,1.	5,3,3,2,3.	6,13.

Public hearings on the proposed rules will be held by the department as follows:

January 9, 1986	Moscow, University of Idaho, Student Union Building, 2nd Floor, Appaloosa Room, 6th and Beacon St., 2:00 p.m.
January 14, 1986	Idaho Falls, Bonneville County Courthouse, Planning and Zoning, Room 101, 605 N. Capitol, 2:00 and 7:00 p.m.
January 15, 1986	Twin Falls, College of Southern Idaho, Vo-Tech Building, Room 101, Mini-auditorium, 2:00 and 7:00 p.m.
January 16, 1986	Boise, Len B. Jordan Building, 3rd Floor Conference Room, 650 W. State St., 2:00 and 7:00 p.m.

Interested persons may present their views, data and arguments orally or in writing to the director at the hearing or may submit written comments to the director until January 27, 1986. Written comments may be addressed to the Idaho Department of Water Resources, 450 W. State St., Boise, ID 83720, Attention: Water Allocation Rules.

Additional copies of the proposed rules and regulations may be obtained by writing the Idaho Department of Water Resources, Statehouse, Boise, ID 83720. Copies may also be obtained from the state office of the department, 450 W. State St., Boise, Idaho or from any of the department's regional offices located in Boise, Coeur d'Alene, Twin Falls or Idaho Falls.



Swan Falls Dam, a 24-foot run-of-the-river power plant on the Snake River near Murphy, was the focal point of the hydropower v. upstream development controversy that started in Idaho in 1977. Originally built to provide power for the Owyhee County mines, the dam is now owned by Idaho Power Co. (Photo by Kay Weaver)

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SCANNED
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Proposed Rules For Water Allocation

RULES WHICH ARE APPLICABLE ONLY TO THE REALLOCATION OF TRUST WATER ARE PRINTED IN BOLD TYPE SET IN THIS ISSUE OF *Currents* TO FACILITATE REVIEW OF THE

RULES. THE BOLD TYPE SET DESIGNATION FOR RULES RELATED TO TRUST WATER WILL NOT BE INCLUDED OR SHOWN IN THE RULES UPON PROMULGATION.

Rule 1. General Provisions

1.1. Background and Purpose

The 1985 Idaho Legislature authorized reallocation of certain hydropower water rights to new upstream beneficial uses. The reallocation is to be accomplished using statutes designed to provide for the appropriation of unappropriated public water supplemented by a public interest review of those reallocations which significantly reduce existing hydropower generation. These rules and regulations provide the procedures for obtaining the right to divert and use unappropriated public water as well as water previously appropriated for hydropower use which has been placed in trust with the State of Idaho and is subject to reallocation. Guidelines are provided for the filing and processing of applications, and criteria are established for determining the actions to be taken by the director.

1.2. Scope and Applicability

These rules and regulations are applicable to appropriations from all sources of unappropriated public water in the State of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and ground water. The rules and regulations are also applicable to the reallocation of hydropower water rights held in trust by the State of Idaho. The rules and regulations are applicable to all applications to appropriate water filed with the Department of Water Resources prior to the effective date of these rules upon which an action to approve or deny the application is pending and to all applications filed subsequent to adoption of the rules and regulations. In addition, the rules and regulations are applicable to all existing permits to appropriate water to the extent that such permits were not developed prior to July 1, 1985.

1.3. Authority

The director of the Department of Water Resources adopts these rules and regulations under the authority provided by Section 42-1805(8), Idaho Code.

1.4. General description of the procedure to be used for allocation of unappropriated water and reallocation of trust water. (See Rule 2.17. for the definition of trust water).

1.4.1. Applications to appropriate unappropriated water will be evaluated using the criteria of Section 42-203A, Idaho Code which requires an assessment to be made of the impact of the proposed use on water availability for existing water rights, the adequacy of the water supply for the proposed use, whether the application is filed for speculative purposes, the financial ability of the applicant to complete the project, and the effect of the proposed use on the local public interest.

1.4.2. Appropriations of trust water made available by Section 42-203B, Idaho Code, will be evaluated using a three-step analysis. Evaluation will be made giving consideration to the purpose of "trust water" established in Section 42-203B, Idaho Code "... to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes to continue using the water pending approval of depletionary future beneficial uses".

1.4.2.1. First, the proposed use must be evaluated under the criteria of 42-203A Idaho Code.

1.4.2.2. Second, if the proposed use satisfies the criteria of Section 42-203A, Idaho Code, then Section 42-203C, Idaho Code requires a determination of whether the proposed use will significantly reduce, individually or cumulatively with other uses, the amount of water available to the holder of a water right used for power production whose rights are held in trust by the state and are subject to subordination and depletion by future beneficial users whose rights are acquired pursuant to state law. Because any application proposing a consumptive use when considered along with the cumulative effects of all other allocations of trust water will reduce the flows available to downstream hydropower rights, all applications proposing consumptive uses of trust water are con-

sidered for purposes of the rules and regulations as causing a significant reduction in flows available for hydropower generation.

1.4.2.3. Third, based upon a finding of significant reduction, the proposed use must be evaluated in terms of the public interest criteria of Section 42-203C(2), Idaho Code. Unprotected applications proposing DCMI uses, as herein defined, are herein determined to satisfy the public interest criteria. (See Rule 2.8. for the definition of DCMI).

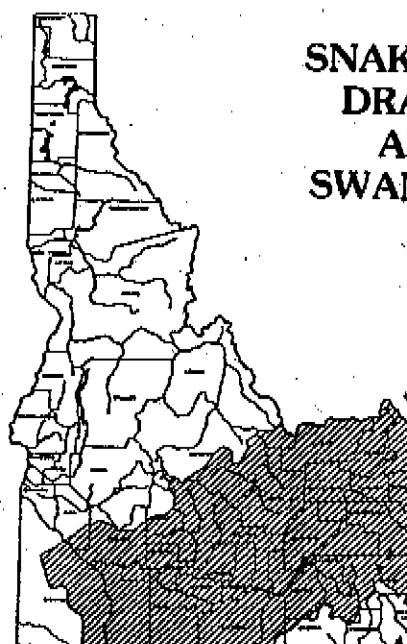
1.5. Location and Nature of Trust Water

1.5.1. The Snake River water rights agreement between the State of Idaho and Idaho Power Company places in trust a part of the flows available to Idaho Power Company under its previously unsubordinated hydropower water rights in the Snake River basin at and upstream from Swan Falls Dam. The flows subject to the trust water provisions as a result of the agreement and the legislation which implemented it are as follows:

1.5.1.1. Trust water flows are located in the Snake River upstream from Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and all surface and ground water sources tributary to the Snake River upstream from Swan Falls Dam.

1.5.1.2. Ground water existing within the geographic area shown in Figure 1 is presumed to be tributary to the Snake River upstream from Swan Falls Dam unless the director determines otherwise. The geographic area is further described as all of the surface water drainage to the Snake River in Idaho upstream from Swan Falls Dam which is located on the Snake River within Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.).

1.5.1.3. Trust water flows are those occurring in the Snake River and tributaries in the geographic area designated in Rule 1.5.1.1. which exceed the established minimum stream flows but are less than the water rights for hydropower generating facilities in the Milner Dam to Swan Falls Dam reach of Snake River, to the extent such rights were unsubordinated prior to the Snake River water rights agreement. Minimum average daily flows have been established by action of the board and legislature at the U.S. Geological Survey gauging station located near Murphy (Section 35, Township 1 South, Range 1 West B.M.) in the amount of 3900 cfs from April 1 to October 31 and 5600 cfs from November 1 to March 31, and at Milner gauging station located in Section 29, Township 10 South, Range 21 East, B.M. in the amount of zero (0) cfs from January 1 to December 31.



Snake River
Drainage
Above
Swan Falls

Figure 1

- 1,5,2. Applications to divert water to storage from the Snake River and tributaries upstream from the U.S. Geological Survey gauging station located near Murphy are not subject to the public interest review for trust water of Section 42-203C, Idaho Code. (Reference: Policy 32 I, State Water Plan).
- 1,5,3. For purposes of these rules and regulations, water made available for reallocation due to subordination conditions placed on hydropower permits or licenses issued on or after July 1, 1985, as authorized by Section 42-203B(6), Idaho Code, shall be treated as trust water.
- 1,5,4. For purposes of clarification, the following sources of public water are not trust water and are not subject to the public interest provisions of Section 42-203C, Idaho Code.
 - 1,5,4,1. Sources or tributaries to sources upon which no hydropower generating facilities are located downstream within the State of Idaho are not trust waters (Example - Salmon River).
 - 1,5,4,2. Sources or tributaries to sources which have hydropower generating facilities located within the State of Idaho for which the hydropower water right permit or license or Federal Energy Regulatory Commission license have not been subordinated, and the State of Idaho has not entered into an agreement with the holder of the hydropower water right pursuant to Section 42-203B(2), Idaho Code, and the State of Idaho has not established a minimum stream flow for purposes of protecting hydropower generation, are not trust waters. Such sources are considered appropriated to the extent of the existing water rights on the source including the amount of all unsubordinated hydropower water rights (Example - Bear River).
 - 1,5,4,3. Sources or tributaries to sources which have hydropower generating facilities located within the State of Idaho for which the hydropower water right permit or license that was issued prior to July 1, 1985, or the Federal Energy Regulatory Commission license for such facility included a subordination condition are not trust water. Such flows are considered to be public waters subject to appropriation under the provisions of Section 42-203A, Idaho Code (Example - Snake River downstream from Murphy gauging station).
 - 1,5,4,4. Flows in excess of established rights and rights used for hydropower purposes are unappropriated waters subject to allocation under Section 42-203A, Idaho Code.

- Rule 2. Definitions
- Unless the context otherwise requires, the following definitions govern these rules and regulations:
- 2,1. Acre-foot (AF) is a volume of water sufficient to cover one acre of land one foot deep and is equal to 43,560 cubic feet.
 - 2,2. Advertisement is the action taken by the director to provide notice, usually by publication of a legal notice in one or more newspapers, of a proposed appropriation or other notice required in administration of his duties and responsibilities.
 - 2,3. Applicant is the person, corporation, association, firm, governmental agency or other entity, or the holder of a permit being reprocessed pursuant to Section 42-203D, Idaho Code, who initiates an appropriation of water or related water matter for the director's consideration.

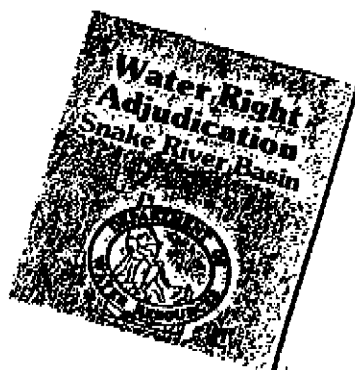
- 2,4. "Application for Permit" is the written request to the department on forms furnished by the department proposing to appropriate the public waters or trust waters of the state.
- 2,5. Board means the Idaho Water Resource Board.
- 2,6. Beneficial Use is one or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the director. Industrial use as used for purposes of these rules and regulations includes, but is not limited to, manufacturing, mining and processing uses of water.
- 2,7. Cubic foot per second (cfs) is a rate of flow approximately equal to 448.8 gallons per minute and also equals 50 Idaho miner's inches.
- 2,8. DCMI is an acronym for domestic, commercial, municipal and industrial. In these rules and regulations it designates certain classes of these uses determined to satisfy public interest requirements. Domestic use, for purposes of this term, is water for one or more households and water used for all other purposes including irrigation of a residential lot in connection with each of the households where the diversion to each household does not exceed thirteen thousand (13,000) gallons per day. Also for purposes of this term, commercial, municipal and industrial uses are any such uses which do not deplete the system containing the trust water more than two (2) acre feet per day.
- 2,9. Department means the Idaho Department of Water Resources.
- 2,10. Director means the director of the Idaho Department of Water Resources.
- 2,11. Legal subdivision is a tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the quarter-quarter, section, township and range description.
- 2,12. Permit or water right permit is the water right document issued by the director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state.
- 2,13. "Priority, or priority of appropriation, or priority date" is the date of appropriation established in the development of a water right. The priority of a water right for public water or trust water is used to determine the order of water delivery from a source during times of shortage. The earlier or prior date being the better right.
- 2,14. Project works is a general term which includes diversion works, conveyance works, and any devices which may be used to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works.
- 2,15. Single family domestic purposes is water for household use or livestock and water used for all other purposes including irrigation of up to one half (1/2) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day.
- 2,16. Subordinated water right means a water right used for hydropower generation purposes that is subject to depletion without compensation by upstream water rights developed later in time.
- 2,17. Trust water is that portion of an unsubordinated water right used for power purposes which is in excess of a minimum flow established by the director in compliance with applicable law (reference: Chapter 15, Title 42, Idaho Code) or by the board through adoption or amendment of the State Water Plan. For purposes of these rules, trust water also includes water available because of subordination conditions applicable to water right permits or licenses for hydropower purposes issued on or after July 1, 1985.
- 2,18. Unappropriated water is the public water of the state of Idaho in streams, rivers, lakes, springs or ground water in excess of that necessary to satisfy prior rights.

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Rule 3. Application Requirements

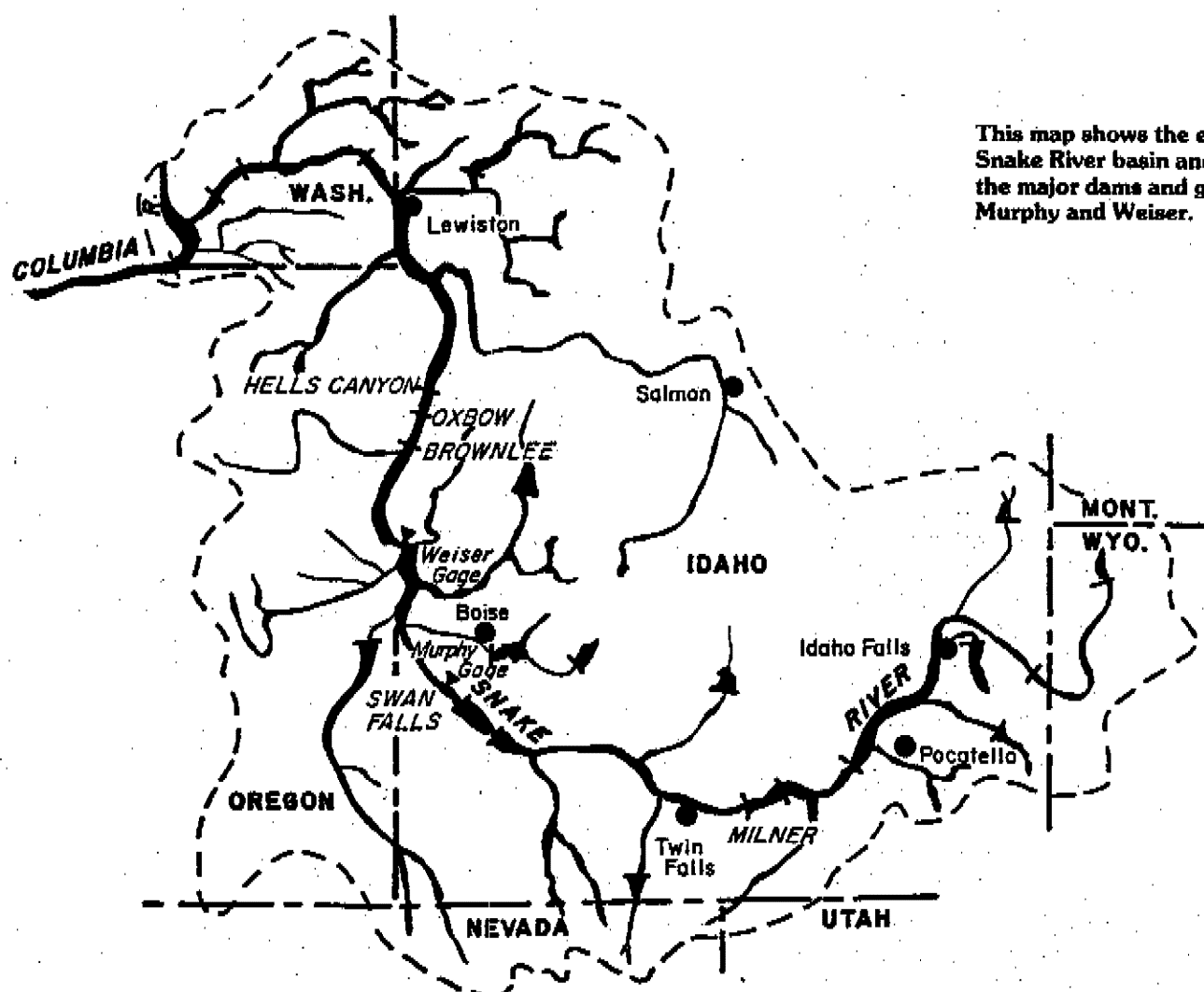
3.1. General Provisions

- 3.1.1. No person shall commence the construction of any project works or commence the diversion of the public water or trust water of the State of Idaho from any source or change the point of diversion, place, period or nature of use of any existing water right without first having filed an application for permit to appropriate the water or other appropriate form with the department and received approval from the director, unless exempted by these rules or by statute.
- 3.1.2. Any person proposing to commence a diversion of the public water or the trust water of the State of Idaho from a ground water source for single family domestic purposes is exempt from the application and permit requirements of Rule 3.1.1. Any person proposing to add a single family domestic use to an existing ground water diversion including one used for single family domestic purposes is exempt from the provisions of Rule 3.1.1.
- 3.1.3. Any person watering livestock directly from a natural stream or natural lake without the use of a constructed diversion works is exempt from Rule 3.1.1.
- 3.1.4. All applications for permit to appropriate public water or trust water of the state of Idaho shall be on the form provided by the department entitled "Application for Permit to Appropriate the Public Waters of the State of Idaho" and shall include all necessary information as described in Rule 3.3. An application for permit that is not complete as described in, Rule 3.3. will not be accepted for filing and will be returned along with any fees submitted to the person submitting the application. No priority will be established by an incomplete application. Applications meeting the requirements of Rule 3.3. will be accepted for filing and will be endorsed by the department as to the time and date received. The acceptability of applications requiring clarification or corrections shall be determined by the director.
- 3.1.5. The department will correspond with the applicant concerning applications which have been accepted for filing by the department which require clarification or correction of the information required by Rule 3.3. If the additional or corrected information is supplied after thirty (30) days, the priority date of the application will be determined by the date the additional or corrected information is received by the department unless the applicant has requested within the thirty (30) day period additional time to provide the information, has shown good reasons for needing additional time, and the director has granted additional time.
- 3.1.6. Failure to submit the additional or corrected information is

cause for the director to void the records of the application.

3.2. Effect of an Application

- 3.2.1. Any application, whether filed before or after promulgation of these rules, which seeks to appropriate water from a source upon which the state holds trust water shall be considered an application for reallocation of trust water unless the applicant indicates in writing that the application is for unappropriated water and provides information necessary to demonstrate that unappropriated water is available.
- 3.2.2. The priority of an application for unappropriated or trust water is established as of the time and date the application is received in complete form along with the statutory fee in any official office of the department. The priority of the application, remains fixed unless changed by action of the director in accordance with applicable law.
- 3.2.3. An application for permit to appropriate water is not a water right and does not authorize diversion or use of water until approved by the director in accordance with statutes and regulations in effect at the time the application is approved.
- 3.2.4. An applicant's interest in an application for permit to appropriate water is personal property. An assignment of interest in an application creates a rebuttable presumption that the application was filed for speculative purposes.
- 3.3. Requirements for Applications to be Accepted for Filing
 - 3.3.1. The department form entitled "Application for Permit to Appropriate the Public Waters of the State of Idaho" (hereafter termed "application for permit form") is the required form to apply for either unappropriated water or trust water.
 - 3.3.2. The following information shall be shown on an application for permit form and submitted together with the statutory fee to an office of the department before the application for permit may be accepted for filing by the department.
 - 3.3.2.1. The name and post office address of the applicant shall be listed. If the application is in the name of a corporation, the names and addresses of its directors and officers shall be provided.
 - 3.3.2.2. The name of the water source sought to be appropriated shall be listed. For surface water sources, the source of water shall be identified by the official geographic name listed on the U.S. Geological Survey Quadrangle map, or if no official name has been given, by the name in local common usage. If the source has not been named, it can be described as "unnamed", but the system or river to which it is tributary shall be identified. For ground water sources,



This map shows the extent of the Snake River basin and the locations of the major dams and gaging stations at Murphy and Weiser.

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the source shall be listed as "ground water". Only one source shall be listed on an application unless the application is for a single system which will have more than one source.

- 3,3,2,3. The legal description of the point of diversion and place of use shall be listed. The location of the point(s) of diversion and the place of use shall be described to the nearest 40-acre subdivision or U.S. Government Lot of the Public Land Survey System. Springs shall be shown to the nearest 10-acre tract. Subdivision names, lot and block numbers and any name in local common usage for the point of diversion, or place of use shall be included in the comments section of the application form. If irrigation is listed as a purpose of use, the number of acres in each 40-acre subdivision of the place of use shall be listed.
- 3,3,2,4. The quantity of water to be diverted shall be listed as a rate of flow in cubic feet per second and/or as a volume to be stored in acre-feet per year for each purpose of use requested.
- 3,3,2,5. Impoundment (storage) applications shall show the maximum acre-feet requirement per year which shall not exceed the storage capacity of the impoundment structure unless the application describes a plan of operation for filling the reservoir more than once per year.
- 3,3,2,6. Every offstream storage impoundment application shall show a maximum rate of diversion to storage as well as the total storage volume.
- 3,3,2,7. The nature of the proposed beneficial use or uses of the water shall be listed. While the purpose may be described in general terms such as irrigation, industrial or municipal, a description sufficient to identify the proposed use or uses of the water shall also be included.
- 3,3,2,8. The period of each year during which water will be diverted, stored and beneficially used shall be listed. The period of use for irrigation purposes shall coincide with the annual periods of use shown in Figure 2, unless it can be shown to the satisfaction of the director that a different period of use is necessary.
- 3,3,2,9. The proposed method of diversion, conveyance system and system for distributing and using the water shall be described.
- 3,3,2,10. The period of time required for completion of the project works and application of water to the proposed use shall be listed. This period of time shall not exceed five (5) years.
- 3,3,2,11. A map or plat of sufficient scale (not less than two inches equal to one mile) to show the project proposed shall be included. The map or plat shall agree with the legal descriptions and other information shown on the application.

- 3,3,2,12. The application form shall be signed by the applicant listed on the application or evidence must be submitted to show that the signator has authority to sign the application. An application in more than one name shall be signed by each applicant unless the names are joined by "or", or "and/or".
- 3,3,2,13. Applications by corporations, companies or municipalities or other organizations shall be signed by an officer of the corporation or company or an elected official of the municipality or an individual authorized by the organization to sign the application. The signator's title shall be shown with the signature.
- 3,3,2,14. Applications may be signed by a person having a current "power of attorney" authorized by the applicant. A copy of the "power of attorney" shall be included with the application.
- 3,3,2,15. An application signed by a mark or "X" must have the signator's name printed or typed nearby and the mark must have been witnessed and the application signed by the witness.

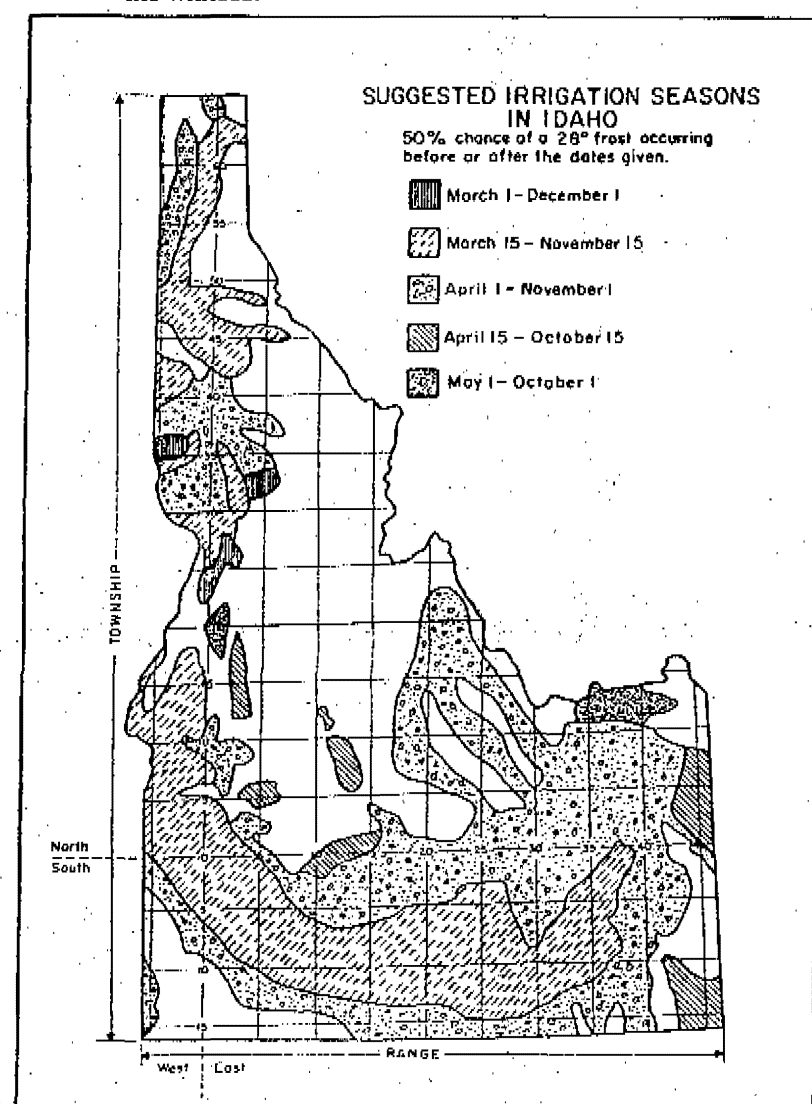


Figure 2

- 3,3,2,16. Applications to appropriate water in connection with Carey Act or Desert Land Entry proposals shall include evidence that appropriate applications have been filed for the lands involved in the proposed project.
 - 3,3,2,17. The application form shall be accompanied with a fee in the amount required by Section 42-221A, Idaho Code.
-
- 3.4. Amended Applications
 - 3,4,1. Applications for permit shall be amended whenever significant changes to the place, period or nature of the intended use, method or location of diversion or proposed use or uses of the water or other substantial changes from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Rule 3,4,3.), if the point of diversion, place of use, or point of discharge of the return flow are altered, if the period of the year that water will be used is changed, if the purpose of the use is changed, or if the change will, in the judgment of the director, otherwise adversely affect the rights of other water users or the local public interest.
 - 3,4,2. An application can be amended to clarify the name of the source of water but may not be amended to change the source of water.
 - 3,4,3. An amendment which increases the rate of diversion, increases the volume of water diverted per year or the

volume of water depleted, lengthens the period of use, or adds an additional purpose of use shall result in the priority of the application for permit being changed to the date the amended application is received by the department.

- 3,4,4. An application for permit may be amended by endorsement by the applicant or his agent on the original application for permit form which endorsement shall be initialed and dated. If the changes required to the information on the application are, in the judgment of the director, substantial enough to cause confusion in interpreting the application form, the amended application shall be submitted on a new application for permit form to be designated as an amended application.
- 3,4,5. An amended application shall be accompanied by the additional fee required by Section 42-221A, Idaho Code, if the total rate of diversion or total volume of storage requested is increased and by the fee required by Section 42-221F, Idaho Code, for readvertising if notice of the original application has been published.
- 3,4,6. If the applicant changes his name or mailing address, an amended application need not be submitted, but the department shall be notified by the applicant in writing.

Rule 4. Processing Applications for Permit and Reprocessing Permits

4.1. General

- 4,1,1. Unprotested applications, whether for unappropriated water or trust water, will be processed using the following general steps:
 - 4,1,1,1. Advertisement and protest period;
 - 4,1,1,2. Department review of applications and additional information, including department field review if determined to be necessary by the director.
 - 4,1,1,3. Fact finding hearing if determined to be necessary by the director.
 - 4,1,1,4. Director's decision;
 - 4,1,1,5. Section 42-1701A, Idaho Code, hearing, if requested; and
 - 4,1,1,6. Director's decision affirmed or modified.
- 4,1,2. Protested applications, whether for unappropriated water or trust water, will be processed using the following general steps:
 - 4,1,2,1. Advertisement and protest period;
 - 4,1,2,2. Hearing and/or conference;
 - 4,1,2,3. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the director.
 - 4,1,2,4. Proposed decision (unless waived by parties);
 - 4,1,2,5. Briefing or oral argument in accordance with Rule 10,2,3. of the department's adopted Rules of Practice and Procedure.
 - 4,1,2,6. Director's decision accepting or modifying the proposed decision.
- 4,1,3. The director's decision rejecting and denying approval of an application for permit filed for diversion from a source previously designated as a critical ground water area or upon which a moratorium has previously been entered may be issued without advertisement of the application.
- 4,1,4. An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The director at his discretion may approve the request unless he determines that another person will be injured by the delay or that the applicant seeks the delay for purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request.

4.2. Public Notice Requirement

4,2,1. Applications for permit which have not been advertised

- 4,2,1,1. Advertisement of applications for permit proposing a rate of diversion of ten (10) cfs or less or storage of 1000 AF or less shall comply with provisions of Section 42-203A, Idaho Code.

- 4,2,1,2. Advertisement of applications for permit in excess of the amounts in Rule 4,2,1,1. shall comply with provisions of Section 42-203A, Idaho Code, and shall be published in a newspaper or newspapers to achieve statewide circulation.

- 4,2,1,3. Statewide circulation with respect to Section 42-203A(2), Idaho Code, shall be obtained by publication of a legal notice at least once each week for two (2) successive weeks in a newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located and by publication of a legal notice at least once each week for two (2) successive weeks in at least one daily newspaper, as defined in Section 60-107, Idaho Code, published in each of the department's four administrative regions and determined by the director to be of general circulation within the department's region within which it is published. The administrative regions of the department are identified on Figure 3. The names of newspapers used for statewide publication are available from any department office.

4,2,2. Applications for permit which have been advertised

- 4,2,2,1. Notice of applications for permit for water from the Snake River and tributaries, including ground water upstream from Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, B.M., which have been held without action pending the resolution of the Swan Falls matter shall be readvertised by the director in accordance with Rule 4,2,1,1. or Rule 4,2,1,2. as appropriate to allow opportunity for protests to be entered with respect to the public interest criteria of Section 42-203C(2), Idaho Code.

- 4,2,2,2. Applications published prior to July 1, 1985 but which have not been approved pending submittal of information to satisfy requirements of Section 42-203A, Idaho Code shall be readvertised with respect to Section 42-203C, Idaho Code.

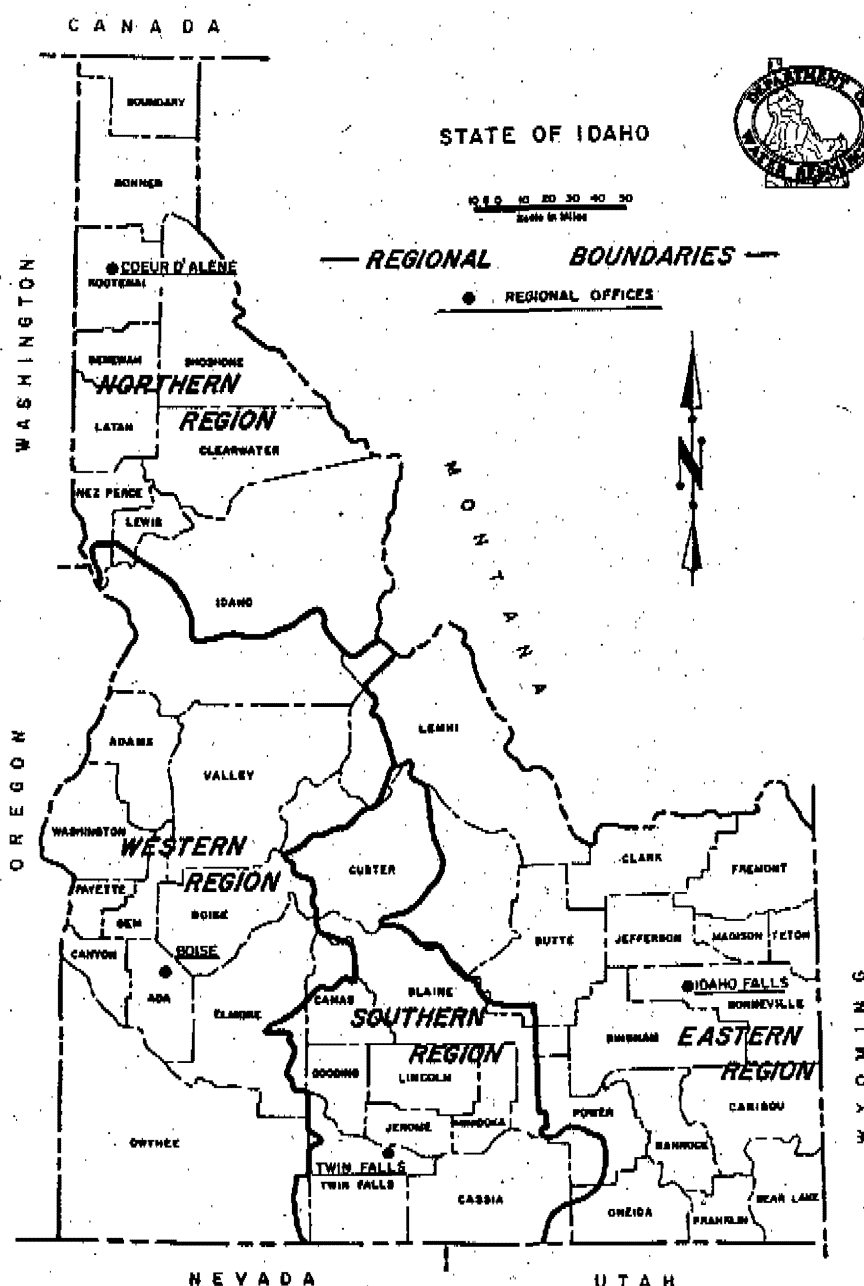


Figure 3

4,2,2,3. The applicant shall pay the readvertisement fee provided in Section 42-221F, Idaho Code, prior to the advertisement.

4,2,3. Notice of existing permits

4,2,3,1. All existing permits, issued prior to July 1, 1985, unless exempted by Rule 4,2,3,2. shall be subject to the review requirements of Section 42-203D, Idaho Code, and shall be readvertised in accordance with Rule 4,2,1,1. or Rule 4,2,1,2. as appropriate. The review is limited to the criteria described in Section 42-203C, Idaho Code.

4,2,3,2. Permits exempt from the provisions of 42-203D, Idaho Code include:

4,2,3,2,1. Permits appropriating water from sources or segments of sources upon which the state does not hold water in trust;

4,2,3,2,2. Permits for DCMI uses and other essentially non-consumptive uses as determined by the Director;

4,2,3,2,3. Permits for stockwater uses; and

4,2,3,2,4. Permits for which an acceptable proof of beneficial use submittal was received by the department prior to July 1, 1985, or permits for which an acceptable proof of beneficial use was submitted after July 1, 1985, if evidence satisfactory to the director has been received to show that the permit was fully developed and put to beneficial use prior to July 1, 1985.

4,2,3,3. Holders of permits subject to the review requirement of Section 42-203D, Idaho Code, shall pay in advance, upon the request of the director, the readvertising fee required by Section 42-221F, Idaho Code.

4,2,3,4. Failure to pay the readvertising fee within 30 days after the applicant is notified to do so is cause for the director to cancel the permit.

4,2,4. Provisions for receiving notice of application for permit by mail

4,2,4,1. Pursuant to Section 42-203A(3), Idaho Code, the department will provide upon written request by regular mail, postage prepaid, the notices for all applications for permit of the classes requested. Mailings will be made on a periodic basis to include all notices of a specific class for which advertisements were prepared for publication during the previous period.

4,2,4,2. Notice of the advertisement of application as described in Section 42-203A(3) may be represented by an abstract, summary or other such representation which includes all the information required by Section 42-203A(1), Idaho Code, for a notice of an application for permit.

4,2,4,3. The annual mailing fee as described in Section 42-203A(3), Idaho Code, shall include all costs incurred by the department in preparation of mailing of the notices of application to those requesting them.

4,2,4,4. The annual fee for receiving notice of all classes will be determined by the director and shall be paid to the department in advance on an annual basis (July 1 to June 30). The annual mailing fee shall be prorated by the department for requests encompassing less than a full year and will be increased for the additional cost the department incurs for requests encompassing fewer than all classes of notice.

4,2,4,5. A request for a specific class of notice may be fulfilled by the mailing of notice of all applications for permit received by the department unless the additional cost to the department of preparing the requests for a specific class of notice is paid in advance.

4,2,4,6. A request to receive a class of notice of applications shall be effective not later than thirty (30) days after receipt by the department of the request together with the annual fee.

4,2,4,7. The notice published in the newspaper of an application or

of a permit being reprocessed as required by Rule 4,2,1., Rule 4,2,2., and Rule 4,2,3. is the official notice required by Section 42-203A, Idaho Code. Errors or omissions in the notices of applications received by mail as provided by Rule 4,2,4., or the failure of the notices to be delivered by mail does not invalidate the notice.

4,3. Protests, Intervention, and Hearings

4,3,1. Protests

4,3,1,1. Protests against the approval of an application for permit or against a permit being reprocessed shall comply with the requirements for pleadings as described in Rule 3 of the department's adopted Rules of Practice and Procedure.

4,3,1,2. Protests against issuance of a permit on an application or a permit being reprocessed will only be considered if received by the department after receipt of the application for permit being protested and prior to the expiration of the protest period announced in the advertisement unless the protestant successfully intervenes in the proceeding.

4,3,1,3. General statements of protest (blanket protests) against appropriations for a particular class of use or from a particular source of water will not be considered as valid protests by the director.

4,3,2. Intervention

4,3,2,1. Requests to intervene in a proceeding pending before the department shall comply with Rule 6 of the department's Rules of Practice and Procedure.

4,3,3. Hearings

4,3,3,1. Hearings will be scheduled and held in accordance with Rule 9 of the department's Rules of Practice and Procedure.

4,4. Burden of Proof

4,4,1. Burden of proof is divided into two parts: first, the burden of coming forward with evidence to present a prima facie case, and second, the ultimate burden of persuasion. The person who has the burden of presenting a prima facie case has the responsibility of making the initial evidentiary showing; the person who has the burden of persuasion must ultimately produce the greater weight of evidence.

4,4,2. The burden of coming forward with evidence is divided between the applicant and the protestant as follows:

4,4,2,1. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criteria (a) through (d) of Section 42-203A(5), Idaho Code;

4,4,2,2. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear the initial burden of coming forward with evidence of those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, for which the protestant can reasonably be expected to be more knowledgeable than the applicant.

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Composition

- 4,4,2,3. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated.
- 4,4,3. The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A, Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code.
- 4,4,4. For unprotested applications or permits to be reprocessed, the director will evaluate the application, information submitted pursuant to Rule 4,5,3. and information in the files and records of the department, and the result of any studies the department may conduct to determine compliance with the appropriate criteria.
- 4,4,5. In protested matters the director will take official notice of information as described in Rule 9,16. of the department's adopted Rules of Practice and Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record.
- 4,5. Additional Information Requirements
- 4,5,1. For unprotested applications and permits being reprocessed, the additional information required by Rule 4,5,3. shall be submitted within 30 days after the director notifies the applicant that the application or permit is being reviewed for decision. The director may extend the time within which to submit the information upon request by the applicant and a showing of good cause. Failure to submit the required information within the time period allowed will change the priority date of the application or permit being reprocessed to the date of receipt of the information and is sufficient cause for the director to void the record of the application or cancel the permit. The director will provide opportunity for hearing as provided in Section 42-1701A, Idaho Code.
- 4,5,2. For protested applications or protested permits being reprocessed, the information required by Rule 4,5,3. may be requested by the director to be submitted within 30 days after notification by the director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures.
- 4,5,3. Information to be submitted
- The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water.
- 4,5,3,1. Information relative to the effect on other water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:
- 4,5,3,1,1. For applications appropriating springs or surface streams with 5 or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.
- 4,5,3,1,2. For applications appropriating ground water, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.
- 4,5,3,1,3. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.
- 4,5,3,2. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:
- 4,5,3,2,1. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.
- 4,5,3,2,2. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for ground water sources, and information on other sources of supply that may be used to supplement the applied for water source.
- 4,5,3,2,3. For applications appropriating more than 25 cfs or 10,000 acre-feet of storage, or to generate more than 500 horse power (HP), the required information submitted shall be certified by a registered professional engineer or geologist.
- 4,5,3,3. Information relative to good faith of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:
- 4,5,3,3,1. The criteria requiring that the director evaluate whether an application is made in good faith or whether it is made for delay or speculative purposes requires an analysis of the intentions of the applicant with respect to the filing and pursuit of application requirements. The judgment of another person's intent can only be based upon the substantive actions that encompass the proposed project. A person taking the actions necessary to carry through with a project can be determined by the director to be proceeding in good faith as long as there are no obvious constraints which make the project impossible to successfully complete.
- 4,5,3,3,2. Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use. Speculation does not prevent an applicant from subsequently selling the developed project for a profit or from making a profit from the use of the water.
- 4,5,3,3,3. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to do so. Applicants for hydropower purposes shall also submit the information required by Section 42-205, Idaho Code.
- 4,5,3,3,4. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of these applications and any subsequent approvals or denials.
- 4,5,3,4. Information Relative to Financial Ability, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:
- 4,5,3,4,1. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein by the applicant and the financial institution preparing the statement, or a binding financial commitment along with the financial statement of the lender or evidence to show that it is reasonably probable that financing is available for the project.
- 4,5,3,4,2. The applicant shall submit plans and specifications along with estimated construction costs for the project facilities. For applications proposing to divert more than 25 cfs or store more than 10,000 AF or generate more than 500 horsepower (HP), the plans, specifications and cost estimates shall be prepared by a licensed professional engineer. The plans shall be definite enough to allow for determination of project impacts and implications.
- 4,5,3,5. Information Relative to Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:
- 4,5,3,5,1. The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Health and Welfare, Division of Environment, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.
- 4,5,3,6. Information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant for trust water as follows:
- 4,5,3,6,1. A project design and estimate of cost of development shall be submitted. For applications appropriating more than 25 cfs, or 10,000 AF of storage, or generating more than 500 HP, the information shall be prepared and submitted by a licensed professional engineer. The design shall be definite enough to reflect the project's impacts and implications.

- 4,5,3,6,2. If the project proposes development for irrigation purposes, information shall be submitted on crop rotation, including acreages, for lands when newly developed and for long-term operation.
- 4,5,3,6,3. Information shall be submitted concerning the number and kinds of jobs that will be created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment shall be submitted.
- 4,5,3,6,4. For applications or permits being reprocessed for more than 25 cfs, or more than 10,000 AF of storage, or more than 500 HP, information shall be submitted concerning the changes to community services that will be required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities and public health and safety facilities, if any.
- 4,5,3,6,5. Information shall be submitted concerning the source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods.
- 4,5,3,6,6. Information shall be submitted concerning the location, amount, and quality of return flow water, and any water conservation features of the proposed project.
- 4,5,3,6,7. If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigable land classification system, and a schedule for bringing into production the project lands.
- 4,5,3,7. The additional information submittal requirements of Rule 4,5,3. are waived for applications appropriating 10 cfs or less or 1,000 AF or less unless the director specifically requests submittal of information on one or more of the criteria.

Rule 5. EVALUATION CRITERIA

- 5,1. Criteria Used to Evaluate All Applications to Appropriate Water.
The director will use the following criteria in evaluating whether an application to appropriate unappropriated water or trust water should be approved, denied, approved for a smaller amount of water or approved with conditions. If the director determines that a proposed use will not comply with one or more of the criteria of Section 42-203A(5), Idaho Code, the application will be denied.
- 5,1,1. Criteria for Determining Whether the Proposed Use Will Reduce the Quantity of Water Under Existing Water Rights.
A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if:
 - 5,1,1,1. The holder of an existing water right will be unable to continue to operate at the same level of production from the lands or facilities that rely upon the existing water right without an unreasonable modification to his existing method of application of water or to his use facilities; or
 - 5,1,1,2. The holder of an existing water right will be forced to an unreasonable effort or expense to divert his existing water right. Protection of existing groundwater rights are subject to reasonable pumping level provisions of Section 42-226, Idaho Code; or
 - 5,1,1,3. The quality of the water available to the holder of an existing water right is made unusable for the purposes of the existing user's right, and the water cannot be restored to usable quality without unreasonable effort or expense.
 - 5,1,1,4. An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the director.

- 5,1,1,5. The provisions of Rule 5,1,1. are not intended to require compensation or mitigation for loss of flow to holders of hydropower rights from which trust water is reallocated.
- 5,1,2. Criteria for Determining Whether the Water Supply is Insufficient for the Proposed Use.
The water supply will be determined to be insufficient for the proposed use if:
 - 5,1,2,1. Water is not available for an adequate share of the time in quantities sufficient to make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval. In assessing such noneconomic factors, the director will also consider the impact on other water rights if the project is abandoned during construction or after completion, the impact on public resource values, and the cost to local, state and federal governments of such an abandonment.
 - 5,1,3. Criteria for determining whether the application is made in good faith.
An application will be found to have been made in good faith if:
 - 5,1,3,1. The applicant shall have legal access to the property necessary to construct and operate the proposed project, is exercising eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in federal ownership, all applications for a right-of-way shall have been filed. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry; and
 - 5,1,3,2. The applicant shall be in the process of obtaining other permits needed to construct and operate the project; and
 - 5,1,3,3. There are no obvious impediments that prevent the successful completion of the project.
 - 5,1,4. Criteria for Determining Whether the Applicant has sufficient financial resources to complete the project.
 - 5,1,4,1. An applicant will be found to have sufficient financial resources if his net worth equals or exceeds the estimated cost of the project, upon a showing that it is reasonably probable that financing is or will be available as necessary for project construction or if binding financial commitments acceptable to the director have been secured at the time the information required by Rule 4,5,3. was submitted or at the time the hearing provided by Rule 4,3,3. is conducted.
 - 5,1,4,2. A governmental entity will be determined to have satisfied this requirement if it has the taxing, bonding or contracting authority necessary to raise the funds needed to commence and pursue project construction in accordance with the construction schedule.
 - 5,1,5. Criteria for Determining Whether the Project Conflicts with the Local Public Interest.
The director will consider the following, along with any other factors he finds to be appropriate, in determining whether the construction and operation of a project will conflict with the local public interest:
 - 5,1,5,1. The effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains;
 - 5,1,5,2. The effect the project will have on fish and wildlife resources in the local area affected by the proposed use; and
 - 5,1,5,3. Compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local, state or federal government jurisdictions.
 - 5,1,5,4. An application which the director determines will conflict with the local public interest will be denied unless the director determines that an over-riding state or national need exists for the project or that the project can be approved under conditions to resolve the conflict with the local public interest.

5.2. Criteria for evaluating whether a proposed use of trust water will significantly reduce water available to the holder of a water right used for power purposes (herein-after termed "significant reduction"). Reference: Section 42-203C(1), Idaho Code.

5.2.1. All permits being reprocessed and all applications, which propose a use that will deplete trust water are presumed by the director to cause a significant reduction in water available to hydropower rights because of the cumulative effect when each proposed use is considered in combination with all other proposed uses. Therefore, all such applications will be evaluated under Rule 5.3.

5.3 Criteria for Evaluating Public Interest.

If the director determines that a proposed use of trust water will significantly reduce water available to the holder of a power right, he will consider the criteria of Section 42-203C(2), Idaho Code, before acting on the application or permit being reprocessed. The director shall consider and balance the relative benefits and detriments for each factor required to be weighed under Section 42-203C(2), Idaho Code, to determine whether a proposed reduction of the amount of water available for power production serves the greater public interest. The director shall evaluate whether the proposed use sought in the permit being reprocessed or the application will provide the greater benefit to the people of the state of Idaho when balanced against other uses for the same water resource. In evaluating the public interest criteria, the director will use the following guidelines:

5.3.1. The director will consider the potential benefits both direct and indirect, that the proposed use would provide to the state and local economies. The economic appraisal shall be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the State of Idaho and the county or counties directly affected by the project:

5.3.1.1. Direct project benefits.

5.3.1.2. Indirect benefits including net revenues to the storage, processing, transportation, supply, service and government sectors of the economy.

5.3.1.3. Direct project costs, to include the opportunity cost of previous land use.

5.3.1.4. Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the increased cost of replacing reduced hydropower generation from hydropower generating facilities located in Idaho from the least costly source.

5.3.2. The director will consider the economic impact the proposed use would have upon the electric utility rates in the State of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact. These evaluations shall be based upon the following guidelines:

5.3.2.1. Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from Idaho Public Utilities Commission or from the electric utility from whose water use trust water is being reallocated.

5.3.2.2. The degree to which the applicant is able to reduce or mitigate the power reduction impacts, and

5.3.2.3. Long term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates.

5.3.3. The director will consider whether the proposed use will promote the family farming tradition in the State of Idaho. For purposes of this evaluation, the director will use the following factors:

5.3.3.1. If the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, do not exceed 960 acres of Class 1 equivalency as defined by U.S. Bureau of Reclamation regulations; the application will be presumed to promote the family farming tradition;

5.3.3.2. If the requirement of Rule 5.3.3.1. is not met, the director will consider the extent the applicant conforms to the following characteristics:

5.3.3.2.1. The farming operation developed or expanded as a result of the application is operated by the applicant or a member of his family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents; and spouse of lineal descendants);

5.3.3.2.2. In the event the application is filed in the name of a partnership, one or more of the partners shall operate the farming operation; and

5.3.3.2.3. If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one or more of the stockholders operates the farming operation unless the application is submitted by an irrigation district, drainage district, canal company or other water entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom shall meet the family farming criteria.

5.3.4. The promotion of full economic and multiple use development of the water resources of the State of Idaho shall be considered. In this regard, the director will consider the extent to which the project proposed complies with the following factors:

5.3.4.1. Promotes and conforms with the adopted State Water Plan;

5.3.4.2. Provides for mitigation and coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies;

5.3.4.3. Utilizes the best technology economically available to enhance water and energy use efficiency;

5.3.4.4. Provides multiple use of the water, including multipurpose storage;

5.3.4.5. Allows opportunity for reuse of return flows;

5.3.4.6. Preserves or enhances water quality, fish, wildlife, recreation and aesthetic values;

5.3.4.7. Provides supplemental water supplies for existing uses with inadequate supplies; and

5.3.4.8. Utilizes the best economically developable soils available for the proposed crops, if for irrigation.

5.3.5. The director will consider whether a proposed use, which includes irrigation, will conform to a staged development policy of up to twenty thousand acres per year or eighty thousand acres in any four-year period in the Snake River drainage above Murphy gauge. In applying this criteria, the director will consider the following:

5.3.5.1. "Above Murphy gauge" is the Snake River and any of its surface or ground water tributaries upstream from Murphy gauge which gauge is located on the Snake River approximately four miles downstream from Swan Falls Dam;

- 5,3,5,2. Twenty thousand acres per year or eighty thousand acres per four (4) year period is a four (4) year moving average of 20,000 acres/year of permits issued during a calendar year for irrigation development. If permits for development of less than 20,000 acres are issued in a year, additional development in excess of 20,000 acres can be permitted in succeeding years. Likewise, if more than 20,000 acres is permitted in one year (recognizing that a single large project could exceed 20,000 acres) the permitted development in succeeding years must be correspondingly less to maintain no greater than a 20,000 acres/year average for any four year period;
- 5,3,5,3. The criteria of Rule 5,3,5. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, shall not be included within this policy; and
- 5,3,5,4. An application determined by the director to be otherwise approvable but found to exceed the acreage limitations, when considered with other applications approved for development, may be approved with conditions providing for the construction of project works and beneficial use of water to be commenced in a future year.
- 5,3,6. No single public interest criterion will be entitled to greater weight than any other public interest criterion.
- 5,3,7. Until such time as the studies prescribed in Policy 32 I of the State Water Plan are completed and accepted by the Idaho Water Resource Board, applications and permits reprocessed which propose to divert water to surface storage from the Snake River and surface tributaries upstream from Murphy Gauging Station shall be presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. Applications or reprocessed permits which are approved prior to completion of the studies, are not subject to additional reprocessing.
- 5,3,8. Applications for permit for trust water sources filed prior to July 1, 1985, for projects for which diversion and beneficial use was complete prior to October 1, 1984, are presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code.
- 5,3,9. Applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributaries, including ground water, within four miles of the nearest edge of the Snake River are presumed not to be in the public interest as defined by Section 42-203C, Idaho Code. Such proposals, would if allowed to develop, prevent the full economic and multiple use of water in the Snake River basin and would have an adverse effect on hydropower availability and electrical energy rates.
- 5,3,10. Proposed DCMI uses which individually do not have a maximum consumptive use of more than two acre-feet/day are presumed to meet the public interest criteria of Section 42-203C(2), Idaho Code, unless protested.

Rule 6. Conditions of Approval

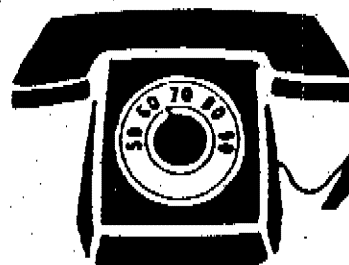
- 6,1. The director may issue permits with conditions necessary to meet the criteria of Section 42-203A, Idaho Code, and to meet the requirements of Section 42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of energy and water.

- 6,2. In accordance with Policy 32 I of the State Water Plan, applications approved to appropriate trust water from the main stem of the Snake River between Milner and Murphy gauging station for diversion to off-stream storage during the period November 1 to March 31 shall include requirements to mitigate the impact of flow depletions on downstream generation of hydropower at facilities located in Idaho.
- 6,3. Applications and existing permits approved for hydropower generation shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that are initiated later in time than the priority of the application or existing hydropower permit. A subordinated permit shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the state of Idaho initiated later in time than the priority of the application or existing hydropower permit. A permit issued for hydropower purposes shall contain a term condition in accordance with Section 42-203B(6), Idaho Code.
- 6,4. Applications approved for on-stream storage reservoirs will, unless specifically waived by the director, require permanent measuring facilities both upstream and downstream from the reservoir.
- 6,5. Applications approved for diversion of ground water may include conditions requiring well spacing and well construction requirements.
- 6,6. Permits reprocessed pursuant to Section 42-203D, Idaho Code, may be cancelled, modified or conditioned by the director to make the permit comply in every way with any permit that would be issued for the same purpose based upon a new application processed under these rules.
- 6,7. The director may condition permits to require commencement of construction of project works within a designated time not to exceed one year and completion of construction of project works and beneficial use of water within a time not to exceed five years.
- 6,8. Permits may be conditioned to authorize the director to void the approval of the permit if he determines that the applicant submitted false or misleading information on the application or supporting documents.
- 6,9. The director may condition permits to retain jurisdiction to insure compliance with the design, construction and operation provisions of the permit.

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- 6,10. The director may condition permits to insure that established minimum stream flows and prior rights are not injured.
- 6,11. The director may condition permits to insure compliance with Idaho's water quality standards.
- 6,12. The director may condition a permit issued for trust water to require that any amendment (Section 42-211, Idaho Code), transfer (Section 42-222, Idaho Code), or assignment of interest in the permit by any method whatsoever shall not result in the project failing to meet the public interest criteria of Section 42-203C, Idaho Code except, however, lenders obtaining title to the project through default will have a reasonable period of time, as determined by the director, to meet such criteria or to convey the project to a person or entity that does meet the criteria.
- 6,13. The director may condition permits to insure compliance with the provisions of Title 42, Chapter 2, Idaho Code, with other statutory duties, and with the public interest.

Rule 7. Moratorium

- 7,1. Applications for Permit
 - 7,1,1. The director may cease to approve applications for permit in a designated geographical area upon finding a need to:
 - 7,1,1,1. Protect existing water rights;
 - 7,1,1,2. Insure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and
 - 7,1,1,3. Prevent reduction of flows below a minimum stream flow which has been established by the director or the board pursuant to applicable law.

- 7,1,2. Notice of the director's action to cease application approval will be by:
 - 7,1,2,1. Summary Order served by certified mail upon the affected applicants; and
 - 7,1,2,2. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area affected.
- 7,1,3. Objections to the director's action shall be considered under the department's Rules of Practice and Procedure and applicable law.
- 7,2. Permits
 - 7,2,1. To the extent a permit has not been developed, the director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Rule 7,1.
 - 7,2,2. Notice of the director's action to cancel or modify permits shall be by:
 - 7,2,2,1. Summary Order served by certified mail upon the affected permit holders in the designated area.
 - 7,2,2,2. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area.
 - 7,2,3. Objections to the director's action shall be considered under the department's Rules of Practice and Procedure and applicable law.

Written comments concerning the draft rules and regulations will be received until January 27, 1986. Comments should be addressed to Department of Water Resources, 450 W. State St., Boise, Idaho 83720.

Attention: Water Allocation Rules.

The foregoing is a true and certified copy of the document on file at the department of Water Resources.
Signed this 4th day of January 1986
Gary Spackman