

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 184

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO WATER RIGHTS; AMENDING SECTION 42-248, IDAHO CODE, TO REVISE
2 PROVISIONS REGARDING NOTIFICATION OF CHANGE IN OWNERSHIP OF WATER
3 RIGHTS, TO PROVIDE THAT CERTAIN INFORMATION MAY BE RELIED ON BY THE
4 DEPARTMENT OF WATER RESOURCES WHEN SENDING NOTICE, TO REVISE PROVI-
5 SIONS REGARDING COMPLIANCE WITH SPECIFIED LAW, TO REVISE PROVISIONS
6 REGARDING FEES, TO PROVIDE FOR CERTAIN EVIDENCE, TO PROVIDE FOR ACTION
7 BY THE DEPARTMENT, TO PROVIDE THAT SPECIFIED ACTIONS ARE NOT SUBJECT TO
8 CHALLENGE UNDER THE IDAHO ADMINISTRATIVE PROCEDURE ACT, AND TO PROVIDE
9 FOR RESOLUTION OF DISPUTES; AND AMENDING SECTION 42-1409, IDAHO CODE,
10 TO REVISE PROVISIONS REGARDING THE MANNER OF NOTICE OF CHANGE OF OWNER-
11 SHIP.
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Section 42-248, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 42-248. NOTIFICATION OF CHANGE IN OWNERSHIP OF A WATER RIGHT OR CHANGE
17 OF ADDRESS OF A WATER RIGHT OWNER -- NOTICE OF ACTION AFFECTING A WATER
18 RIGHT. (1) All persons owning or claiming ownership of a right to use the wa-
19 ter of this state, whether the right is represented by decree of the court, by
20 claim to a water right filed with the department of water resources or by per-
21 mit or license issued by the director of the department of water resources,
22 shall provide notice to the department of water resources of any change in
23 ownership of any part of the water right or of any change in the owner's
24 mailing address, either of which occurs after June 30, 2000. Notice shall
25 be provided within one hundred twenty (120) days of any change using forms
26 acceptable to the director. Any notice received by the department of water
27 resources more than one hundred twenty (120) days after the change in owner-
28 ship or mailing address has occurred shall be accompanied by a late filing
29 fee. The late filing fee shall be one hundred dollars (\$100). The director
30 may waive the late filing fee or a portion thereof for good cause.

31 (2) All persons owning or claiming ownership of a right to use the wa-
32 ter of this state that is evidenced by a water right recorded with the depart-
33 ment of water resources prior to June 30, 2000, and for which a claim to water
34 right, with current ownership and mailing address, is not on file with the
35 department of water resources in the Snake River Basin Adjudication, Twin
36 Falls Civil Case No. 39576, shall verify with the department that the own-
37 ership and mailing address information in the department's records is cor-
38 rect. Any incorrect ownership or mailing address shall be corrected by the
39 owner or claimant of the water right by July 1, 2002, using forms acceptable
40 to the director. Any mailing address or ownership corrections required by
41 this subsection received by the department of water resources after July 1,
42 2002, shall be subject to the late filing fee described in subsection (1) of

1 this section. The director may waive the late filing fee or a portion thereof
2 for good cause.

3 ~~(3) The director of the department of water resources will be deemed to~~
4 ~~have provided notice concerning any action by the director affecting a water~~
5 ~~right or claim if a notice of the action is mailed to the address and owner of~~
6 ~~the water right shown in the records of the department of water resources at~~
7 ~~the time of mailing the notice.~~

8 (2) The department may rely on the name and address of the owner of the
9 water right shown in the records of the department when sending notice of any
10 action related to that water right.

11 ~~(43) Compliance with section 42-1409(6), Idaho Code, shall be deemed~~
12 ~~to be compliance with this section. The filing of an application to change a~~
13 ~~water right under the provisions of section 42-211 or section 42-222, Idaho~~
14 ~~Code, showing a change in address of the owner of the right or accompanied~~
15 ~~by evidence documenting any change in ownership of the water right, shall~~
16 ~~be deemed compliance with this section provided the requirements of sub-~~
17 ~~sections (5) and (6) of this section are met. The fee requirements of this~~
18 ~~subsection (4) of this section shall apply in addition to the filing fee that~~
19 ~~may be required in connection with an application to change a water right~~
20 ~~under the provisions of section 42-211 or 42-222, Idaho Code.~~

21 (54) A filing fee of twenty-five dollars (\$25.00) per right shall ac-
22 company a notice of change of water right ownership of a water right, pro-
23 vided that the fee shall be one hundred dollars (\$100) per right if a request
24 is made to change the department's records to reflect a division in the own-
25 ership of the water right resulting from a division in the ownership of the
26 place of use under the water right. No fee is required for a notice of change
27 of ownership of a claim pending in a water rights adjudication. A notice of
28 change of ownership of all or part of a water right not accompanied by the re-
29 quired filing fee is incomplete and shall be returned without processing to
30 the person who submitted the notice.

31 (5) A notice of change of water right ownership of all or part of a wa-
32 ter right shall be accompanied by deeds, court decrees, or other evidence
33 showing the basis for the change in ownership, of conveyance of the water
34 right and how the water right is divided if the change divides the water right
35 among multiple owners.

36 (6) If the person filing the notice of a change of water right ownership
37 does not own the land identified as the place of use for the water right, the
38 notice shall be accompanied by evidence that written notice of the change of
39 water right ownership has been mailed or hand-delivered to the landowner of
40 record, as identified in the records of the county recorder.

41 (7) If the department receives the required notice, fee, and satisfac-
42 tory evidence of conveyance of the water right as required in subsection (5)
43 of this section, and evidence that the notice requirements of subsection (6)
44 of this section, if applicable, have been met, the department shall update
45 the ownership information in the water right records maintained by the de-
46 partment. If any required information is not provided, the department shall
47 return the notice of change of ownership to the person filing the notice.

48 (8) Any action by the department updating the ownership of a water right
49 in the department's records or returning the notice of change of ownership to
50 the person filing the notice is not a determination of water right ownership,

1 is not an administrative action subject to challenge under the Idaho admin-
 2 istrative procedure act, chapter 52, title 67, Idaho Code, and is not subject
 3 to a request for hearing pursuant to section 42-1701A, Idaho Code. Water
 4 right ownership disputes arising from a notice of change of water right own-
 5 ership under this section must be resolved either in a water rights adjudica-
 6 tion or in an action to quiet title pursuant to section 6-401, Idaho Code.

7 (9) Any person having a security interest in a water right and desiring
 8 to be notified by the department regarding the filing of a change in owner-
 9 ship of that water right or of any proposed or final action to amend, transfer
 10 or otherwise modify that water right shall make the request upon a form pro-
 11 vided by the department accompanied by a fee of twenty-five dollars (\$25.00)
 12 per right. The request shall be accompanied by evidence of the security in-
 13 terest including the expiration date of the security interest or other date
 14 defining the end of the period for which notification is requested. The re-
 15 quest for notification shall expire at the end of the requested notification
 16 period unless renewed on a form provided by the department and accompanied by
 17 a renewal fee of twenty-five dollars (\$25.00) per right. The holder of a se-
 18 curity interest requesting notification under this subsection shall provide
 19 notice to the department within sixty (60) days if the security interest is
 20 terminated prior to the end of the requested notification period.

21 SECTION 2. That Section 42-1409, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 42-1409. NOTICE OF CLAIM. (1) The director shall prepare and furnish
 24 on request a standard notice of claim form.

25 The notice of claim form shall include the following:

- 26 (a) the name and address of the claimant;
- 27 (b) the source of water;
- 28 (c) the quantity of water claimed:

- 29 (i) the quantity of water claimed to be used for water rights ac-
 30 quired under state law shall describe the rate of diversion or, for
 31 an instream flow claim, a rate of water flow in cubic feet per sec-
 32 ond or the annual volume of diversion of water for use or storage in
 33 acre-feet per year, or both;

- 34 (ii) the quantity of water claimed for water rights established
 35 under federal law shall describe for each and every purpose the
 36 rate of present and future water diversion or, in the case of an
 37 instream flow claim the rate of flow in cubic feet per second or an-
 38 nual volume of present and future diversion in acre-feet per year
 39 or both;

- 40 (d) the date of priority claimed:

- 41 (i) the date of priority claimed for water rights acquired under
 42 state law shall be from any license, permit, or decree; or if the
 43 right is not based upon a license, permit, or decree, then the date
 44 when the water was first applied to beneficial use;

- 45 (ii) the date of priority claimed for water rights established
 46 under federal law shall be determined in accordance with federal
 47 law;

- 48 (e) the number thereof, if founded upon a right on file with the depart-
 49 ment; or if the right is founded upon judicial decree not on file with

1 the department, then the title of the court and cause, number of the ac-
2 tion and the date of entry;

3 (f) the legal description of the existing point(s) of diversion; if the
4 claim is for an instream flow, then a legal description of the beginning
5 and ending points of the claimed instream flow;

6 (g) the purpose(s) of use and the period of use:

7 (i) the purpose(s) of use for water rights acquired under state
8 law shall describe each purpose of use and the period of the year
9 when water is used for each purpose;

10 (ii) the purpose(s) of use for a water right established under
11 federal law shall describe the purposes for which the water in-
12 cluded in the claim is presently being used, if at all, and the pe-
13 riod of the year when water is necessary for the designated pur-
14 poses;

15 (h) a legal description of the place of use:

16 (i) the legal description of the place of use for water rights ac-
17 quired under state law shall describe the land where the water is
18 beneficially used; if one (1) of the purposes of use is irrigation,
19 then the number of irrigated acres within each forty (40) acre sub-
20 division, except as provided in section 42-219, Idaho Code;

21 (ii) the legal description of the place of use for a water right
22 established under federal law shall describe the federal reserva-
23 tion and the existing or proposed place of use for each consumptive
24 use;

25 (i) the dates of any changes or enlargements in use for water rights ac-
26 quired under state law, including the dimension of the diversion works
27 as originally constructed and as enlarged;

28 (j) conditions on the exercise of any water right included in any de-
29 cree, license, approved transfer application or other document; and

30 (k) such remarks and other matters as are necessary for definition of
31 the right, for clarification of any element of a right or for adminis-
32 tration of the right by the director.

33 (2) With respect to any water right for which a change was approved by
34 the director pursuant to section 42-211 or 42-222, Idaho Code, after fil-
35 ing the notice of claim and prior to filing of the director's report, the
36 claimant shall amend the notice of claim consistent with the determination
37 of the director on the change.

38 (3) Each claimant, through submission of a claim, shall solemnly swear
39 or affirm under penalty of perjury that the statements contained in the no-
40 tice of claim or amended notice of claim are true and correct.

41 (4) All claimants of water rights that are included in a general adju-
42 dication shall file with the director a notice of claim for all water rights,
43 except for those types of water rights designated in paragraphs (a) through
44 (d) of subsection (1) of section 42-1420, Idaho Code.

45 (5) Any person who fails to submit a required notice of claim shall be
46 deemed to have been constructively served with notice of a general adjudica-
47 tion by publication and mailing as required by section 42-1408, Idaho Code.

48 (6) Each purchaser of a water right from the water system shall inquire
49 of the director whether a notice of claim has been filed, and if not, shall
50 file a notice of claim in accordance with this section. All claimants and

1 purchasers shall provide the director written notice of any change in own-
2 ership or of any change in mailing address during the pendency of a general
3 adjudication. ~~All purchasers shall submit some evidence of ownership along~~
4 ~~with the notice of change of ownership~~ in the manner prescribed in section
5 42-248, Idaho Code.

6 (7) At least one hundred twenty (120) days prior to filing of the direc-
7 tor's report with the court, the director may notify each holder of a per-
8 mit or license to appropriate water from the water system, for which proof of
9 beneficial use was filed after entry of the court's order commencing a gen-
10 eral adjudication, to file a notice of claim within thirty (30) days of mail-
11 ing of the notice. The director shall notify the holder of the permit or li-
12 cense by certified mail at the most recent address shown in the records of the
13 department.

14 (8) The district court or director may extend the time for filing a no-
15 tice of claim.