

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 186

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO WATER; AMENDING SECTION 42-1409, IDAHO CODE, TO REVISE PROVI-
2 SIONS REGARDING NOTICES OF CLAIM ASSOCIATED WITH THE USE OF STOCKWATER
3 ON FEDERAL LAND AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION
4 42-1411, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE DIRECTOR'S DE-
5 TERMINATION OF SPECIFIED ELEMENTS TO DEFINE AND ADMINISTER THE WATER
6 RIGHTS ACQUIRED UNDER STATE LAW AND TO MAKE TECHNICAL CORRECTIONS.
7

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

9 SECTION 1. That Section 42-1409, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 42-1409. NOTICE OF CLAIM. (1) The director shall prepare and furnish
12 on request a standard notice of claim form. The notice of claim form shall
13 include the following:

14 (a) ~~The~~ name and address of the claimant;

15 (b) ~~The~~ source of water;

16 (c) ~~The~~ quantity of water claimed:

17 (i) ~~The~~ quantity of water claimed to be used for water rights ac-
18 quired under state law shall describe the rate of diversion or, for
19 an instream flow claim, a rate of water flow in cubic feet per sec-
20 ond or the annual volume of diversion of water for use or storage in
21 acre-feet per year, or both;

22 (ii) ~~The~~ quantity of water claimed for water rights established
23 under federal law shall describe for each and every purpose the
24 rate of present and future water diversion or, in the case of an in-
25 stream flow claim, the rate of flow in cubic feet per second or an-
26 nual volume of present and future diversion in acre-feet per year,
27 or both;

28 (d) ~~The~~ date of priority claimed:

29 (i) ~~The~~ date of priority claimed for water rights acquired un-
30 der state law shall be from any license, permit, or decree; or if
31 the right is not based upon a license, permit, or decree, then the
32 date when the water was first applied to beneficial use; provided,
33 that for stockwater use on federal land, the claimant may claim
34 the date of the first grazing permit issued on the federal grazing
35 allotment, pursuant to federal grazing authorizations, including
36 but not limited to the Taylor grazing act, as evidence of the date
37 of priority, unless the claimant has evidence of earlier stockwa-
38 ter use on the federal land, which shall then establish the claimed
39 date of priority;

40 (ii) ~~The~~ date of priority claimed for water rights established
41 under federal law shall be determined in accordance with federal
42 law;

1 (e) ~~The number thereof of claims~~, if founded upon a right on file with
 2 the department; or if the right is founded upon judicial decree not on
 3 file with the department, then the title of the court and cause, number
 4 of the action and the date of entry;

5 (f) ~~The legal description of the existing point(s) of diversion; if~~
 6 the claim is for an instream flow, then a legal description of the begin-
 7 ning and ending points of the claimed instream flow;

8 (g) ~~The purpose(s) of use and the period of use:~~

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

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

17 (h) ~~A~~ legal description of the place of use:

18 (i) ~~The legal description of the place of use for water rights~~
 19 acquired under state law shall describe the land where the water is
 20 beneficially used; if one (1) of the purposes of use is irrigation,
 21 then the number of irrigated acres within each forty (40) acre sub-
 22 division, except as provided in section 42-219, Idaho Code; if one
 23 (1) of the purposes of use is stockwater on federal land, then the
 24 federal grazing allotment name and managing federal agency and the
 25 legal description of the base property to which the water right is
 26 appurtenant;

27 (ii) ~~The legal description of the place of use for a water right~~
 28 established under federal law shall describe the federal reserva-
 29 tion and the existing or proposed place of use for each consumptive
 30 use;

31 (i) ~~The dates of any changes or enlargements in use for water rights~~
 32 acquired under state law, including the dimension of the diversion
 33 works as originally constructed and as enlarged;

34 (j) ~~Conditions on the exercise of any water right included in any de-~~
 35 ~~creed, license, approved transfer application or other document; and~~

36 (k) ~~Such remarks and other matters as are necessary for definition of~~
 37 the right, for clarification of any element of a right or for adminis-
 38 tration of the right by the director.

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

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

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

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

4 (6) Each purchaser of a water right from the water system shall inquire
 5 of the director whether a notice of claim has been filed, and, if not, shall
 6 file a notice of claim in accordance with this section. All claimants and
 7 purchasers shall provide the director written notice of any change in own-
 8 ership or of any change in mailing address during the pendency of a general
 9 adjudication. All purchasers shall submit some evidence of ownership along
 10 with the notice of change of ownership.

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

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

21 SECTION 2. That Section 42-1411, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 42-1411. REPORT OF THE DIRECTOR. (1) The director shall prepare a di-
 24 rector's report on the water system. The director may file the director's
 25 report in parts as the director deems appropriate. The director may include
 26 such explanatory material as he deems appropriate in the director's report.
 27 Such explanatory material shall not impose any conditions or restrictions on
 28 the rights reported and shall not be subject to objection. This explanatory
 29 material shall not be used to support any notice of claim, objection to a no-
 30 tice of claim, or response to an objection.

31 (2) The director shall determine the following elements, to the extent
 32 the director deems appropriate and proper, to define and administer the wa-
 33 ter rights acquired under state law:

34 (a) ~~The~~ name and address of the claimant;

35 (b) ~~The~~ source of water;

36 (c) ~~The~~ quantity of water used describing the rate of water diversion
 37 or, in the case of an instream flow right, the rate of water flow in cubic
 38 feet per second or annual volume of diversion of water for use or storage
 39 in acre-feet per year as necessary for the proper administration of the
 40 water right;

41 (d) ~~The~~ date of priority; provided that for stockwater use on federal
 42 land, the director shall accept the date of the first grazing permit
 43 issued on the federal grazing allotment, pursuant to federal grazing
 44 authorizations, including but not limited to the Taylor grazing act,
 45 as prima facie evidence of the date of priority, unless the claimant
 46 produces evidence of earlier stockwater use on the federal land, which
 47 shall then establish the date of priority;

1 (e) ~~The~~ legal description of the point(s) of diversion; if the claim
2 is for an instream flow, then a legal description of the beginning and
3 ending points of the claimed instream flow;

4 (f) ~~The~~ purpose of use;

5 (g) ~~The~~ period of the year when water is used for such purposes;

6 (h) ~~a~~ A legal description of the place of use; if one (1) of the pur-
7 poses of use is irrigation, then the number of irrigated acres within
8 each forty (40) acre subdivision, except that the place of use may be
9 described using a general description in the manner provided under
10 section 42-219, Idaho Code, which may consist of a digital boundary as
11 defined in section 42-202B, Idaho Code, if the irrigation project would
12 qualify to be so described under section 42-219, Idaho Code; provided
13 that for stockwater use on federal land, there shall be a rebuttable
14 presumption that the claimant's base property relates back to the base
15 property when the first grazing permit was issued on the federal grazing
16 land or when water was first applied to beneficial use on the federal
17 land;

18 (i) ~~e~~Conditions on the exercise of any water right included in any de-
19 cree, license, or approved transfer application; and

20 (j) ~~s~~Such remarks and other matters as are necessary for definition of
21 the right, for clarification of any element of a right, or for adminis-
22 tration of the right by the director.

23 (3) The director may include such general provisions in the director's
24 report, as the director deems appropriate and proper, to define and to admin-
25 ister all water rights.

26 (4) The director shall file the director's report with the district
27 court, and the director's report shall be a part of the record. Upon filing
28 with the court, the director's report, except for the explanatory material
29 referred to in subsection (1) of this section, shall constitute prima facie
30 evidence of the nature and extent of the water rights acquired under state
31 law. The unobjected to portions of the director's report shall be decreed as
32 reported.

33 (5) Each claimant of a water right acquired under state law has the ul-
34 timate burden of persuasion for each element of a water right. Since the di-
35 rector's report is prima facie evidence of the nature and extent of the water
36 rights acquired under state law, a claimant of a water right acquired under
37 state law has the burden of going forward with the evidence to establish any
38 element of a water right ~~which~~ that is in addition to or inconsistent with
39 the description in a director's report. Any party filing an objection to any
40 portion of the director's report shall have the burden of going forward with
41 the evidence to rebut the director's report as to all issues raised by the ob-
42 jection. Provided however, that a claimant objecting to the director's rec-
43 ommended place of use described by a digital boundary or other similar tech-
44 nology shall not be required to produce digital boundary or other similar
45 technology-generated evidence in order to meet the burden provided by this
46 section. Places of use described using digital boundaries or other similar
47 technology-based descriptions shall not be entitled to any greater weight
48 than descriptions by metes and bounds, the number of irrigated acres within
49 each forty (40) acre subdivision, or other method adequate for the descrip-
50 tion of water rights. Any other party to the proceeding may submit evidence

1 in opposition to the objector's position and in support of the director's re-
2 port. All such proceedings shall be governed by the Idaho rules of civil pro-
3 cedure and Idaho rules of evidence.

4 (6) The director shall file an original of the director's report with
5 the district court. The director shall also distribute for display and re-
6 view at least one (1) copy of the director's report to the office of the clerk
7 of the district court for each county in which any part of the water system is
8 located. The director shall also serve on each claimant or the claimant's
9 attorney whose water right is listed in the director's report a notice of
10 filing of the director's report. Notice shall be sent to the last known ad-
11 dress of the claimant or the claimant's attorney. The notice shall be pre-
12 pared by the director using plain and concise language and shall include:

13 (a) a A statement that the director's report of the various water rights
14 acquired under state law has been filed with the district court, naming
15 the district court (s) to which the report was filed;

16 (b) a A copy of that portion of the report setting forth the claimant's
17 water right;

18 (c) a A statement that a complete copy of the director's report is
19 available for inspection, listing the locations at which the director's
20 report is available, which shall include the office of the clerk of the
21 district court for each county in which any part of the water system
22 is located, the offices of the department, and any other locations the
23 director may designate;

24 (d) a A statement that all or a portion of the director's report is
25 available upon request at the offices of the department, subject to pay-
26 ment of a reasonable fee to cover costs of reproduction and mailing;

27 (e) a A statement that any claimant may file objections to any portion
28 of the director's report with the district court specified in the no-
29 tice and must mail a copy of the objection to the director, and to the
30 claimant of each claimed right objected to, if the objector is not also
31 the claimant of the right for which the objection is filed;

32 (f) ~~the~~ A date prior to which all objections must be filed, which shall
33 not be less than sixty (60) days for any director's report containing
34 five hundred (500) claims or less, one hundred twenty (120) days for
35 any director's report containing more than five hundred (500) claims
36 and not more than five thousand (5,000) claims, and one hundred eighty
37 (180) days for any director's report containing more than five thousand
38 (5,000) claims; the above-stated periods of time shall commence on the
39 date of service by mail of the notice of filing;

40 (g) a A statement that claimants may file responses with the court to
41 objections filed against their claims, and that a copy of any response
42 must be mailed to the director and to the objector;

43 (h) ~~the~~ A date prior to which all responses to objections must be filed
44 with the court, which shall not be less than sixty (60) days following
45 receipt of a copy of the objection; and

46 (i) a A statement that any part of the report to which no objections are
47 filed shall be decreed by the district court and the time and location
48 set for the hearing at which the unobjected parts of the report will be
49 decreed, which time shall not be less than sixty (60) days following the
50 expiration of the period for filing objections.

1 (7) The director shall file an affidavit with the district court demon-
2 strating compliance with the notice requirements of subsection (6) of this
3 section.