

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 268

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO WATER; AMENDING SECTION 42-204, IDAHO CODE, TO REVISE PROVISIONS
2 REGARDING EXTENSIONS OF TIME FOR CONSTRUCTION, WORK, OR APPLICATION OF
3 WATER TO FULL BENEFICIAL USE, TO PROVIDE FOR THE EXTENSION OF TIME FOR
4 COMPLETION OF WORKS AND APPLICATION OF WATER TO FULL BENEFICIAL USE UN-
5 DER SPECIFIED CONDITIONS, TO PROVIDE FOR APPLICABILITY, AND TO CLARIFY
6 PROVISIONS REGARDING EXTENSIONS.
7

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

9 SECTION 1. That Section 42-204, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 42-204. EXAMINATION -- PERMIT -- COMMENCEMENT OF WORK -- EXTENSIONS
12 -- APPEAL. (1) On receipt of the application, which shall be of a form pre-
13 scribed by the department of water resources, it shall be the duty of that de-
14 partment to make an endorsement thereon of the date of its receipt and to ex-
15 amine said application and ascertain if it sets forth all the facts necessary
16 to show the location, nature and amount of the proposed use. If upon such
17 examination the application is found defective, it shall be the duty of the
18 department of water resources to return the same for correction or to corre-
19 spond with the applicant to obtain the needed information or amendments. If
20 the application is returned to the applicant or the department shall request
21 additional information and the applicant fails to return the corrected ap-
22 plication or to supply the needed information within thirty (30) days, the
23 department may void the record of said application and notify the applicant
24 of such action. If the corrected application is returned or the informa-
25 tion is supplied after thirty (30) days, such corrected application shall be
26 treated in all respects as a new application, and the priority of the right
27 initiated shall be determined by the date of receipt in the office of the de-
28 partment of the corrected application or additional information; provided,
29 that upon request, and good cause appearing therefor, the director of the de-
30 partment of water resources may grant an extension of time within which to
31 return the corrected application or supply needed information. All appli-
32 cations that comply with the provisions of this chapter and with the regula-
33 tions of the department of water resources shall be numbered in such manner
34 as will aid in their identification, and it shall be the duty of the depart-
35 ment to approve all applications made in proper form that contemplate the ap-
36 plication of water to a beneficial use: provided, that the department may
37 deny any such application, or may partially approve and grant a permit for a
38 lesser quantity of water than applied for, or may grant a permit upon condi-
39 tions as provided in this chapter.

40 (2) The department of water resources shall issue a permit for any ap-
41 proved application, make a record of the approval and provide a copy of the
42 permit to the applicant, who shall be authorized, on receipt thereof, to pro-

1 ceed with the construction of the necessary works for the diversion of such
2 water and to take all steps required to apply the water to a beneficial use
3 and perfect the proposed appropriation.

4 (3) The provisions of this subsection shall not apply to permits held by
5 municipal providers for reasonably anticipated future needs. For all other
6 permits, the department shall require that actual construction work and ap-
7 plication of the water to full beneficial use shall be complete within a pe-
8 riod of five (5) years from the date of such approval, but may limit permit
9 development to a shorter period than requested in the application, and the
10 permit shall set forth the date when beneficial application of the water to
11 be diverted by such works shall be made. Sixty (60) days before the date set
12 for the completion of the appropriation of water under any permit, the de-
13 partment shall forward a notice to the permit holder by certified mail at the
14 permit holder's address of record of the date for such completion, which said
15 notice shall advise the permit holder of the necessity of submitting a state-
16 ment of completion showing proof of beneficial use or a request for an exten-
17 sion of time on or before said date. The department may approve a timely re-
18 quest for an extension of time in the following circumstances:

19 (a) In cases where the permit holder is prevented from proceeding with
20 construction, work, or application of water to full beneficial use by
21 the permit holder's failure to obtain necessary consent or final ap-
22 proval or rejection from the federal government because of the pendency
23 of an application for right-of-way or other matter within the juris-
24 diction of the United States, by state, county, city or other local
25 government permitting or administrative action or process related to
26 the permit holder's land or water development, or by litigation of any
27 ~~nature which might bring the permit holder's title to said water in~~
28 question related to the permit holder's land or water development, the
29 department of water resources, upon proper showing of the existence
30 of any such condition, and being convinced that said permit holder is
31 proceeding diligently and in good faith, shall extend the time so that
32 the amount of time lost by such delays shall be added to the time given in
33 the original permit, or in any subsequent grant of extension pursuant to
34 paragraph (b), (c), (d), or (f) of this subsection, for each and every
35 action required.

36 (b) The time for completion of works and application of the water to
37 full beneficial use under any permit involving the diversion of more
38 than twenty-five thousand (25,000) acre-feet in one (1) irrigation
39 season for a project of no less than five thousand (5,000) acres may,
40 upon application to the director of the department of water resources
41 supported by a showing that additional time is needed on account of
42 the time required for organizing, financing and constructing works of
43 such large size, be extended by the director of the department of water
44 resources for up to twelve (12) years beyond the initial development
45 deadline contained in the permit, or beyond a grant of extension pur-
46 suant to the provisions of paragraph (a) of this subsection: Provided,
47 that no such extension shall be granted unless the permit holder for
48 such extension shall show that there has been actually expended toward
49 the construction of said diversion, including expenditures for the pur-

1 chase of rights-of-way and property in connection therewith, at least
2 one hundred thousand dollars (\$100,000).

3 (c) The time for completion of works and application of the water to
4 full beneficial use under any permit involving the construction of a
5 reservoir of more than ten thousand (10,000) acre-feet capacity or for
6 the appropriation of water to be impounded in such reservoir of more
7 than ten thousand (10,000) acre-feet capacity may be extended by the
8 director of the department of water resources upon application to the
9 director if the permit holder establishes that the permit holder has
10 exercised reasonable diligence and that good cause exists for the re-
11 quested extension.

12 (d) The time for completion of works and application of the water to
13 full beneficial use: (i) under any permit ~~involving~~ authorizing the
14 diversion of two (2) or more cubic feet per second of water or the devel-
15 opment or cultivation of one hundred (100) or more acres of land or (ii)
16 under any permit that, when combined with another permit, authorizes
17 the diversion of two (2) or more cubic feet per second of water or the
18 development or cultivation of one hundred (100) or more acres of land,
19 provided the permits have a common or combined diversion and distri-
20 bution system, are owned by the same permit holder, and are approved
21 within five (5) years of each other may be extended by the director
22 of the department of water resources upon application by the permit
23 holder for an additional period up to ten (10) years beyond the initial
24 development deadline contained in the permit, or beyond a grant of ex-
25 tension pursuant to the provisions of paragraph (a) of this subsection,
26 provided the permit holder establishes that the permit holder has exer-
27 cised reasonable diligence and that good cause exists for the requested
28 extension.

29 (e) In connection with permits held by the United States, or the Idaho
30 water resource board, whether acquired as the original applicant by
31 assignment or otherwise, the director of the department of water re-
32 sources may extend the time for completion of the works and application
33 of the water to full beneficial use for such additional period or peri-
34 ods of time as the director may deem necessary upon an extension request
35 supported by a showing that such additional time is required by reason
36 of the status of plans, authorization, construction fund appropri-
37 ations, construction, or any arrangements that are found to be requisite
38 to completion of the construction of such works.

39 (f) In all other situations not governed by these provisions, the de-
40 partment may grant one (1) extension of time, not exceeding five (5)
41 years beyond the date originally set for completion of works and ap-
42 plication of the water to full beneficial use, or beyond any grant of
43 extension pursuant to the provisions of paragraph (a) of this subsec-
44 tion, upon request for extension received on or before the date set for
45 completion, provided good cause appears therefor.

46 (4) For permits held by municipal providers for reasonably anticipated
47 future needs, the permit development period shall correspond to the plan-
48 ning horizon authorized by the permit, which may not be extended. During the
49 permit development period, the municipal provider shall periodically sub-
50 mit to the department incremental statements of completion showing proof of

1 beneficial use consistent with the provisions of section 42-217, Idaho Code.
2 Each such incremental statement shall document the extent of application of
3 water to beneficial use during the most recent reporting interval. Each in-
4 cremental statement shall be prepared by a certified water rights examiner,
5 unless the permit holder is not asserting any additional increment of bene-
6 ficial use during that reporting interval. The department shall set and may
7 later adjust the duration of any reporting interval for any permit, which
8 shall be made a condition of the permit, to any duration not shorter than
9 five (5) years. Sixty (60) days before the end of each reporting interval,
10 the department shall forward a notice to the municipal provider by certified
11 mail to its address of record specifying the date the incremental statement
12 is due. Unless an extension of the deadline for the incremental statement is
13 requested by the municipal provider prior to the deadline, and the extension
14 is approved by the director upon a showing of good cause, failure to timely
15 submit an incremental statement shall result in a lapse of that portion of
16 the permit that has not previously been licensed or for which an incremental
17 statement of completion showing proof of beneficial use has not been submit-
18 ted. Such lapsed permit portion may be reinstated only in accordance with
19 the provisions of section 42-218a, Idaho Code. For reasonably anticipated
20 future needs permits existing on July 1, 2020, the department shall have one
21 (1) year from July 1, 2020, either to issue a license, where proof already
22 has been submitted, or to modify the permit to conform to the provisions of
23 this section by establishing future reporting intervals for periodic proof
24 statements, by establishing the date for the final proof statement corre-
25 sponding with the end of the planning horizon authorized by the existing per-
26 mit, and by updating approval conditions to clarify whether information that
27 must be submitted with proof of beneficial use is due at each reporting in-
28 terval or only with the final proof statement.

29 (5) Any permit holder aggrieved by the decision of the department of wa-
30 ter resources regarding its request for extension may request a hearing be-
31 fore the director in accordance with section 42-1701A(3), Idaho Code, for
32 the purpose of contesting the decision and may seek judicial review pursuant
33 to section 42-1701A(4), Idaho Code, of any final decision of the director
34 following the hearing.

35 (6) Subject to the provisions for reinstatement as provided in sec-
36 tion 42-218a, Idaho Code, a permit holder who fails to comply with the pro-
37 visions of this section within the time or times specified shall be deemed to
38 have relinquished all rights under its permit or, in the case of a permit held
39 by a municipal provider for reasonably anticipated future needs, the permit
40 holder shall be deemed to have relinquished all rights under any portion of
41 the permit that has not previously been licensed or for which an incremental
42 statement of completion showing proof of beneficial use has not been submit-
43 ted.

44 (7) The provisions of this section as it becomes effective on July 1,
45 2021, shall apply to all existing permits pending before the department of
46 water resources on July 1, 2021. Permits pending before the department on
47 July 1, 2021, are entitled to the maximum qualifying extension available
48 pursuant to the provisions of this section regardless of whether the permit-
49 tee received a prior extension under subsection (3) (f) of this section.