

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature First Regular Session - 2013

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 131

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO WATER; AMENDING SECTION 42-204, IDAHO CODE, TO REVISE EXTENSION PROVISIONS RELATING TO THE TIME IN WHICH A PERMIT HOLDER COMPLETES WORK AND APPLIES WATER TO FULL BENEFICIAL USE, TO PROVIDE THAT THE TIME FOR COMPLETION OF WORKS AND APPLICATION OF THE WATER TO FULL BENEFICIAL USE UNDER CERTAIN PERMITS MAY BE EXTENDED FOR AN ADDITIONAL PERIOD OF UP TO TEN YEARS UNDER SPECIFIED CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY, PROVIDING FOR APPLICABILITY AND TO PROVIDE THAT PERMITS PENDING BEFORE THE DEPARTMENT ARE ENTITLED TO THE MAXIMUM QUALIFYING EXTENSION AVAILABLE UNDER SPECIFIED LAW.

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

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

42-204. EXAMINATION -- PERMIT -- COMMENCEMENT OF WORK -- EXTENSIONS -- APPEAL. On receipt of the application, which shall be of a form prescribed by the department of water resources, it shall be the duty of that department to make an ~~indorsement~~ endorsement thereon of the date of its receipt, and to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action. If the corrected application is returned or the information is supplied after thirty (30) days, such corrected application shall be treated in all respects as a new application, and the priority of the right initiated shall be determined by the date of receipt, in the office of the department, of the corrected application or additional information; provided, that upon request, and good cause appearing therefor, the director of the department of water resources may grant an extension of time within which to return the corrected application or supply needed information. All applications which shall comply with the provisions of this chapter and with the regulations of the department of water resources shall be numbered in such manner as will aid in their identification, and it shall be the duty of the department to approve all applications, made in proper form, which contemplate the application of water to a beneficial use: provided, that the department may deny any such application, or may partially approve and grant a permit for a lesser quantity of water than applied for, or may grant a permit upon conditions as provided in the preceding section.

1 The department of water resources shall issue a permit for any approved
 2 application, make a record of the approval and provide a copy of the permit to
 3 the applicant, who shall be authorized, on receipt thereof, to proceed with
 4 the construction of the necessary works for the diversion of such water, and
 5 to take all steps required to apply the water to a beneficial use and perfect
 6 the proposed appropriation. The department shall require that actual con-
 7 struction work and application of the water to full beneficial use shall be
 8 complete within a period of five (5) years from the date of such approval, but
 9 may limit the permit to a less period than is named in the application, and
 10 the permit shall set forth the date when beneficial application of the water
 11 to be diverted by such works shall be made. Sixty (60) days before the date
 12 set for the completion of the appropriation of water under any permit, the
 13 department shall forward a notice to the applicant by certified mail at his
 14 address of record of the date for such completion, which said notice shall
 15 advise the applicant of the necessity of submitting an affidavit of comple-
 16 tion or a request for an extension of time on or before said date; Provided
 17 that:

18 (1-) In cases where the applicant is prevented from proceeding with
 19 his work by his failure to obtain necessary consent or final approval or
 20 rejection from the federal government because of the pendency of an applica-
 21 tion for right-of-way or other matter within the jurisdiction of the United
 22 States, by state, county, city or other local government permitting or ad-
 23 ministrative action or process related to the applicant's land or water de-
 24 velopment, or by litigation of any nature which might bring his title to said
 25 water in question, the department of water resources upon proper showing of
 26 the existence of any such condition, and being convinced that said applicant
 27 is proceeding diligently and in good faith, shall extend the time so that
 28 the amount of time lost by such delays shall be added to the time given in the
 29 original permit, or in any subsequent grant of extension pursuant to subsec-
 30 tion (2), (3), (4) or (6) of this section, for each and every action required.

31 (2-) The time for completion of works and application of the water to
 32 full beneficial use under any permit involving the diversion of more than
 33 twenty-five thousand (25,000) acre feet in one (1) irrigation season for a
 34 project of no less than five thousand (5,000) acres, may upon application to
 35 the director of the department of water resources supported by a showing that
 36 additional time is needed on account of the time required for organizing, fi-
 37 nancing and constructing works of such large size, be extended by the direc-
 38 tor of the department of water resources for ~~an additional period of seven~~
 39 ~~(7) years, but not to exceed up to~~ twelve (12) years in all from the date of
 40 beyond the initial development deadline contained in the permit, or beyond
 41 a grant of extension pursuant to the provisions of subsection (1) of this
 42 section: Provided, that no such extension shall be granted unless the ap-
 43 plicant for such extension shall show that there has been actually expended
 44 toward the construction of said diversion, ~~(including expenditures for the~~
 45 ~~purchase of rights-of-way and property in connection therewith),~~ at least
 46 one hundred thousand dollars (\$100,000).

47 (3-) The time for completion of works and application of the water to
 48 full beneficial use under any permit involving the construction of a reser-
 49 voir of more than ten thousand (10,000) acre feet capacity or for the appro-
 50 priation of water to be impounded in such reservoir of more than ten thousand

(10,000) acre feet capacity, may be extended by the director of the department of water resources upon application to the director if the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

(4-) The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of two (2) or more cubic feet per second or the development or cultivation of one hundred (100) or more acres of land may be extended by the director of the department of water resources upon application by the permittee for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of subsection (1) of this section, provided the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

(5) In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

5-(6) In all other situations not governed by these provisions the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, or beyond any grant of extension pursuant to the provisions of subsection (1) of this section, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

Any applicant feeling himself aggrieved by the decision of the department of water resources regarding his application may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the decision and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval regarding all permits pending before the Idaho depart-

1 ment of water resources. Permits pending before the department are entitled
2 to the maximum qualifying extension available pursuant to the provisions of
3 section 42-204, Idaho Code, regardless of whether the permittee received a
4 prior extension under section 42-204(6), Idaho Code.