

ADMINISTRATIVE MEMORANDUMS INDEX

As of January 26, 2016

Please note that these Administrative Memorandums will include many memos that have become outdated due to changes in rules, statutes or current Department policy. Some memos have been amended or superseded by others, and some may no longer be applicable.

STREAM CHANNEL ALTERATIONS

No.	Title	Signed	Amended or Superseded
Stmt	<u>Stream Channel Alterations Policy Statement</u>	11-24-80	1-4-83
1.	<u>Stream Alteration Permits for Dredge Mining</u>	1-6-75	
2.	<u>Extension of Time on Stream Alteration Permits</u>	10-17-75	
3.	<u>Right-of-Way Clarification Needed on Permits</u>	3-5-76	
4.	<u>Coordination with the Department of Lands when Processing Stream Alteration Applications</u>	4-19-76	
5.	<u>Copies of Stream Channel Alteration Permits</u>	9-29-86	
6.	<u>Investigation Reports</u>	6-6-90	
7.	<u>Permit Application with the Corps of Engineers</u>	3-21-91	
8.	<u>Stream Channel Alterations</u>	2-26-91	
9.	<u>Stream Channel Alteration Permits and the Endangered Species Act in the Salmon/Clearwater Basins</u>	5-28-93	
10.	<u>Outside Agency Comments</u>	9-28-94	
11.	<u>Emergency Stream Channel Alterations</u>	2-27-96	
12.	<u>Work Exempt from Permitting under the Water Use Exemption</u>	1-14-99	
13.	<u>Review of Apps. for Permit on a State Protected River Reach or within a Minimum Stream Flow Reach</u>	8-16-99	



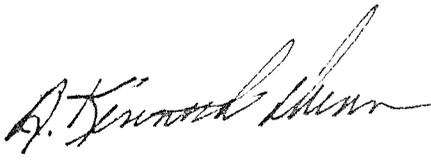
State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

POLICY STATEMENT
(supercedes November 24, 1980)

DATE: January 4, 1983
FROM: A. Kenneth Dunn
Director 
SUBJECT: Enforcement of Title 42, Chapter 38, Idaho Code
also known as the Stream Protection Act

Section 42-3812, Idaho Code, empowers Department of Water Resources employees to issue uniform citations for the enforcement of Chapter 38, Title 42, Idaho Code, the Stream Protection Act. Citations and/or warnings of violations will be issued only by those classified Department of Water Resources employees authorized in writing by the Director to issue citations and/or warnings of violation.

In order to protect the environment of Idaho's streams and to secure compliance with the Stream Protection Act, it is the policy of the Department of Water Resources to issue warnings of violations and/or cease and desist orders when, in the opinion of the field officer, their issuance will result in the desired compliance with the Act and the officer believes the offender did not have previous knowledge of the Act. The department policy is to issue citations to individuals who previously received a warning of violation or a cease and desist order for a violation of the Stream Protection Act, or to individuals whom the officer believes either had previous knowledge of the Act or will ignore a warning or a cease and desist order. The issuance of a citation for any non-mining activity shall first be approved at the Regional Supervisor level.

Warnings of violations provide a record of an apparent violation of the Stream Protection Act whereas cease and desist orders not only provide a record of an apparent violation of the Act but also are an order from the Director, the violation of which is a misdemeanor. Warnings of violations should be used in cases of dredge and/or sluice mining violations that would normally be considered minimum standard activities, if the operator agrees to comply with the Stream Protection Act. If the operator seems

somewhat reluctant to comply, a citation should be issued. Cease and desist orders will normally be used in all situations except minimum standard mining violations described earlier.

Department of Water Resources employees do not have authority to make arrests under the provisions of the Stream Protection Act. If a suspected violator refuses to sign a citation, an immediate arrest cannot be made by a department employee. If the department employee is accompanied by a regular peace officer or calls for assistance from a peace officer in the case of a serious continuing violation, the decision to make an arrest or not to make an arrest will be left to the discretion of the peace officer. If a suspected offender refuses to sign a citation and is not immediately arrested by a peace officer, the department employee shall proceed to obtain a summons or arrest warrant through the appropriate prosecuting attorney, which will result in having the suspected violator summoned into court or arrested by a regular law enforcement officer. The department employee shall be certain the information he presents to the prosecuting attorney is clear and as complete as practical to assist the prosecuting attorney and the appropriate authorities in obtaining and delivering a summons or executing an arrest warrant. The employee should also expect that a probable cause hearing may be necessary before a summons or warrant is issued.

Department of Water Resources employees do not have authority to seize evidence or to execute search warrants. Water Resource employees will rely on the use of photographs and the statements of witnesses, if available, as evidence rather than taking physical evidence.

Water Resource employees can pick up abandoned property that has been used in a violation of the Stream Protection Act. The employee will first attempt to ascertain the ownership of the property by interviewing all individuals present or easily accessible. Property will be picked up and taken to a department office only if ownership cannot be determined.

Water Resource employees shall comply with the Governor's firearm policy dated September 22, 1981, and any revisions thereof.

The Department of Water Resources requests that Department of Fish and Game officials and officers enforce only those portions of Chapter 38, Title 42, Idaho Code, which deal with the operation of suction dredges and sluice boxes which are capable of moving two or less cubic yards of stream bed material per hour unless requested by a Department of Water Resources employee to assist in the enforcement of other portions of the Act. It is also Department of Water Resources policy to accept enforcement assistance from Fish and Game officials and peace officers on an "as available" basis with the understanding that Fish and Game officials and peace officers are not under any obligation to provide routine enforcement of any part of the Stream Protection Act. The department requests that copies of all warnings of violations and citations issued by non-department personnel be forwarded immediately to the Department of Water Resources, Statehouse, Boise, Idaho 83720, Attention: Permits Section.

AKD:alw

OPERATIONS DIVISION
ADMINISTRATIVE MEMORANDUM

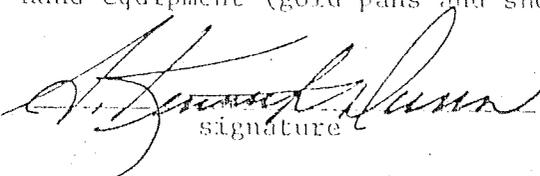
TO: Staff
FROM: A. Kenneth Dunn
DATE: January 6, 1975
SUBJECT: STREAM ALTERATION PERMITS FOR DREDGE MINING

The Department of Lands requires a Dredge Mining Permit for all activity involving equipment capable of moving more than two cubic yards of material per hour. While all hydraulic dredges are not of the same design and capacity, it appears that most dredges with suction tubes smaller than two inches in diameter will not move two cubic yards per hour. All applications involving two inch or larger dredges, or dredges otherwise determined to be capable of moving more than two cubic yards per hour shall be treated as any other non-standard stream alteration with the permit signed by the Operations Division Administrator and comments sought from other agencies -- especially Lands. Final action on these applications shall be held up until the Dredge Mining Permit has been issued, or until we have been notified by Lands that it is not required, because that permit has more authority, including requiring a bond, to protect the stream. If the Dredge Mining Permit is not issued before our 60-day processing deadline and the proposal is otherwise acceptable, the District should send the application through with a denial and notify the applicant that a new application will be reconsidered without prejudice as soon as the necessary Dredge Mining Permit is obtained.

Smaller dredges that do not appear to come under the Dredge Mining Act still require stream alteration permits; however, such permits may be issued on a District level after only minimal contact with Lands and Fish and Game. Maintaining a position that permits are required will allow us to begin restricting dredge activity if it begins to become extensive enough in a specific location that it causes problems. It also allows us to prohibit activity in prime spawning beds during critical periods for such activity.

Any permit issued should include a statement that it does not constitute a right to trespass on to land or mining claims owned by others and does not constitute a permit under the Idaho Dredge Mining Act. Work locations need not be specified down to the quarter section but should be as specific as possible. The applicant should at least specify a particular stream or drainage and on large streams some reach is necessary (even if several miles long). We can then place any necessary restrictions to protect spawning, etc. on the permit. Copies of all permits for dredging must be sent to Fish and Game and Lands. The Forest Service may also wish copies for work on Forest land.

Hand equipment (gold pans and shovels) do not require permits.


signature

OPERATIONS DIVISION
ADMINISTRATIVE MEMORANDUM

TO: Staff
FROM: Ken Dunn
DATE: October 17, 1975
SUBJECT: EXTENSION OF TIME ON STREAM ALTERATION PERMITS

Extensions of time for past permits that have expired pose several administrative problems. All files that have expired are microfilmed in the State Office and are not as easy to work with as folders maintained for active permits. Also, conditions at the site may change over a long period of time and a new review by other interested agencies is warranted. For these reasons, the following policy is to be followed in granting extensions.

1. Extensions of time will only be granted when a request is made prior to expiration of the permit or no later than 30 days following the expiration date. An exception to this would be where provisions for future extensions were made when initial approval was granted.
2. An extension of time must be requested in writing and granted by letter from the Department.
3. Department personnel authorized to grant the original permit are also authorized to grant extensions. Where the district supervisor approves the permit he may also grant the extension.
4. Upon receipt of an extension request and prior to forwarding it to the State Office or granting approval at the district level, the district shall contact interested agencies to insure that the timing change will not have a detrimental effect.

In some cases where extensions might be contemplated on a permit, the original permit cover letter should inform the applicant of the deadline for an extension request.


signature

OPERATIONS DIVISION
ADMINISTRATIVE MEMORANDUM

TO: Staff
FROM: Ken Dunn
DATE: March 5, 1976
SUBJECT: RIGHT-OF-WAY CLARIFICATION NEEDED ON PERMITS

Because of occasional incidents that arise when an alteration is done by an applicant who may not own all land at or adjacent to the site, the following statement shall be added to the condition for each permit issued:

This permit does not constitute an easement or right-of-way to trespass across or work upon property belonging to others.

Hopefully, this will eliminate the possibility of anyone using our permit as an excuse for trespass. Where appropriate the condition should be expanded to include special reference to the Department of Lands and the fact that our permit does or does not grant approval required by that


K. KENNETH DUNN
Administrator - Operations Division

AKD:WRG

OPERATIONS DIVISION
ADMINISTRATIVE MEMORANDUM

TO: All Regions
FROM: A. Kenneth Dunn
DATE: April 19, 1976
SUBJECT: COORDINATION WITH THE DEPARTMENT OF LANDS WHEN PROCESSING STREAM ALTERATION APPLICATIONS

At a recent meeting between this Department and the Department of Lands, the existing Memorandum of Agreement regarding stream alteration work was discussed as well as House Bill No. 561 passed by the recent legislature requiring specific coordination between the two departments. As a result of this, the following procedures are to be followed when processing applications.

1. All decisions of the Department must include a statement indicating whether or not our permit constitutes approval from the Department of Lands.
2. Whenever a region wishes to process an application as Minimum Standards work, it must still transmit a copy of the application to the Department of Lands (Bill Scribner in Boise) and allow them 10 days to comment before taking action.
 - a. In those situations where the region feels quicker action on an application is desirable, telephone contact with the Department of Lands must be made to insure that they have an opportunity for comment. When Bill Scribner cannot be reached by phone, you should attempt to contact either Terry Maley - Administrator of the Department of Lands' Earth Resources Division, or Patti Harris - Scribner's secretary.
3. Whenever this Department reviews a proposal in the field prior to or at the time the application is being made, a copy of our field report should be included with the application when it is sent to the Department of Lands for comment. Field comments from the staff would aid the Department of Lands in formulating comments.

As part of House Bill 561, provisions are made for the Department of Water Resources to comment on Department of Lands' dredge permit applications and to allow the Department of Lands to include in their permit statements indicating whether or not it also constitutes Department of Water Resources approval. We cannot reach a decision regarding a stream alteration permit until other agencies have also commented to us on the proposal. For this reason, the Department of Lands will provide copies of dredge applications to other agencies and ask that they include comments pertaining to the stream alteration act when replying. We will either get other agency comments directly from those agencies or through the Department of Lands before we make a decision with regard to stream alteration approval. Since processing of a dredge permit normally takes longer than the 60 days provided for in our act, we should refrain from attempting to get a

separate stream alteration application on work where a dredge permit is required. This will allow us to issue approval under the Stream Channel Protection Act at the same time the dredge permit is approved and will not limit us to the 60-day processing requirement -- since the Department of Water Resources would not have received a stream alteration application and be bound by any specific time limits.



A. KENNETH DUNN

Administrator - Operations Division

AKD:WRG:ldt



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
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A. KENNETH DUNN
Director

Mailing address:
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ADMINISTRATOR'S MEMORANDUM

TO: Regional Office Bureau and Operations Bureau
FROM: Norman C. Young *NCY*
DATE: September 29, 1986
RE: Copies of Stream Channel Alteration Permits

Stream Channel Alterations No. 5

In the past, original Stream Channel Alteration (SCA) permits have been archived at the state office shortly after permit approval, and copies have been maintained at the regional offices.

Now that most of the processing of SCA applications is conducted at the regional offices, and approval authority for all related actions except denial is delegated to the regional offices, there is diminished need for originals to be forwarded to the state office.

Henceforth the regional offices are authorized to archive original SCA permits, and no copies are required to be forwarded to the state office except in special cases on a request basis. At a reasonable time after expiration of a SCA permit the original file should be sent from the regional office to the state office for microfilming, archiving of the film, and destruction of the file.



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Administrative Memorandum #6 (Stream Channel Alterations)

M E M O R A N D U M

RECEIVED
JUN 07 1990

TO: Stream Channel Specialists and Regional Managers

FROM: John Homan^{JKH} Legal Division and
Norman C. Young, Administration^{ncy}

RE: Investigation Reports

DATE: June 6, 1990

Department of Water Resources
Western Regional Office

Any investigation report pertaining to a criminal matter must include and specifically allege facts that inform the reader that a violation of the law has occurred. The investigator must take care to focus in on the legal elements of the crime and avoid being distracted into writing a narrative about his observations involving the issuance of the citation. The investigation report must allege facts to convince the prosecutor that the legal elements of the offense have been met.

The operable language in § 42-3803 that provides the elements for the criminal offense is as follows:

No applicant shall engage in any project or activity which will alter a stream channel without first applying to and receiving a permit therefor from the director.

Each and every legal element in the above offense must

be alleged and proven beyond a reasonable doubt if there is to be a successful criminal prosecution. If the suspect or his attorney is successful in showing that there is a reasonable doubt about even a single element, then the prosecution will fail.

Element No. 1 "Applicant" - Defined in 42-3802(a) must allege and prove that suspect fits into one of the categories AND is proposing to alter a stream channel.

Element No. 2 "Engage in any project or activity" - Must allege and prove that suspect or his agents were the responsible parties, i.e. who performed the activity that resulted in the alteration.

Element No. 3 "Alter" as defined in § 42-3802(b) must allege and prove that the suspect's project or activity either obstructed, diminished, destroyed, altered, modified, relocated or changed the natural existing shape or direction of the water flow of a stream channel.

Element No. 4 "WITHIN or below the mean high water mark.

Element No. 5 "Stream channel" as defined in § 42-3802(d) must allege and prove watercourse is

- a) natural watercourse of perceptible extent
- b) course has definite bed and banks
- c) confines and conducts continuously flowing water.

It may also be necessary to include an explanation, depending on the time of the year, why the stream channel is dry, i.e. flood channel adjacent to a flowing channel or diversion

occurring upstream, etc.

Element No. 6 "No permit" - Must allege and prove suspect does not possess a permit.

Element No. 7 Activity does not fall under the exceptions for irrigation listed under § 42-3806, reservoir projects and port districts of § 42-3807, or the Lake Protection Act of § 58-142 et seq.

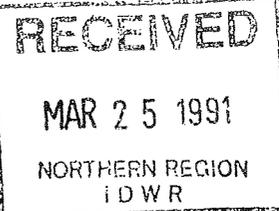
These are the elements the prosecutor must prove to prevail. Your investigation report is a road map for the prosecutor to prepare his case. Moreover, if you are asked to testify at trial, the prosecutor's questions will track very closely to the elements.

Because of the need to be fully prepared to demonstrate these elements and to have the county prosecutor fully briefed, it is always necessary to prepare a written investigation report especially if a citation has been issued. To allow adequate time for preparation of the report, citations should normally be issued only when an ongoing violation is actually encountered or it appears the violation will soon be recommenced. Otherwise, an investigation report should be prepared and submitted for state office review before asking the prosecutor to file a complaint. Remember, you can always issue the citation to the violator at a later date after fully investigating the matter and touching bases with the state office.

Finally, I.C. § 19-403 requires that any prosecution for a misdemeanor be commenced within one year after the commission of the act. So it is important to establish an accurate date for the violation.

The state office is to be advised immediately of significant violations and citations and provided copies of draft investigation reports prior to submittal to the prosecutor.

MEMORANDUM



To: Regional Stream Channel Protection Specialists
From: L. Glen Saxton *LS*
RE: PERMIT APPLICATION COORDINATION WITH THE CORPS OF
ENGINEERS
Date: March 21, 1991

Stream Channel Alteration No. 7

The Corps of Engineers (Corps) has recently advised the department (IDWR) that in some cases, IDWR has not timely advised the Corps of applications which IDWR has approved under minimum standards. In the particular example cited, IDWR sent a copy of an application and IDWR's approval of it to the Corps at the same time. Obviously, if the Corps does not have an opportunity to review an application before IDWR approves it, there is potential for conflict between our approval and Corps requirements.

In order to prevent this from happening in the future, IDWR offices are to notify the Corps of applications prior to permit issuance by IDWR. After determining that our permit will not conflict with Corps requirements, IDWR may then issue a permit.



ADMINISTRATORS MEMORANDUM

TO: REGIONAL STREAM PROTECTION SPECIALISTS
FROM: NORM YOUNG *NY*
DATE: FEBRUARY 26, 1991
SUBJECT: STREAM CHANNEL ALTERATIONS

SCA No 8

To resolve the differences in permits issued from the Dept's Regional offices, we need to use a standard permit format. To insure a coordinated permit program, all regions are asked to use the following letter format when drafting permits.

"STANDARD OPENING"

Dear M.....

This office has reviewed the above referenced application for a permit to alter a stream channel and has prepared a decision as provided for in Section 42-3805, Idaho Code.

You may consider this letter as a permit to alter the stream channel shown on your application provided you adhere to the conditions listed below.

SPECIAL CONDITIONS:

MINIMUM STANDARDS (These standards are established in the Stream Channel Alterations, Rules and Regulations dated March 1, 1985, and are enclosed with this permit.)

"Reference Appropriate Standards Here"

- EXAMPLE:
- 9,1 - Construction Procedures
 - 9,2 - Dumped Rock Riprap
 - 9,3 - Wire-Enclosed Gabion Riprap
 - etc.

"Continue With Special Conditions Pertaining To Specific Job"

EXAMPLE:

No equipment shall be operated in the flowing portion of the stream channel.

Page 2, MEMO

A permit is not required from the Department of Lands.

This permit does not relieve the applicant of the responsibility to obtain a permit from the U.S. Army Corps of Engineers if a permit is required. A copy of this permit has been provided to the Corps for their review.

This permit shall expire on -----.

"STANDARD CLOSING"

GENERAL CONDITIONS:

This permit does not constitute any of the following:

- a. An easement or right-of-way to trespass across or work upon property belonging to others.
- b. Other approval that may be required by State or Federal Government, unless specifically stated in the special conditions above.
- c. Responsibility of the Department of Water Resources for damage to adjacent properties due to work done.
- d. Compliance with the Federal Flood Insurance Program, FEMA regulations or approval of the local Planning and Zoning authority.

The permit holder or operator must have a copy of this permit at the alteration site, available for inspection at all times.

The Department of Water Resources may cancel this permit at any time that it determines such action is necessary to minimize adverse impact on the stream channel.

CONDITIONS AND CONSTRUCTION PROCEDURES APPROVED UNDER THIS PERMIT MAY NOT COINCIDE WITH THE PROPOSAL AS SUBMITTED. FAILURE TO ADHERE TO CONDITIONS AS SET FORTH HEREIN CAN RESULT IN LEGAL ACTION AS PROVIDED FOR IN SECTION 42-3809, IDAHO CODE.

If you object to the decision issuing this permit with the above conditions, you have fifteen days in which to notify this office in writing that you request a formal hearing on the matter. If an objection has not been received within fifteen days, the decision will be final.

If you have any questions, please contact this office.

Sincerely,

Someone

cc as needed

ADMINISTRATOR'S MEMORANDUM

Stream Channel Alterations No. 9

To: Water Management Division
From: Norm Young *NCY*
Date: May 28, 1993

Re: Stream Channel Alteration Permits and the Endangered Species Act in the Salmon/Clearwater Basins

The Endangered Species Act prohibits the taking of an endangered species and authorizes legal action and penalties against those who take an endangered species. The meaning of "take," as defined by the act, is "to harass, harm, pursue hunt shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." U.S.C. § 1532 (19).

When the activities of an agency of the federal government may jeopardize the further existence of an endangered species, the agency is required to consult with the U.S. Fish & Wildlife Service (F&WS) or the National Marine Fisheries Service (NMFS), depending on which agency is responsible for a listed species. Generally, F&WS is responsible for land and fresh water species & NMFS is responsible for marine species. Consultation requires the submittal of biological information about the species, and the agency responsible for the species must issue a biological opinion.

There is no corresponding law requiring states to consult in any regulatory, permitting or funding action. Legal scholars are uncertain whether indirect permitting or regulation which allows a third party to engage in an activity that will result in the taking of an endangered species is by itself a taking. The Department of Water Resources believes its permitting and regulation functions cannot be construed as a taking.

At least with respect to the issuance of stream channel alteration permits, representatives of NMFS have informally told the Department that issuance of our permits is not a taking. A permit holder may break the law, however, by incidentally taking an endangered species while otherwise working in the stream channel pursuant to one of our permits.

Despite an interpretation that our permitting is not a taking, we should be cognizant of both the letter and spirit of the Endangered Species Act. The following summarizes how we should process a variety of stream channel alteration applications.

One-Stop Recreational Dredge Permits

The Department will continue to issue one-stop recreational dredge permits with the following condition:

This permit does not authorize the taking of any threatened or endangered species, or the destruction or degradation of any critical habitat of any threatened or endangered species.

Once a year, the Department of Water Resources, with the assistance of both state and federal agencies, including NMFS, will refine the stream closure list to exclude streams or restrict dredging during periods when salmon may be present to insure there will not be a taking. In other words, the one-stop permits should only authorize mining where and/or when there is no possibility that salmon at any point in their life cycle can be taken.

Long Form Stream Channel Alterations - No Corps Participation

Once in a while, the Department receives an application for stream channel alteration over which the Corps of Engineers has no jurisdiction. These applications typically propose the removal of material from the stream channel, but no filling of the channel, which would invoke Corps review.

We must seek comment from the Corps for these applications, as well as comment from other agencies. Furthermore, the Department should send a copy of the application to NMFS for review whenever a stream alteration application proposes work in the Salmon/Clearwater Basins.

If an application is approved, it must be carefully conditioned to prevent the taking of an endangered or threatened species using the following condition:

This permit does not relieve the permittee from complying with any applicable provision of federal law, particularly the taking of any threatened or endangered species, or the destruction or degradation of any critical habitat of any threatened or endangered species.

Long Form Stream Channel Alterations - Corps Participation

For joint Department-Corps applications, the 404 permitting process forces the Corps to consult with NMFS. The Corps must also consult with NMFS about the possibility of jeopardy to endangered species when issuing and administering nationwide permits. Conditions imposed by the Corps should always address concerns about jeopardy to the listed species. We should not ignore concerns about listed species simply because the Corps participates, however, but should independently inquire about the effects of the proposal, and, at a minimum, use the same condition imposed on other long form approvals.

September 28, 1994

Administrative Memorandum No. 10
Stream Channel Alteration - Outside Agency Comments

MEMORANDUM

TO: Regional Managers,
Stream Protection Unit

FROM: Norm Young *NCY*

The purpose of this memorandum is to insure that the Department of Water Resources is meeting our responsibility as outlined under § 42-3804, Idaho Code. Application--Review by the director.

Section 42-3804 of the I.C. requires IDWR to consult with other state agencies having an interest in the stream channels to determine the full effect of any proposed channel alteration.

Some of these agencies do not feel their time and comments are being utilized by the department in this regard. I also realize that sometimes the comments submitted by these agencies cannot be considered under our specific authority.

However, as a matter of clarification on this point the department will consider all comments submitted which are required by the SCA act. If the comments suggest conditions of approval or actions which exceed our authority, are unwarranted or cannot be reasonably included into the permit, the commenting agency must be contacted and advised of the problem and given the opportunity to modify or withdraw the comments.

If you are having a problem with a particular individual or agency please feel free to refer the problem to me or Erv Ballou.

ADMINISTRATOR'S MEMORANDUM
IDAHO DEPARTMENT OF WATER RESOURCES

Stream Channel Alterations No. 11

TO: Regional Managers
Stream Channel Protection Specialists

FROM: Norman C. Young, Administrator, Water Management Division *NCY*

RE: Emergency Stream Channel Alterations

DATE: February 27, 1996

Recent high water and flooding conditions on several Idaho streams and rivers emphasize the need for the Department of Water Resources to respond expeditiously and appropriately to the emergency stream channel alteration needs of affected persons. Section 42-3808, Idaho Code, authorizes the Director of the department to waive provisions of the Stream Channel Protection Act during emergency situations in order to protect life or property.

Pursuant to section 42-3808, Idaho Code, and in response to public need and request, the Director has acted to waive the sixty (60) day advance filing requirement and the fee payment provision of the Stream Channel Protection Act for those stream segments affected by a natural disaster event for which the Governor has issued a declaration of disaster emergency pursuant to section 46-1008, Idaho Code. Under these circumstances, the requirements of section 42-3803(a), Idaho Code, that an application for a stream channel permit must be filed not less than sixty (60) days prior to the intended date of commencement of the stream channel alteration activity and that the application must be accompanied by the statutory filing fee are waived during the pendency of the Governor's declaration of disaster emergency. While the filing fee is waived, this waiver does not relieve a person of the responsibility to file an application for a stream channel alteration permit and to obtain an authorization from the department prior to commencement of the stream channel alteration activity, unless a waiver of such filing requirement has been obtained by the person pursuant to section 42-3808, Idaho Code, and Rule 50 of the department's Stream Channel Alteration Rules.

It is further directed in accordance with the Director's instruction, that where stream channel alterations have already occurred during the recent emergency conditions in north Idaho, such accomplished work is to be deemed to have been completed in compliance with section 42-3808, Idaho Code, and the department's rules, provided that an application for a stream channel alteration permit is subsequently made and any unsatisfactory stream channel alterations are corrected.

Administrator's Memorandum
February 27, 1996

The department's Stream Channel Protection personnel should not issue cease and desist orders, notices of violation or citations to persons taking immediate action to protect life or property in areas covered by a declaration of disaster emergency except in unusual circumstances approved in advance by the Division Administrator.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

To: Norman C. Young
Administrator, Water Management Division

Date: February 27, 1996

From: Karl J. Dreher

Subject: Emergency Stream Channel Alterations

Recent high water and flooding conditions on several Idaho streams and rivers emphasize the need for the Department of Water Resources to respond expeditiously and appropriately to the emergency stream channel alteration needs of affected persons. Section 42-3808, Idaho Code, authorizes the Director of the department to waive provisions of the Stream Channel Protection Act during emergency situations in order to protect life or property.

Pursuant to section 42-3808, Idaho Code, and in response to public interest, need and request, I hereby waive the sixty (60) day advance filing requirement and the fee payment provision of the Stream Channel Protection Act for those stream segments affected by a natural disaster event for which the Governor has issued a declaration of disaster emergency pursuant to section 46-1008, Idaho Code. Under these circumstances, the requirements of section 42-3803(a), Idaho Code, that an application for a stream channel permit must be filed not less than sixty (60) days prior to the intended date of commencement of the stream channel alteration activity and that the application must be accompanied by the statutory filing fee are waived during the pendency of the Governor's declaration of disaster emergency. While the filing fee is waived, this waiver does not relieve a person of the responsibility to file an application for a stream channel alteration permit and to obtain an authorization from the department prior to commencement of the stream channel alteration activity, unless a waiver of such filing requirement has been obtained by the person pursuant to section 42-3808, Idaho Code, and Rule 50 of the department's Stream Channel Alteration Rules. However, where stream channel alterations have already occurred during the recent emergency conditions in north Idaho, such accomplished work is to be deemed to have been completed in compliance with section 42-3808 and the department's rules provided application for a stream channel alteration permit is subsequently made and any unsatisfactory stream channel alterations are corrected.

The department's Stream Channel Protection personnel should not issue cease and desist orders, notices of violation or citations to persons taking immediate action to protect life or property in areas covered by a declaration of disaster emergency except in unusual circumstances approved in advance by you or your designee.

Please issue the appropriate administrator's memorandum to effectuate this policy.

ADMINISTRATOR'S MEMORANDUM

TO: RESOURCE PROTECTION BUREAU
REGIONAL SUPERVISORS
STREAM CHANNEL UNIT

FROM: NORM YOUNG *NY*

RE: WORK EXEMPT FROM PERMITTING
UNDER THE WATER USER EXEMPTION

SCA No 12

DATE: JANUARY 14, 1999

The State Stream Channel Protection Act (Chapter 38, Title 42, Idaho Code) requires that a permit be obtained from the department before engaging in any project or activity altering the channel of a natural, continuously flowing stream. The act also includes several exemptions from the requirement to obtain a permit, including an exemption for work necessary to divert water under a valid water right.

Section 42-3806 of the Idaho Code provides the following exemptions relating to diversion of water.

This act shall not operate or be so construed as to impair, diminish, control, or divest any existing or vested water rights acquired under the laws of the State of Idaho or the United States, nor to interfere with the diversion of water from streams under existing or vested water right permit for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws.

No permit shall be required from a water user or his agent to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch or lateral. No permits shall be required from a water user or his agent to remove any obstruction from any stream channel, if such obstruction interferes with or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit.

The statute, as it applies to natural channels, limits the exemption to work involving the diversion structure and removal of obstructions which interfere with water delivery to the diversion and/or headgate. The term "repair" as defined in Rule 10.11 of the "Stream Channel Rules" as follows:

1. Repair. Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure.

A Rule, cannot give authority not included in the statute. The term "protect" used in the Rule is limited to work done on the structure itself and does not authorize building drop structures or jetties to protect the structure. This rule limits work to the diversion structure and to the stream channel upstream and downstream from the diversion structure. Accordingly, work on the structure or to the channel as required to facilitate efficient diversion of water into the headgate above and below the structure is exempt from permitting.

CONCLUSION

For the purpose of coordinated management of the Stream Channel Protection Program, the water user exemption shall be viewed as allowing removal of obstructions which prevent delivery of water to the diversion structure and/or headgate, and work on the diversion structure and to the stream channel upstream and downstream of the diversion as required to support and maintain the diversion structure. Construction or work on separate structures, such as a drop structure to control water depth at the toe of the diversion structure, is not exempt from the permitting requirements unless that structure was designed and built as part of the original structure. New structures designed by a registered professional engineer with ancillary structures as part of the design which demonstrate that those structures are required for efficient operation of the water diversion structure, will be exempted from permitting under the Stream Channel Protection Act.

Ancillary structures proposed to be added to an existing structure are not exempt from permitting, but can be given expedited approval when the structures meet requirements of the adopted minimum standards. Water users need to be made aware of special concerns relating to fill in the floodway and care needs to be taken to avoid construction of structures which will interfere with floodplain management ordinances adopted by communities participating in the National Flood Insurance Program.

ADMINISTRATOR'S MEMORANDUM

TO: RESOURCE PROTECTION BUREAU
REGIONAL SUPERVISORS
STREAM CHANNEL UNIT

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ADMINISTRATOR'S MEMORANDUM

Application Processing No. 64
Transfer Processing No. 19
Dam Safety Processing No. 2
SCA No. 13

To: Water Management Division

From: Norman C. Young *NCY*

RE: REVIEW OF APPLICATIONS FOR PERMIT ON A STATE PROTECTED RIVER REACH OR WITHIN A MINIMUM STREAM FLOW REACH

Date: August 16, 1999

The Water Resource Board has adopted Comprehensive State Water plans for certain drainages in Idaho to protect designated reaches of waterways and associated riparian buffers from activities that would degrade the aesthetics and recreational values of the reaches. In addition, minimum streamflows have been approved for approximately 70 stream reaches in Idaho.

In order to assure that various approvals for programs administered by Water Management Division do not conflict with protected rivers in an adopted Comprehensive State Water Plan (plan) or Minimum Stream Flow reach ("minimum flow reach"), staff is directed to seek and consider comment from Planning and Policy Division as described below.

Upon receipt of an application which proposes an activity in a protected river or minimum flow reach, as shown by maps or digital layers provided to Water Management Division by Policy and Planning Division, Water Management staff should provide a copy of the application to Water Planning Bureau for review and comment. This notification should be in addition to Planning and Policy Division's review of the weekly water right print out available on the department's home page. Comments provided by Water Planning Bureau need to be considered before recommending action on such applications.

Examples of permitting activities which require this review include stream channel alteration activities, dam construction, diversion works authorized by a water right permit or transfer.