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PART 405 – FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS

SUBPART A – COMPLIANCE WITH LAWS AND REGULATIONS

ID405.03(b)(1)

§ID405.00 Purpose.

This supplement sets forth the Natural Resources Conservation Service (NRCS) policy for Idaho on technical assistance to landowners and operators in planning, designing, constructing, rehabilitating, operating, and maintaining conservation practices that are subject to federal, state, and local laws and regulations.

§ID405.02 NRCS responsibility.

NRCS employees are not to make interpretations whether work is exempt from the Idaho Stream Channel Alteration Act or the U. S. Army Corps of Engineers (USACE) 404 permit system. NRCS employees are to inform the landowner that it is his/her responsibility to obtain the applicable permit(s) or obtain an exemption in writing.

§ID405.03 NRCS guidance material.

(a) (1) Subpart B – Exhibits, §ID405.10, ID405.12 and ID405.13, is a summary of the Rules and Regulations of the State of Idaho pertaining to water rights, water storage facilities, and stream channel alterations.

(2) As of July 1, 1977, all the waters of the United States are under the jurisdiction of the USACE 404 permit system.

The construction of dams, dam diversion structures, and alterations of a stream may require a permit from the USACE prior to commencing work. The Idaho Department of Water Resources automatically forwards all stream alteration requests as defined in Exhibits §ID405.10 to the USACE. The USACE will then send the applicant the necessary forms to fill out and submit, or will notify the applicant that no permit is required.

The owner or operator must make application for a 404 permit directly with the USACE for all other projects such as dam construction, dam diversion rehabilitation or construction. Detailed designs are not required to accompany the application.

Section IV of Exhibits §ID405.10 lists the addresses of the Idaho Department of Water Resources and the USACE.

(3) As of March 10, 2003, construction sites with land disturbing activities on one (1) or more acres are regulated under the National Pollution Discharge Elimination System (NPDES) stormwater program administered by EPA. Operators of regulated construction sites

## SUBPART A – COMPLIANCE WITH LAWS AND REGULATIONS

ID405.03(a)(3)

are required to develop and implement stormwater pollution prevention plans and to obtain permit authorization from EPA.

(b) The following kinds of information and assistance can be provided to landowners in connection with their applications for permits:

- (1) Information on applicable local, county, state, and federal laws.
- (2) Assist the landowner, if requested, in filling out a permit.
- (3) Provide, as requested, location maps and preliminary sketches for permit applications.
- (4) Technical information from preliminary designs needed for permit applications.
- (5) Meet with landowners and applicable state and federal agencies to resolve questions.

(c) Landowners must furnish NRCS with a copy of applicable water rights, permits or letters of exemption before final designs, drawings, and specifications are prepared. Copies of applicable permits or letters of exemption will be filed with the supporting data for the design. All correspondence between NRCS and the landowner or local agencies concerning permits will be sent under the signature of the district conservationist.

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SUBPART B – EXHIBITS

ID405.10(I)(B)

§ID405.10 Summary of the rules and regulations of the State of Idaho.

I. Water Rights

A. Beneficial Use. Under the prior appropriation doctrine that governs the appropriation use of water in Idaho, the amount of water diverted under a water right is limited to the amount necessary, at the time, to satisfy the beneficial purpose served by that right. Because the prior appropriation doctrine grew out of the unique circumstances of the arid Western states, the doctrine imposes a duty upon water right holders to use water under their rights in an efficient and non-wasteful manner in order to maximize the public benefit from this limited resource. Thus, although a recorded right is defined, in part, as the right to divert a specific quantity of water for a specific beneficial use, the holder of a water right is not authorized to divert more water, at any time, than is required to satisfy the authorized beneficial use.

When a water right holder implements water conservation measures (i.e. conversion from surface to sprinkler irrigation) the user is reducing the quantity of water required to satisfy the authorized beneficial use. When water conservation measures are implemented the water right holder is not authorized to spread the water over additional acres, unless such areas are within the authorized beneficial use area of the water right.

NRCS financially and/or technically assisted projects that improve irrigation efficiencies need to be planned, designed and constructed in conformance with current Department of Water Resources Rules and Regulations and State of Idaho Water Right Laws. Therefore in addition to documenting the quantity of water in water rights the designed beneficial use will be documented i.e., irrigated acres as stated in the individual water right or shares (acres) that the participant has in an Irrigation Company or District.

In many situations after irrigation system improvements are implemented the landowner will be limited to watering the same number of acres as currently being irrigated with the existing irrigation system.

Per NRCS policy water rights are the responsibility of the landowner, however, NRCS personnel have responsibility for informing the landowner of applicable water right laws.

Water rights will be documented for all projects involving USDA financial or NRCS technical assistance. The water flow quantity (cfs, time, acre-feet) and beneficial use purpose and area will be documented. Exhibit ID405.11 can be used to document applicable water right(s). Similar information may be provided by a cooperator via letter.

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### ID405.10(I)(B)

#### B. Application to Appropriate Water Contents, Filing Fees, Disposition of Fees, Record of Receipts

For the purpose of regulating the use of public water and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural stream, springs or seepage waters, lakes or groundwater, or other public waters in the State of Idaho, shall, before commencing the construction, enlargement, or extension of the ditch, canal, well or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the Department of Water Resources for a permit to make such appropriation. Such application as per Form 243 must set forth:

1. The name and post office address of the applicant.
2. The source of the water supply.
3. The nature of the proposed use or uses and the period of the year during which water is to be used for such use or uses.
4. The location of the point of diversion and description of the proposed ditch, channel, well or other work, and the amount of water to be diverted and used.
5. The time required for the completion of construction of such works and application of the water to the proposed use.

Whenever it is desired to appropriate and store flood and winter flow waters, the application shall specify in acre-feet the quantity of such flood or winter flow waters which he intends to store, but for irrigation purposes he shall not claim more than five acre-feet of stored water per acre of land to be irrigated, nor, in the event of the filing of an application claiming both normal flow and flood water and winter flow water, shall the total amount water claimed exceed the equivalent of a continuous flow during the irrigation season of more than one cubic foot per second for each fifty acres of land to be irrigated or more than five acre-feet of stored water for each acre of land to be irrigated.

The application shall be accompanied by a plan and map of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location, and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells, and other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated, or location of place of other use.

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ID405.10(I)(B)(5)

The application shall be accompanied by a plan and map of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location, and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells, and other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated, or location of place of other use.

If the application involves more than twenty-five (25) second feet of water or the development of more than five hundred (500) theoretical horsepower, or impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre-feet, the applicant may be required by the Director of the Department of Water Resources to furnish a statement of the financial resources of the corporation, association, firm or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided, and the estimated cost of construction. If such application is made by a corporation, the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors; and if for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity, and estimated cost of works, and whether the water is to be and will be returned to the stream and, if so, at what point on the stream.

C. Change in Point of Diversion or Place of Use of Water Under Established Rights; Forfeiture and Extension; Appeals

Any person entitled to the use of water whether represented by license issued by the Department of Water Resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion or place of use of all or part of the water under the right shall first make application to the Department of Water Resources for approval of such change. Such application shall be upon Form No. I-222 furnished by the Department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee.

Upon receipt of such application, it shall be the duty of the Director of the Department of Water Resources to examine same and if otherwise proper, to cause notice of the proposed change to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such paper, otherwise in a newspaper of general circulation within the county. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests to the Department within ten (10) days of the last date of publication. Upon the receipt of any protest, it shall be the duty of the Director of the Department of Water Resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the Director of the Department of Water Resources of his recommendation on the application, and the Director shall

## SUBPART B – EXHIBITS

### ID405.10(I)(C)

not finally determine the action of the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

#### D. Measuring Devices Above Reservoirs

Any person, firm or corporation using the channel of any stream or streams or any tributary of such stream or streams in this state as an impounding reservoir shall place therein at a point above and as near as practicable to the backwater of such reservoir, such system or device as the Department of Water Resources may require for measuring the flow of the water at such point and in accordance with plans and specifications which shall be furnished by the Department.

#### E. Measuring Devices Along Streams

It shall also be the duty of those using water in any district to place in the streams from which said water is diverted and at such places and intervals on such streams as the Department of Water Resources may require, suitable systems or devices for measuring the flow of water.

### II. Water Storage Facilities

#### A. Definitions

1. “Department” means the Idaho Department of Water Resources.
2. “Dam” means any artificial barrier together with appurtenant works, which is or will be 10 feet or more in height or has or will have an impounding capacity at maximum storage elevation of 50 acre-feet or more. Height of a dam is defined as the vertical distance from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Director, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation. No obstruction in a canal used to raise or lower water therein or divert water therefrom and no fill or structure determined by the Director to be designed primarily for highway or railroad traffic shall be considered a dam.
3. “Small dams” are artificial barriers 20 feet or less in height and are capable of storing less than 100 acre-feet of water.
4. “Intermediate dams” are artificial barriers more than 20 feet, but less than 40 feet in height, or are capable of storing 100 acre-feet or more but less than 4,000 acre-feet of water.

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ID405.10(II)(A)(5)

5. “Large dams” are artificial barriers 40 feet or more in height or are capable of storing 4,000 acre-feet or more of water.

6. The following are not subject to department jurisdiction:

a. Artificial barriers constructed in low risk areas as determined by the Director, which are six (6) feet or less in height, regardless of storage capacity.

b. Artificial barriers constructed in low risk areas as determined by the Director, which impound ten (10) acre-feet or less at maximum water storage elevation, regardless of height.

c. Artificial barriers in a canal used to raise or lower water therein or divert water therefrom.

d. Fills or structures determined by the Director to be designed primarily for highway or railroad traffic.

e. Fills, retaining dikes or structures which are under jurisdiction of the division or environment, department of health and welfare, designed primarily for retention and treatment of municipal, livestock or domestic wastes, or sediment and wastes from produce washing or food processing plants.

f. Levees that store water regardless of storage capacity. “Levee” means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure.

7. Risk category. The following table describes categories of risk used by the Department to classify losses and damages anticipated in downstream area, that could be attributable to failure of a dam during typical flow conditions:

<b><u>Risk Category</u></b>	<b><u>Dwellings</u></b>	<b><u>Economic Losses</u></b>
Low	No permanent structures for human habitation.	Minor damage to land, crops, agricultural, commercial or industrial facilities, transportation, utilities or other public facilities or values.

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ID405.10(II)(A)(7)

<u>Risk Category</u>	<u>Dwellings</u>	<u>Economic Losses</u>
Significant	No concentrated urban development, one or more permanent structures for human habitation which are potentially inundated with flood water at a depth of 2 feet or less or at a velocity of 2 feet per second or less.	Significant damage to land, crops, agricultural, commercial or industrial facilities, loss of use and/or damage to transportation, utilities or other public facilities or values.
High	Urban development, or any permanent structures for human habitation which is potentially inundated with flood water at a depth or more than 2 feet or at a velocity of more than 2 feet per second.	Major damage to land, crops, agricultural, commercial or industrial facilities, loss of use and/or damage to transportation, utilities or other public facilities or values.

The Director shall determine the size and risk category of a new or existing dam.

8. “Reservoir” means any basin which contains or will contain the water impounded by a dam.

9. “Owner” includes any of the following who own, control, operate, maintain, manage or propose to construct a dam or reservoir:

a. The State of Idaho and any of its departments, agencies, institutions, and political subdivisions;

b. The United States of America and any of its departments, bureaus, agencies, and institutions; provided that the United States of America shall not be required to pay any of the fees required by Section 42-1713, Idaho Code, and shall submit plans, drawings, and specifications as required by Section 42-1712, Idaho Code, for information purposes only;

c. Every municipal or quasi-municipal corporation;

d. Every public utility;

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ID405.10(II)(A)(9)(e)

e. Every person, firm, association, organization, partnership, business trust, corporation or company;

f. The duly authorized agents, lessees or trustees of any of the foregoing; or

g. Receivers or trustees appointed by any court of any of the foregoing.

10. “Alterations: and/or “Repairs” mean only such alterations or repairs as may directly affect the safety of the dam or reservoir, as determined by the Department.

11. “Enlargement” means any change in or addition to an existing dam or reservoir, which raises or may raise the water storage elevation of the water impounded by the dam.

12. “Water storage elevation” means the maximum elevation of water surface which can be obtained by the dam or reservoir.

13. “Storage capacity” means the total storage at the maximum storage elevation.

14. “Days” used in establishing deadlines means calendar days including Sundays and holidays.

15. “Certificate of approval” means a certificate issued by the Department for all dams listing restrictions imposed by the Department, and without which no new dams shall be allowed to impound water.

16. “Engineer” means a registered professional engineer, licensed as such by the State of Idaho.

### B. Construction, Enlargement, Alteration or Repair of Dams.

Owners who shall desire to construct, or enlarge, or alter, or repair any dam, for the purpose of storing or appropriating or diverting any of the waters of this State, when the same is to be more than twenty (20) feet in height or have a storage capacity of one hundred (100) acre-feet or more, or be located in a high risk area regardless of height and storage, shall submit duplicate plans, drawings, and specifications of the proposed work to the Department of Water Resources, and construction of a new dam or enlargement, or alteration, or repairs shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings, and specifications. The owner is also required to submit Form 1712 with the required fee.

1. The owner shall notify the Director in writing ten (10) calendar days prior to commencing construction.

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ID405.10(II)(B)(2)

2. The owner shall not proceed with the following stages of construction without approval from the Director:

- a. After clearing and excavation of foundation and prior to placing any fill material;
- b. After installation of outlet conduit and before placing any backfill material around the conduit;
- c. After construction is completed and before any water is stored in the reservoir.

3. The owner shall notify the Idaho Department of Water Resources upon completion.

C. Dams Less Than 20 Feet high and 100 Acre-Feet Capacity; Low and Significant Risk Only

The following provisions apply to dams 20 feet or less in height and having a storage capacity of less than 100 acre-feet:

1. Prior to commencing construction, the owner shall complete the necessary Form 1710 and submit it to the Director with the required fee.

2. Design and construction of small earthfill dams that do not require approval of plans and specifications shall follow the same general criteria for larger dams, except that submittal of plans, test results, etc., is not required.

D. Small Dam Design Criteria; High Risk Category

The following provisions apply to small dams in the high risk category:

1. Design and construction of small dams located in high risk areas as determined by the Director require submittal of fees, plans, and specifications prepared by an engineer and shall follow the same general design criteria established for intermediate and large dams, and file Form 1712.

2. The owner shall notify the Director in writing ten (10) calendar days prior to commencing construction.

3. The owner shall not proceed with the following stages of construction without approval from the Director:

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ID405.10(II)(D)(3)(a)

- a. After clearing and excavation of the foundation area and cutoff trench, and prior to placing any fill material;
  - b. After installation of the outlet conduit, and before placing any backfill material around the conduit;
  - c. After construction is completed, and before any water is stored in the reservoir;
  - d. At such other times as determined necessary by the Director. The Director, will, upon seven (7) days notice, inspect and, if satisfactory, approve the completed stage of construction.
4. The owner shall in writing notify the Director upon completion of construction.

### III. Stream Channel Alterations

#### A. Definitions

1. “Alteration” means to obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel, emplacement of material or structures in the stream channel, and diking of the banks.
2. “Stream channel” is a natural water course of perceptible extent with definite beds and banks which confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules and regulations only, the beds of lakes and reservoir pool areas are not considered to be stream channels.
3. “Mean high water mark” is a water level corresponding to the “natural or ordinary high water mark” as defined in Section 58-104(9), Idaho Code, and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive soil of its vegetation and destroy its value for agricultural purposes.
4. “Continuously flowing water” means a sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are part of a stream which is continuously flowing in

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ID405.10(III)(A)(4)

the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water.

5. “Applicant” means any individual, partnership, company, corporation, municipality, county, state or federal agency, or other entity proposed to alter a stream channel or actually engage in constructing a channel alteration whether authorized or not.

6. “Board” means the Idaho Water Resource Board.

7. “Department” means the Idaho Department of Water Resources.

8. “Director” means the Director of the Idaho Department of Water Resources.

9. “Plans” means maps, sketches, engineering drawings, photos, work descriptions, and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration.

B. Application

An application shall be filed at least 60 days before the applicant proposed to start the construction and shall be upon forms available from the Idaho Department of Water Resources and The Corps. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work.

IV. Permit Application Offices

A. Idaho Department of Water Resources

Eastern Regional Office .....(208) 525-7161  
900 North Skyline Drive, Suite A ..... FAX (208) 525-7177  
Idaho Falls, ID 83402-6105

Northern Regional Office .....(208) 769-1450  
1910 Northwest Boulevard, Suite 210..... FAX (208) 769-1454  
Coeur d’Alene, ID 83814-2615

Southern Regional Office .....(208) 736-3033  
1341 Fillmore St., Suite 200 ..... FAX (208) 736-3037  
Twin Falls, ID 83301-3380

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ID405.10(IV(A))

Western Regional Office.....(208) 334-2190  
2735 Airport Way.....FAX (208) 334-2348  
Boise, ID 83705-5082

B. U.S. Army Corps of Engineers, Walla Walla District

Chief, Regulatory Branch .....(509) 527-7150  
201 North Third Avenue  
Walla Walla, WA 99362-1876

U.S. Army Corps of Engineers  
Regulatory Office  
Idaho Panhandle Forest Building  
3815 Schrieber Way  
Coeur d'Alene, ID 83815-8363

U.S. Army Corps of Engineers  
Regulatory Office  
304 North 8<sup>th</sup> Street, Room 140  
Boise, ID 83702-5820

U.S. Army Corps of Engineers  
Regulatory Office  
900 North Skyline Dr., Suite A  
Idaho Falls, ID 83402

SUBPART B – EXHIBITS

ID405.11

**Documentation of Water Rights  
for USDA - Natural Resource Conservation Service  
Assisted projects**

General:

Natural Resource Conservation Service (NRCS) technical assistance for planning, designing, constructing, operating and maintaining a conservation practices is subject to applicable Federal, State of Idaho, or local laws and regulations.

NRCS technical assistance on irrigation related projects (conservation practices) is subject to State of Idaho water law and State of Idaho Department of Water Resources, Rules and Regulations. Landowners are responsible for having or acquiring water rights, obtaining permits and obtaining approval of construction plans as needed from Federal, State, or local agencies as appropriate.

The following information must be provided to your local NRCS Field Office prior to their providing assistance on your irrigation project.

Individual Water Right

<u>Right Number</u>	<u>Amount (cfs or ac-ft)</u>	<u>Beneficial Use (Acres, legal description)</u>	<u>Period of Use</u>
_____	_____	_____	_____
_____	_____	_____	_____

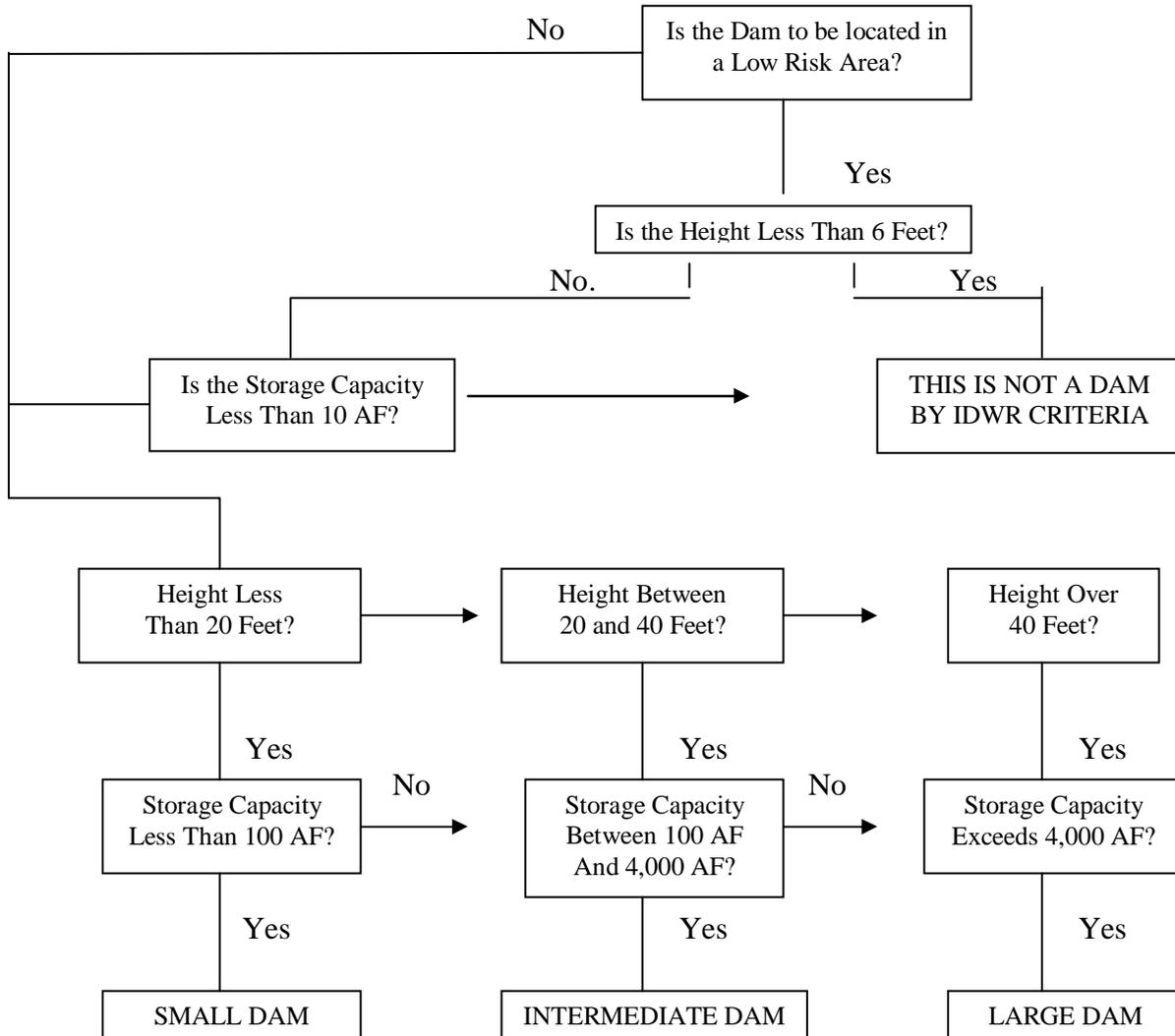
Irrigation District/Irrigation Company Shares

<u>No. of Shares</u>	<u>Amount (cfs or ac-ft)</u>	<u>Beneficial Use (Acres, legal description)</u>	<u>Period of Use</u>
_____	_____	_____	_____
_____	_____	_____	_____

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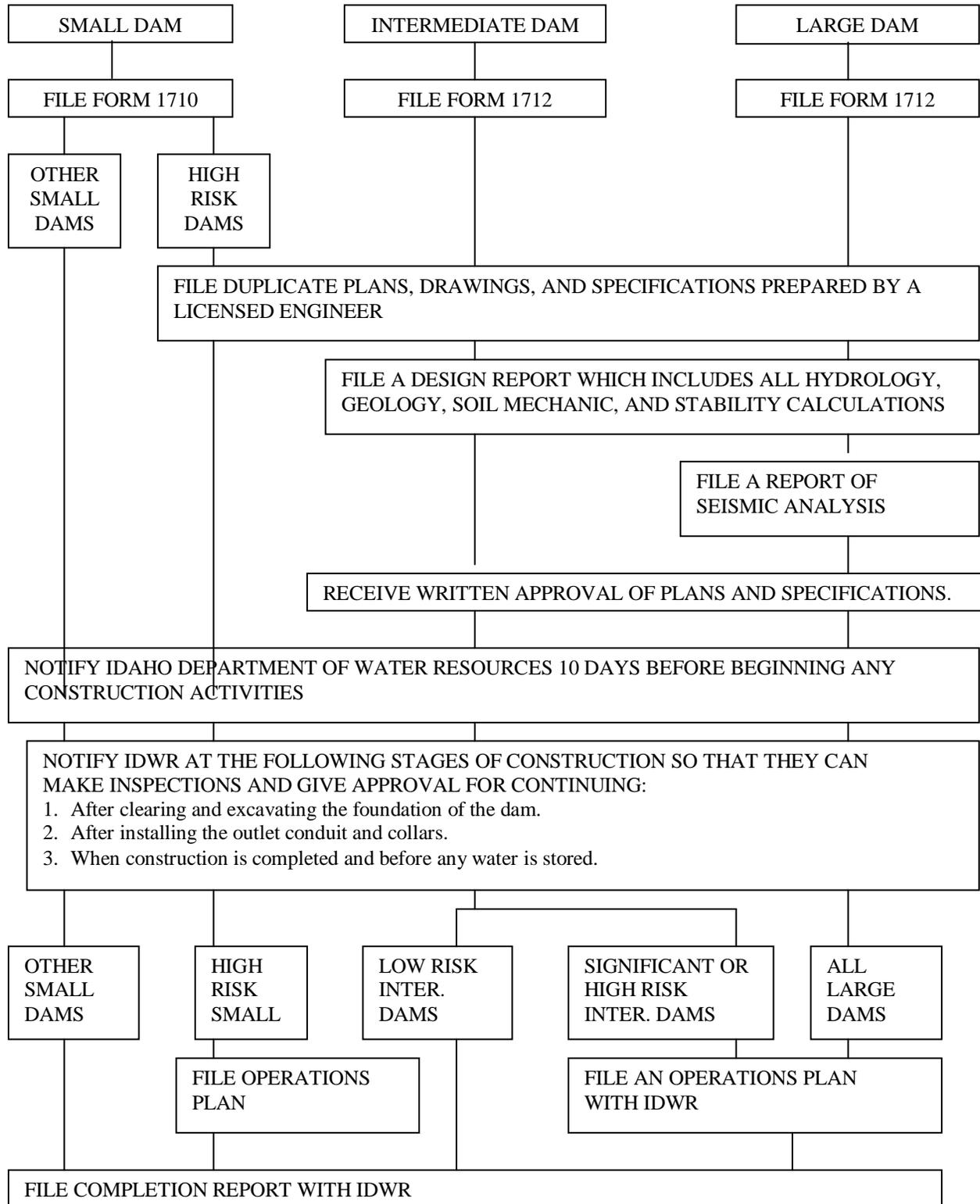
ID405.12

**How to Determine the Classification of Dams  
By IDWR Criteria**



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ID405.13



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### ID405.14

The person who has operational control over the construction plans and specifications and/or the person who has day-to-day supervision and control of construction activities is responsible for obtaining a construction storm water permit. When a construction project disturbs more than one (1) acre of land, the operator is required to apply for permit coverage through U.S. Environmental Protection Agency (EPA). The operator is required to develop and implement a site specific Storm Water Pollution Prevention Plan (SWPPP). As a condition of the permit coverage, the operator must document the erosion, sediment and pollution controls they intend to use, inspect those controls periodically and maintain best management practices throughout the construction.

The EPA has issued a general permit that contains requirements for construction activities in Idaho for sites where storm runoff may enter surface water. The Idaho Construction General Permit and Notice of Intent form are available electronically from the EPA websites [www.epa.gov/npdes/stormwater/cgp](http://www.epa.gov/npdes/stormwater/cgp) or [www.eps.gov/r10/stormwater.htm](http://www.eps.gov/r10/stormwater.htm).