



# Adios, Agua Water Rights in Danger

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# Idaho in My Mind





# Idaho in My Backyard



## Idaho's Water Right Pathway

- Application
- Permit
- Development
- Proof of Beneficial Use
- Field Exam
- License
- Decree (if adjudicated)





## Danger #1: Lapsed Permit

1. Failure to file Proof of Beneficial Use on time.
2. No development actually occurred.

“A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect.”

(Idaho Code § 42-218a)



## Danger #2: Voided Permit

1. No development actually occurred.
2. Failure to comply with permit conditions.

“In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit.”  
(Idaho Code § 42-219(8))





## Danger #2a: Voided Hydropower Permit

Idaho's Hydropower for Idahoans:

Hydropower rights can only be held by residents of the state of Idaho. Corporations must be organized and qualified to do business in Idaho. (Idaho Code § 42-206)

“[I]n the event of its sale, transfer, assignment or of its being mortgaged without a compliance with the provisions of this act, such permit shall be immediately canceled and revoked by the director of the department of water resources.” (Idaho Code § 42-208)



## Danger #3: Abandonment

Well . . . it's not too dangerous.

Abandonment is voluntary.

IDWR has developed simple relinquishment and abandonment forms.

Main reasons for abandonment: Unwillingness to pay annual water district assessments





## Danger #4: Forfeiture

“All rights to the use of water . . . shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter . . . .” (Idaho Code § 42-222(2))

Clear and convincing evidence standard.



## Danger #4: Forfeiture

“For any application for transfer, the department must determine that a right, or part thereof, proposed to be transferred is valid and has not been lost by forfeiture or partial forfeiture.”

“The department will presume, absent other information indicating forfeiture, that the right has not been forfeited if the department’s water measurement records, aerial photography, remote sensing, or other information shows use of water during the previous, consecutive, five-year period.”  
(IDWR Administrator’s Memo)





## Danger #4: Forfeiture

Yeah, but . . .

Land in CRP?

Rights in Water Supply Bank?

Delivered by watermaster?

Ditch losses?

Land cultivated without water?

Unusually wet years?

Affidavits of use?

Resumption of use?

Unauthorized irrigations elsewhere on property?





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