

**DAMS, PONDS, DOCKS AND WATER REMOVAL FROM PUBLIC SOURCES**  
**AUGUST 2007**

I. This is a quick review of controlling water in the state of Idaho. Please keep in mind that these regulations are not merely intended to stifle creativity and restrict the private citizens' ability to landscape and use the water on his property. All of these regulations are there for a reason and, hopefully will help in preserving our lakes, streams and wetlands for future generations. Also, this guide is not intended to be complete or even entirely correct as these regulations change frequently. It should, however, send you in the right direction and give you some idea of what to expect from the various federal, state and local agencies.

II. There are basically three levels of control of water rights in the state of Idaho. These are: 1. Federal – The Corps of Engineers; 2. State – Idaho department of Water Resources (IDWR), Idaho Department of Lands (IDL) and the Idaho Department of Fish & Game (IDFG); 3. County or local - Bonner County Commissioners and Bonner County Planning and Zoning.

1. The Corps of Engineers – located in Coeur d'Alene. Telephone number: (208) 765-7440. The Corps is concerned with waterways and wetlands. Any movement of fill material in quantity requires a permit from them. Also, placing any quantity of fill in wetlands or waters of the US, including ephemeral and intermittent streams, typically requires a permit from the Corps. A permit is required to construct a dam, regardless of storage capacity. Two types of permits could be issued, an individual permit or a nationwide permit, depending on the scope of the work and impact on aquatic resources. It is unlikely that the Corps would issue permits to individual lot owners to place sand below the ordinary high water mark (OHWM) of Lake Cocolalla to create a beach. A permit is required for bank stabilization projects when fill will be placed below the OHWM.

Creating or nourishing of beaches is generally forbidden and bank stabilization requires a permit from the Corps.

Check with the Corps.

III. State agencies – Idaho Department of Water Resources (IDWR) – Telephone number: (208) 762-2800, Idaho Department of Lands (IDL) – telephone number: (208) 263-5104 and Idaho Department of Fish & Game (IDFG) – Telephone number: (208) 769-1414. IDWR and IDFG are located in Coeur d'Alene. IDL for the Pend Oreille area is located in Sandpoint.

1. Idaho Department of Water Resources - IDWR: Before the waters of rivers, streams, lakes, springs, ground water or other sources are diverted in the State of Idaho, a water right must be acquired. The IDWR is the only agency that issues new water rights and IDWR administers all water rights in the State of Idaho. A court may

decree a water right based on an adjudication of the right(s) but IDWR still administers the water rights. A person may have established a water right based on the fact that it was put to beneficial use prior to May 20, 1971, for surface water sources and prior to March 25, 1963 for ground water sources. Domestic uses as defined in Idaho Code 42-111 that are diverted from a ground water source, do not require a water permit. Domestic uses diverted from a surface water source (including springs) require an application for a permit.

A dam that impounds water is considered a diversion and therefore, even if the dam does not require a permit under the department's dam safety program a water right is still required.

The IDWR does not issue dock permits or lake encroachment permits. However, you cannot pump water from a water intake line unless you have a valid water right.

Any alteration of a stream channel below the mean high water mark of a continuously flowing stream requires a permit under the Stream Protection Act (1971).

A well can only be drilled by a driller who is licensed in the State of Idaho. A drilling permit is required for any well drilled, but normally the driller will acquire that permit.

Although it may seem that these regulations change frequently, the Stream Protection Act and the mandatory permit statute for surface water sources were signed into law in 1971, and the mandatory permit statute for ground water resources was signed into law in 1963.

Permits generally cost between \$100 and \$200 each. Check with the responsible agency for the exact cost. Also, check with IDWR for current requirements and regulations.

2. Idaho Department of Lands - (IDL): IDL must provide an encroachment permit prior to the placement of any new structures or changes to existing structures in navigable waters in the State of Idaho. A single family dock with a water intake requires two fees. 1) a permit application fee (presently \$50) and 2) a water encroachment fee (presently \$250). There are size and construction restrictions on these structures which can be provided by IDL.

3. Idaho Department of Fish & Game - (IDF&G): IDF&G requires a permit anytime fish are to be released in any waterway, public or private. These permits are free but an inspection must be made by F&G to ensure that no non-native wildlife is released into public waters and lands.

IV. County Agencies – Bonner County Agencies, to include Bonner County Department of Planning and Zoning, telephone number: (208) 265-1458 and the

Bonner County Board of Commissioners, telephone number: (208) 265-1438. Planning and Zoning governs all site disturbances above the OHWM. The planning and zoning comprehensive plan is presently under review and is expected to be placed in effect within one year, perhaps by as early as March 2008. The Bonner County Commissioners have final authority over the Planning and Zoning recommendations but typically approves them. The comprehensive plan will require a permit from Planning and Zoning for any construction or alteration above the OHWM.

## V. EPA NPDES Construction Stormwater Permit

### Who Needs an EPA NPDES Construction Stormwater Permit?

1. Does your construction project disturb one or more acres of land through clearing, grading, excavating, or stockpiling of fill material? Remember to count the cumulative acreage of the entire project whether in a single or in a multiphase project. This applies even if you are responsible for only a small portion [less than one acre] of the larger project planned over time.
2. Is there any possibility that stormwater could run off your site during construction and into surface waters or conveyance systems leading to surface waters of the state? In almost every case, the answer to this question is yes. However, if the topography and location of your site is such that there is no possibility that rainfall or snowmelt could leave the site or enter a waterway, you do not need permit coverage.

**If you answered "yes" to both of these questions, your construction site needs a permit.** Construction site operators must apply for a permit 60 days prior to discharging stormwater.

For more information go to: <http://www.epa.gov/Region10/> and search for General NPDES permits.

This is a very brief summary of the regulations which are required to be complied with any time you build a pond, stock it with fish, extract water from the lake or build a dock on the lake, among other things. Also, permits must actually be granted (not merely applied for) prior to starting any work requiring a permit. As you can see, these regulations are complex and change frequently. It is in your own best interest to check with each of these agencies before beginning any of the above projects.

We hope that this short pamphlet is helpful in your project.