

# The Water Gram

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**IRWA MARKS**  
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# Requesting Rural Water Public Records from IDWR and DEQ

Rural water utilities and municipalities should have a water rights inventory and keep it updated. The best place to start an inventory is collecting water rights documents with a water right public records request is with the Idaho Department of Water Resources ("IDWR"). To gather information related to wastewater permits and water quality certifications, the ideal place to find such public records is with the Idaho Department of Environmental Quality ("DEQ"). This article will introduce IDWR and DEQ online resources and explain how to file a Public Records Request with the IDWR and DEQ.

## Defining Public Records

Public record is defined very broadly under the Idaho Code. It "includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics." Idaho Code § 74-101(13). "Writing" means information maintained in many forms, including typewritten or handwritten documents as well as pictures, maps, tapes, magnetic or punched cards, and computer media. Idaho Code § 74-101(16). The right to inspect and to receive a copy of public records at all reasonable times is absolute unless the record is exempt from disclosure by law. Idaho Code § 74-102(1). In addition, public agencies are required to extend reasonable comfort and facility to the individual requesting public records. Idaho Code § 74-102(6).

As state agencies subject to Idaho public records law, IDWR and DEQ are obligated to provide any such public record to an inspector who makes a request. Those public records can include documents such as water right Applications, Permits, Certificates, Transfers, water quality permitting and certifications, and any correspondence including email exchanges related to such documents.

## Searching for IDWR and DEQ Online Resources

In Idaho, to find water right public records, first check to see if such information is available on the IDWR website. For example, when it comes to a water rights inquiry, the Water Right and Adjudication Search that can be found on the IDWR website is a helpful resource that provides information pertaining to water

right applications, permits, certificates, transfers, and related information. For a short video introduction on how to search the IDWR website for water rights information, visit to this link: <https://water-law.com/webinars/idaho-water-right-research/>

On the other hand, to gather information about wastewater treatment and disposal system of wastewater facilities in Idaho, the best place to start is with the DEQ online resources. DEQ-issued permits and water quality certification information can be easily accessed under the *Permit* tab on the DEQ website.

If you cannot find the needed information online, sometimes a phone call to IDWR can lead you to the record needed. As a final option, you can file a public records request.

## Filing an IDWR Public Records Request

Pursuant to Idaho public records law, a public agency may require that a request for public records be submitted in writing that specifically describes the subject matter and records sought, including a specific date range for when the records sought were created.

The requesting party shall be as specific as possible and provide sufficient detail when requesting records to enable the public body to locate such records with reasonable effort. This writing typically must provide the requester's name, mailing address, email address, and telephone number. A request for public records and delivery of the public records may be made by electronic mail. Idaho Code § 74-102(4).

IRWA has indicated that the best way to file a public records request with them is to send an email to [publicrecordsrequest@idwr.idaho.gov](mailto:publicrecordsrequest@idwr.idaho.gov). The requesting party should be as specific as possible and provide sufficient detail when requesting records from IRWA. The requester should also provide her name and contact methods when making the request through email.

It is recommended that whatever information you obtained online be mentioned in the request to give IRWA a starting point and avoid unnecessary searches and costs.

## Filing a DEQ Public Records Request

As indicated on the DEQ website, the best way to make a public records request with DEQ is to submit an online public records request form. The online form asks for the requesting party's contact information, and a description of the public records

requested for disclosure in “as much detail as possible.” The request can also be submitted via email, fax, mail, or hand delivery to any DEQ office.

### Responding to a Public Records Request

As provided by Idaho Public Records Law, a public agency has three working days from the date of the receipt of the request to grant or deny the information. Idaho Code § 74-103(1).

However, public agencies should not delay three days to provide information that is readily available. Employees of the public agency are allowed to determine that a longer period of time is needed to locate or retrieve information, notify the individual in writing that more time is needed, and then grant or deny the request in whole or in part within 10 working days following the request. *Id.* If there is no response to the request, it shall be deemed to be denied within 10 working days following the request. Idaho Code § 74-103(2).

Therefore, when a requesting party files a public records request with IDWR or DEQ, they generally can expect a response from the agency within three working days. If the employee determines that a longer period of time is needed to address the request, an additional seven working days may be taken – in which case the requesting party will receive an extension letter. If you do not receive a response from IDWR or DEQ within 10 working days following the request, regardless of reason, the request is deemed denied.

If your public records request is denied, starting from 10 working days following the request, you have the right to file an appeal within 180 days of the mailing date of the denial notice. Idaho Code § 74-115(1).

### Receiving the Requested Public Records

The right to inspect and receive a copy of public records at all reasonable times is absolute unless the record is exempt from disclosure by law. Idaho Code § 74-102(1). When the requesting party makes such request, public agencies such as IDWR and DEQ should produce a copy of the requested record to the requesting party. Idaho Code § 74-101(2). Additionally, a certified copy, if feasible to produce, must be provided upon request. Idaho Code § 74-102(3).

### Fees

Filing a public records request to IDWR and DEQ may incur fees. Idaho Public Records Law allows public agencies to recover the cost of copying public records, the cost of mailing or faxing copies of public records, and labor costs incurred in locating, redacting, copying, and providing access to public records. Idaho Code § 74-102(10).

IDWR has indicated that it may charge fees for requesting public records, depending on the volume and complexity of the requested materials.<sup>1</sup> DEQ’s fee schedule is published on its website for the public to review. As a practical matter, when filing the Request, we recommend the requester include an amount such as “up to \$100, they are willing to pay for

requesting materials” and request IDWR or DEQ advise if the cost exceeds that amount.

### Conclusion

Once the Public Records are received, the utility can prepare an inventory and document any deadlines when they are reviewed. Confirming that IDWR or DEQ has the correct entity name and address associated with the water rights/wastewater permits and water quality certifications is also an important final step. That way, you can make sure that the utility or municipality can receive correspondence from IDWR or DEQ related to its water information.

### About the Authors

*Schroeder Law Offices, P.C.*, was founded by Laura A. Schroeder and represents water-rights clients in six western states and consults internationally. This article was drafted with the assistance of Echo Zhang. Echo is a Law Clerk with Schroeder Law Offices and is a 3L student at the University of Washington. You can read more about this topic and other water rights issues at Schroeder Law Offices’ Water Law Blog, <http://water-law.com/home/blog>.

<sup>1</sup> Indicated by an IDWR staff member during a phone inquiry that commenced on August 16, 2022.



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