

IN THE SENATE

SENATE BILL NO. 1033

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO IRRIGATION; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE AD-
2 DITION OF A NEW SECTION 42-204A, IDAHO CODE, TO PROVIDE FOR THE APPRO-
3 PRIATION OF GROUND WATER FOR SUPPLEMENTAL IRRIGATION USE; AND DECLARING
4 AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
9 ignated as Section 42-204A, Idaho Code, and to read as follows:

10 42-204A. APPROPRIATION OF GROUND WATER FOR SUPPLEMENTAL IRRIGATION
11 USE. (1) The intent of this section is to conserve ground water resources
12 and secure the maximum use and benefit from surface water resources in Idaho
13 by requiring that permits to appropriate ground water to irrigate land with
14 surface water rights for irrigation be conditioned to require use of avail-
15 able surface water as the primary irrigation supply and use of ground water
16 as a supplemental water supply when surface water is not available. Surface
17 water rights include decreed, licensed, claimed, or permitted water rights
18 diverted from surface sources, such as springs, streams, rivers, drains, or
19 lakes.

20 (2) When the department of water resources receives an application to
21 appropriate ground water, as defined in section 42-230(a), Idaho Code, for
22 irrigation purposes, it shall determine whether the proposed place of use:

23 (a) Has appurtenant surface water rights for irrigation purposes; or

24 (b) Is entitled to distribution of surface water from an irrigation
25 district, canal company, ditch users association, or other water
26 delivery entity for irrigation purposes and whether the entity's dis-
27 tribution system is capable of delivering the water to the land.

28 (3) When the department finds the proposed place of use meets the cri-
29 teria of subsection (2) of this section and the requirements of section
30 42-203A(5), Idaho Code, have been met, the department shall condition the
31 permit for irrigation from ground water to:

32 (a) Require use of all surface water rights identified in subsection
33 (2) of this section when irrigating the proposed place of use and limit
34 the use of ground water to those times when the surface water supply is
35 not reasonably sufficient to irrigate the place of use or is not avail-
36 able due to drought, curtailment by priority, or the seasonal startup
37 and shutoff or maintenance schedules for surface water deliveries; and

38 (b) Prohibit the diversion and use of ground water for irrigation pur-
39 poses if use of surface water is intentionally discontinued or reduced
40 or is not deliverable due to nonpayment of annual assessments levied by
41 the water delivery entity.

1 (4) The department may elect to not condition a permit pursuant to sub-
2 section (3) of this section if the department finds that:

3 (a) The appurtenant surface water rights for irrigation are not dis-
4 tributed by a water delivery entity identified by subsection (2) (b) of
5 this section and the applicant demonstrates that the use of surface wa-
6 ter for irrigation is not necessary to protect the local public interest
7 or to conserve water resources in the state of Idaho; or

8 (b) The application is submitted in connection with a proposed or ap-
9 proved mitigation plan or ground water management plan that allows the
10 diversion of ground water to irrigate land with appurtenant surface wa-
11 ter rights.

12 (5) This section, and any determinations by the department concerning
13 the appropriation of ground water as provided in this section, shall be bind-
14 ing upon the applicant and the applicant's successors and assigns in any pro-
15 ceedings before all other state and local governmental entities.

16 SECTION 2. An emergency existing therefor, which emergency is hereby
17 declared to exist, this act shall be in full force and effect on and after
18 July 1, 2023.