

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 559

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO PRESCRIPTIVE OVERFLOW EASEMENTS; AMENDING SECTION 5-246, IDAHO
2 CODE, TO PROVIDE THAT SPECIFIED PROVISIONS RELATING TO PRESCRIPTIVE
3 OVERFLOW EASEMENTS SHALL NOT BE CONSTRUED TO RESTRICT ANY USE OF
4 THE UNDERLYING PROPERTY FOR ANY PURPOSE OTHERWISE CONSISTENT WITH
5 OWNERSHIP EVEN IF THE USE REASONABLY INTERFERES WITH THE STORAGE OF
6 WATER ON THE PROPERTY AND TO CLARIFY THAT THE USE SHALL NOT UNREASONABLY
7 INTERFERE WITH THE STORAGE OF WATER ON THE PROPERTY.
8

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

10 SECTION 1. That Section 5-246, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 5-246. PRESCRIPTIVE OVERFLOW EASEMENTS. In conformity with the
13 limitations of actions time period set forth in sections 5-203 through
14 5-206, Idaho Code, the owner of a dam shall be deemed to have obtained a
15 nonexclusive prescriptive overflow easement over real property which has
16 been inundated or overflowed by the operations of the dam for at least a part
17 of a year for any consecutive five (5) year period prior to commencement
18 of an action by the property owner seeking relief inconsistent with such
19 nonexclusive prescriptive overflow easement. Said dam owner shall be deemed
20 to have not forfeited said nonexclusive prescriptive overflow easement if
21 the reason for the failure to exercise the easement is a lack of water caused
22 by drought or acts of God.

23 It is further provided that if a dam has inundated or overflowed real
24 property for at least a part of a year for the five (5) consecutive years
25 prior to the enactment of this section, then the owner of the dam shall
26 be deemed to have obtained a nonexclusive prescriptive overflow easement
27 hereunder over said real property one (1) year after the enactment of
28 this section, provided, no action seeking relief inconsistent with such
29 nonexclusive prescriptive overflow easement has been commenced by the
30 property owner within one (1) year of the enactment of this section. The
31 provisions of this section shall not be construed to affect the riparian and
32 littoral rights of property owners to have access to and use of waters in
33 this state, or to restrict any use of the underlying property for any purpose
34 otherwise consistent with ownership thereof, even if said use reasonably
35 interferes with the storage of water on the property, but said use shall not
36 unreasonably interfere with the storage of water on the property. Nothing
37 herein shall be deemed to affect any prescriptive overflow easement that any
38 dam owner may have previously acquired under common law. The provisions of
39 this section shall not be construed to apply to the beds of navigable waters
40 lying below the natural or ordinary high watermark as defined in subsection
41 (c) of section 58-1302, Idaho Code, and subsection (9) of section 58-104,
42 Idaho Code, or any other lands owned by the state of Idaho.