

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 608

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO WATER RIGHTS; AMENDING SECTION 42-201, IDAHO CODE, TO PROVIDE AN
2 EXCEPTION FROM WATER RIGHTS REQUIREMENTS FOR CERTAIN MUNICIPALITIES,
3 MUNICIPAL PROVIDERS, SEWER DISTRICTS AND REGIONAL PUBLIC ENTITIES OP-
4 ERATING PUBLICLY OWNED TREATMENT WORKS, TO REQUIRE MUNICIPAL PROVIDERS
5 AND SEWER DISTRICTS TO PROVIDE NOTICE TO THE DEPARTMENT OF WATER RE-
6 SOURCES IF CERTAIN LAND APPLICATION IS TO TAKE PLACE, TO PROVIDE THAT
7 NOTICE SHALL BE ON FORMS FURNISHED BY THE DEPARTMENT AND TO PROVIDE FOR
8 INCLUSION OF ALL REQUIRED INFORMATION; AND AMENDING SECTION 42-221,
9 IDAHO CODE, TO PROVIDE A FEE FOR FILING NOTICE OF LAND APPLICATION OF
10 EFFLUENT.
11

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

13 SECTION 1. That Section 42-201, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL DIVERSION AND
16 APPLICATION OF WATER -- USES FOR WHICH WATER RIGHT NOT REQUIRED -- EXCLUSIVE
17 AUTHORITY OF DEPARTMENT. (1) All rights to divert and use the waters of this
18 state for beneficial purposes shall hereafter be acquired and confirmed un-
19 der the provisions of this chapter and not otherwise. And after the passage
20 of this title all the waters of this state shall be controlled and adminis-
21 tered in the manner herein provided. Such appropriation shall be perfected
22 only by means of the application, permit and license procedure as provided in
23 this title; provided, however, that in the event an appropriation has been
24 commenced by diversion and application to beneficial use prior to the effec-
25 tive date of this act it may be perfected under such method of appropriation.

26 (2) No person shall use the public waters of the state of Idaho except
27 in accordance with the laws of the state of Idaho. No person shall divert any
28 water from a natural watercourse or apply water to land without having ob-
29 tained a valid water right to do so, or apply it to purposes for which no valid
30 water right exists.

31 (3) Notwithstanding the provisions of subsection (2) of this section,
32 water may be diverted from a natural watercourse and used at any time, with or
33 without a water right:

34 (a) To extinguish an existing fire on private or public lands, struc-
35 tures, or equipment, or to prevent an existing fire from spreading to
36 private or public lands, structures, or equipment endangered by an ex-
37 isting fire;

38 (b) For forest practices as defined in section 38-1303(1), Idaho Code,
39 and forest dust abatement. Such forest practices and forest dust abate-
40 ment use is limited to two-tenths (0.2) acre-feet per day from a single
41 watercourse.

1 (4) For purposes of subsection (3) (b) of this section, no person shall
2 divert water from a canal or other irrigation facility while the water is
3 lawfully diverted, captured, conveyed, used or otherwise physically con-
4 trolled by the appropriator.

5 (5) If water is to be diverted from a natural watercourse within a wa-
6 ter district, or from a natural watercourse from which an irrigation deliv-
7 ery entity diverts water, a person diverting water pursuant to subsection
8 (3) (b) of this section shall give notice to the watermaster of the intent
9 to divert water for the purposes set forth in said subsection. In the event
10 that the water to be diverted pursuant to subsection (3) (b) of this section
11 is not within a water district, but an irrigation delivery entity diverts wa-
12 ter from the same natural watercourse, the required notices shall be given to
13 said irrigation delivery entity. For uses authorized in subsection (3) (a)
14 of this section, notice shall not be required but may be provided when it is
15 reasonable to do so.

16 (6) A water right holder, who determines that a use set forth in subsec-
17 tion (3) of this section is causing a water right to which the holder is en-
18 titled to be deprived of water to which it may be otherwise entitled, may pe-
19 tition the director of the department of water resources to order cessation
20 of or modification of the use to prevent injury to a water right. Upon such
21 a petition, the director shall cause an investigation to be made and may hold
22 hearings or gather information in some other manner. In the event that the
23 director finds that an injury is occurring to a water right, he may require
24 the use to cease or be modified to ensure that no injury to other water rights
25 occurs. A water right holder feeling aggrieved by a decision or action of the
26 director shall be entitled to contest the action of the director pursuant to
27 section 42-1701A(3), Idaho Code.

28 (7) This title delegates to the department of water resources exclusive
29 authority over the appropriation of the public surface and ground waters of
30 the state. No other agency, department, county, city, municipal corporation
31 or other instrumentality or political subdivision of the state shall enact
32 any rule or ordinance or take any other action to prohibit, restrict or reg-
33 ulate the appropriation of the public surface or ground waters of the state,
34 and any such action shall be null and void.

35 (8) Notwithstanding the provisions of subsection (2) of this section,
36 a municipality or municipal provider as defined in section 42-202B, Idaho
37 Code, a sewer district as defined in section 42-3202, Idaho Code, or a re-
38 gional public entity operating a publicly owned treatment works shall not be
39 required to obtain a water right for the collection, treatment, storage or
40 disposal of effluent from a publicly owned treatment works or other system
41 for the collection of sewage or stormwater where such collection, treatment,
42 storage or disposal, including land application, is employed in response to
43 state or federal regulatory requirements. If land application is to take
44 place on lands not identified as a place of use for an existing irrigation
45 water right, the municipal provider or sewer district shall provide the de-
46 partment of water resources with notice describing the location of the land
47 application, or any change therein, prior to land application taking place.
48 The notice shall be upon forms furnished by the department of water resources
49 and shall provide all required information.

1 SECTION 2. That Section 42-221, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 42-221. FEES OF DEPARTMENT. The department of water resources shall
4 collect the following fees which shall constitute a fund to pay for legal
5 advertising, the publication of public notices and for investigations, re-
6 search, and providing public data as required of the department in the per-
7 formance of its statutory duties:

8 A. For filing an application for a permit to appropriate the public wa-
9 ters of this state:

10 1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20
11 acre feet or less \$100

12 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s.
13 or for a storage volume greater than 20 acre feet but not exceeding 100
14 acre feet \$250

15 3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s.,
16 or for a storage volume greater than 100 acre feet but not exceeding
17 2,000 acre feet \$250
18 plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet
19 or part thereof over the first 1.0 c.f.s. or 100 acre feet.

20 4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s.
21 or for a storage volume greater than 2,000 acre feet but not exceeding
22 10,000 acre feet \$1,010
23 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet
24 or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

25 5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0
26 c.f.s., or for a storage volume greater than 10,000 acre feet but not ex-
27 ceeding 50,000 acre feet \$2,610
28 plus \$10.00 for each additional c.f.s. or part thereof or 100 acre feet
29 or part thereof over the first 100 c.f.s. or 10,000 acre feet.

30 6. For a quantity greater than 500 c.f.s., or for a storage volume
31 greater than 50,000 acre feet\$6,610
32 plus \$2.00 for each additional 1.0 c.f.s. or part thereof or 100 acre
33 feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

34 B. For filing an application for an extension of time within which to
35 resume the use of water under a vested water right\$100

36 C. For filing application for amendment of permit\$100

37 D. 1. For filing claim to use right under section 42-243, Idaho
38 Code \$100

39 2. For filing a late claim to use a water right under section 42-243,
40 Idaho Code, where the date filed with the department of water resources
41 or, the postmark if mailed to the department of water resources, is:

42 i. After June 30, 1998 \$250

43 ii. After June 30, 2005 \$500

44 iii. For every ten (10) years after June 30, 2005, an addi-
45 tional \$500

46 E. For filing an assignment of permit\$25.00

47 F. For readvertising application for permit, change, exchange, or ex-
48 tension to resume use\$50.00

49 G. For certification, each document\$1.00

- 1 H. For making photo copies of office records, maps and documents for
2 public use A reasonable charge as determined by the department.
- 3 I. For filing request for extension of time within which to submit proof
4 of beneficial use on a water right permit\$50.00
- 5 J. For tasks requiring in excess of one (1) hour research or for comput-
6 erized data provided for public use A reasonable charge as determined
7 by the department.
- 8 K. For filing proof of beneficial use of water and requests for water
9 right license examinations, a fee based upon the rate of diversion claimed in
10 the proof of beneficial use:
- 11 1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20
12 acre feet or less \$50.00
13 except no fee shall be charged for domestic use for which a permit is not
14 required.
- 15 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s.,
16 or for a storage volume greater than 20 acre feet, but not exceeding 100
17 acre feet\$100
- 18 3. For a quantity greater than 1.0 c.f.s., or for a storage volume
19 greater than 100 acre feet \$100
20 plus \$25.00 for each additional c.f.s. or part thereof, or 100 acre feet
21 or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maxi-
22 mum fee not to exceed \$600.
- 23 L. For filing a protest or request to intervene in a protes-
24 ted matter\$25.00
- 25 M. For filing an application to alter a stream channel pursuant to chap-
26 ter 38, title 42, Idaho Code:
- 27 1. Application for recreational dredge permits by residents of the
28 state\$10.00
- 29 2. Application for recreational dredge permits by nonresidents of the
30 state\$30.00
- 31 3. Other applications\$20.00
- 32 N. For receipt of all notices of application within a designated area, a
33 reasonable annual charge as determined by the department.
- 34 O. For filing an application to change the point of diversion, place,
35 period or nature of use of water under a vested water right:
- 36 1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20
37 acre feet or less\$200
- 38 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s.,
39 or for a storage volume greater than 20 acre feet but not exceeding 100
40 acre feet\$500
- 41 3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s.,
42 or for a storage volume greater than 100 acre feet but not exceeding
43 2,000 acre feet\$500
44 plus \$80.00 for each additional c.f.s. or part thereof or 100 acre feet
45 or part thereof over the first 1.0 c.f.s. or 100 acre feet.
- 46 4. For a quantity greater than 20.0 c.f.s. but not exceeding 100
47 c.f.s., or for a storage volume greater than 2,000 acre feet but not
48 exceeding 10,000 acre feet\$2,020
49 plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet
50 or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

1 5. For a quantity greater than 100 c.f.s. but not exceeding 500 c.f.s.,
 2 or for a storage volume greater than 10,000 acre feet but not exceeding
 3 50,000 acre feet\$5,220
 4 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet
 5 or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6 6. For a quantity greater than 500 c.f.s., or for a storage volume
 7 greater than 50,000 acre feet\$13,220
 8 plus \$4.00 for each additional c.f.s. or part thereof or 100 acre feet
 9 or part thereof over the first 500 c.f.s. or 50,000 acre feet.

10 7. For any application to change the nature of use of water under one (1)
 11 or more vested water right(s), an additional fee of \$250 shall apply.

12 P. For filing a notice of land application of effluent as required by
 13 section 42-201(8), Idaho Code\$150

14 All fees received by the department of water resources under the provi-
 15 sions of this chapter shall be transmitted to the state treasurer for deposit
 16 in the water administration account.