

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 73

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO WATER; AMENDING SECTION 42-5249, IDAHO CODE, TO PROVIDE FOR THE  
2 ESTABLISHMENT OF DIVISIONS WITHIN WATER DISTRICTS; AMENDING SECTION  
3 42-5224, IDAHO CODE, TO EXPAND THE POWERS AND DUTIES OF GROUNDWATER DIS-  
4 TRICT BOARDS TO INCLUDE THE ABILITY TO DIVIDE DISTRICTS INTO DIVISIONS;  
5 AMENDING SECTION 42-5240, IDAHO CODE, TO REVISE A PROVISION REGARD-  
6 ING LIENS OF ASSESSMENT AND TO MAKE A TECHNICAL CORRECTION; AMENDING  
7 SECTION 42-5242, IDAHO CODE, TO REVISE A PROVISION REGARDING ENTRY OF  
8 DELINQUENT ASSESSMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING  
9 SECTION 42-701, IDAHO CODE, TO ALLOW FOR A WATER TELEMETRY SYSTEM AND TO  
10 MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN  
11 EFFECTIVE DATE.  
12

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

14 SECTION 1. That Section 42-5249, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 42-5249. ORDER ACCEPTING OR REJECTING PETITION. (1) If the board of  
17 directors deems a proposed annexation not to be in the best interests of the  
18 district to include the lands mentioned in the petition, the board shall re-  
19 ject the petition. But if they deem it for the best interest of the district,  
20 the board may order the lands mentioned in the petition or some part thereof  
21 be annexed to the district.

22 (2) The order shall describe the lands to be annexed to said district  
23 and the board may cause a survey thereof to be made if deemed necessary.  
24 Thereafter the annexed land shall be subject to such assessments from time to  
25 time as the board of directors shall deem right under the circumstances, and  
26 such assessments shall be deemed to be assessments for benefits to said lands  
27 by reason of their annexation to said district. The directors shall state  
28 on their minutes at their next regular meeting which division and election  
29 precinct in said district the said lands so annexed shall be attached, and,  
30 if necessary, the board shall make an order redividing the district into  
31 divisions and election precincts, in the same manner and to like effect, as  
32 near as may be, as provided for that purpose on the formation of a district.

33 (3) If the board determines that it is in the best interest of the dis-  
34 trict, the board may create additional divisions and election precincts in  
35 the district following the annexation of additional lands. Any new division  
36 created within the district for the purpose of conducting elections follow-  
37 ing the annexation of lands must be consistent with the parameters estab-  
38 lished in section 42-5208, Idaho Code. If the board creates a new division  
39 and reallocation, the board shall make an order redividing the district into  
40 divisions, including the new division and election precinct.

1 SECTION 2. That Section 42-5224, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 42-5224. POWERS AND DUTIES OF BOARD OF DIRECTORS. The board shall, in  
4 addition to any other powers and duties provided in this chapter, and pro-  
5 vided that nothing in this chapter shall abrogate or impair the right of any  
6 person to take any action necessary to acquire, protect, challenge or defend  
7 any water right, have the following powers and duties:

8 (1) To acquire, and/or construct, operate, control or use by appro-  
9 priation, grant, purchase, bequest, devise, contract or lease works or  
10 facilities, water rights, water permits or licenses, well-drilling permits,  
11 wells, pipelines, ditches and any other real and personal property (includ-  
12 ing easements and rights-of-way) or contract entitlement within or without  
13 the district necessary or convenient to fully exercise its powers;

14 (2) To sell, lease, encumber, alienate, or otherwise dispose of works  
15 or facilities, water, water rights, wells, pipelines, ditches, reservoirs,  
16 recharge facilities, and any other real and personal property owned by the  
17 district within or without its boundaries, and to incur indebtedness on be-  
18 half of the district as specified in this chapter;

19 (3) To enter into contracts and agreements, cooperative and otherwise,  
20 including contracts with the United States of America and any of its agencies  
21 or instrumentalities, and tribes, and contracts with corporations, public  
22 or private, municipalities, or governmental subdivisions necessary or con-  
23 venient to fully exercise its powers;

24 (4) To hire and retain agents, employees, engineers, hydrologists, ge-  
25 ologists, and attorneys as shall be necessary and convenient to transact the  
26 district's business and to represent the district's interests;

27 (5) To levy assessments for the operation of the district and its pro-  
28 grams;

29 (6) To represent district members, with respect to their individual wa-  
30 ter rights, in general water rights adjudications and other legal and admin-  
31 istrative proceedings or before political bodies, provided that the board  
32 may levy assessments for these matters against only those members who have  
33 given written consent for the representation;

34 (7) To represent district members in proceedings or meetings of a water  
35 district established by the director of the department notwithstanding any  
36 provision to the contrary in chapter 6, title 42, Idaho Code. Provided how-  
37 ever, that the board shall not be authorized to cast a vote in any proceeding  
38 or meeting of a water district established pursuant to chapter 6, title 42,  
39 Idaho Code, on behalf of any district member who has, prior to such proceed-  
40 ing or meeting, given written notice to the board and to the water district  
41 that such district member intends to vote on his own behalf, or on behalf  
42 of any district member who attends such meeting or proceeding and intends to  
43 vote on his own behalf. The board shall provide a verified list of the water  
44 rights that it represents at any water district proceeding or meeting to the  
45 chairman of the water district proceeding or meeting;

46 (8) To appropriate, develop, store, and transport water within the  
47 state;

48 (9) To acquire stock in canal companies, water companies, and water  
49 users' associations;

1 (10) To invest any surplus money in the district treasury pursuant to  
2 the public depository law as contained in chapter 1, title 57, Idaho Code;

3 (11) To develop, maintain, operate and implement mitigation plans de-  
4 signed to mitigate any material injury caused by ground water use within the  
5 district upon senior water uses within and/or without the district;

6 (12) To finance the repair or abandonment of wells in the ground water  
7 district which have experienced or are experiencing declines in water level  
8 or water pressures because of reasons including, but not limited to, flow,  
9 leakage, and waste from improper construction, maintenance, and operation  
10 of wells;

11 (13) To have and exercise the power of eminent domain in the manner pro-  
12 vided by law for the condemnation of private property for easements, rights-  
13 of-way, and other rights of access to property necessary to the exercise of  
14 the mitigation powers herein granted, both within and without the district;

15 (14) To sue and be sued, and be a party to suits, actions and proceed-  
16 ings;

17 (15) To enter into joint powers agreements and/or memoranda of under-  
18 standing with other districts, governmental or quasi-public entities;

19 (16) To develop and acquire water rights for, and operate, aquifer stor-  
20 age or recharge projects;

21 (17) To monitor, measure, study, and implement programs in the inter-  
22 ests of the district's members regarding the protection of ground water di-  
23 versions, depth of water in wells, aquifer water levels and characteristics;

24 (18) To adopt and amend bylaws not in conflict with the constitution and  
25 laws of the state for carrying on the business, objects and affairs of the  
26 board and of the district and to establish a fiscal year;

27 (19) To enter upon land to make surveys, locate district property,  
28 works, or facilities, and to otherwise conduct the affairs of the district;

29 (20) To make, record and report annually to the director sufficient mea-  
30 surements of diversions and water levels of district members to allow the  
31 district to be excluded from any water measurements district created pur-  
32 suant to sections 42-705 through 42-715, Idaho Code;

33 (21) To divide the district into divisions and precincts following the  
34 annexation of lands under sections 42-5245 through 42-5250, Idaho Code, for  
35 the purpose of conducting elections as long as any such division is consis-  
36 tent with the parameters established in section 42-5208, Idaho Code; and

37 ~~(21)~~ (22) To manage and conduct the affairs of the district and to have  
38 and exercise all rights and powers necessary or incidental to or implied from  
39 the specific powers granted herein. Such specific powers shall not be con-  
40 sidered as a limitation upon any power necessary or appropriate to carry out  
41 the purposes and intent of this chapter.

42 SECTION 3. That Section 42-5240, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 42-5240. LIEN OF ASSESSMENT. From and after ~~January~~ February 1 of  
45 any year, all assessments, other than those levied against municipalities,  
46 shall be liens against the land of ground water users to which the water  
47 rights used to determine assessments are appurtenant, and notwithstanding  
48 anything to the contrary in this chapter or any provisions incorporated  
49 therein by reference, shall be superior to the lien of any mortgage or deed of

1 trust, whether prior in time or not, provided that notice of the assessment  
 2 delinquency is sent to the mortgage or deed of trust holder at least sixty  
 3 (60) days prior to any foreclosure sale of the property. Said assessment  
 4 liens shall not be removed until the assessments are paid or the property  
 5 is sold for the payment thereof, and shall constitute such lien until paid.  
 6 Upon any sale of the property, the purchaser at such sale shall take the  
 7 property subject to any annual assessments of the district subsequent in  
 8 time to the assessment for which the foreclosure occurred. Nothing in this  
 9 section alters or affects any liens of water related districts or entities  
 10 authorized pursuant to Idaho law.

11 SECTION 4. That Section 42-5242, Idaho Code, be, and the same is hereby  
 12 amended to read as follows:

13 42-5242. ENTRY OF DELINQUENT ASSESSMENTS -- FILING OF DELINQUENCY  
 14 LIST. (1) On or before ~~the 15th day of January~~ February 15 of each year the  
 15 treasurer shall enter the amount of all delinquent assessments ~~upon~~ on the  
 16 assessment book, which entry shall be considered to be dated as of the first  
 17 day of ~~January~~ February. Such entry shall have the force and effect of a sale  
 18 to the treasurer of the district as grantee in trust for the district of all  
 19 property to which a lien has attached as a result of such unpaid assessments.

20 (2) The treasurer shall compile a list of such delinquency entries  
 21 which shall contain the names of the persons or entities to whom the assess-  
 22 ments were directed and the amount of such delinquent assessments together  
 23 with the amount of the penalties to be added thereto. A certified copy of the  
 24 delinquency list, duly acknowledged by the treasurer, shall be filed with  
 25 the county recorder of each county in which the properties affected by such  
 26 delinquent assessments are located, and the treasurer shall then provide by  
 27 certified mail a notice of delinquency to each ground water user having a  
 28 delinquent assessment.

29 (3) Upon the payment in full of any delinquent assessment and penalty  
 30 that was entered on a recorded delinquency list, the treasurer shall file  
 31 with the county recorder of each county in which the list of delinquent as-  
 32 sements was recorded an acknowledged notice that the delinquent assess-  
 33 ment and any penalty owed has been paid in full. The treasurer shall file any  
 34 notices of payment of delinquent assessments with the county recorders, as  
 35 required, on at least a monthly basis.

36 SECTION 5. That Section 42-701, Idaho Code, be, and the same is hereby  
 37 amended to read as follows:

38 42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASUR-  
 39 ING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON FAILURE TO INSTALL AND  
 40 MAINTAIN -- MEASURING AND REPORTING OF DIVERSIONS -- PENALTY FOR FAILURE TO  
 41 COMPLY -- ENFORCEMENT PROCEDURE -- REPORT FILING FEE. (1) The appropriators  
 42 or users of any public waters of the state of Idaho shall maintain to the  
 43 satisfaction of the director of the department of water resources suitable  
 44 headgates and controlling works at the point where the water is diverted.  
 45 Each device shall be of such construction that it can be locked and kept  
 46 closed by the watermaster or other officer in charge, and shall also be of  
 47 such construction as to regulate the flow of water at the diversion point.

1 Each such appropriator shall construct and maintain, when required by the  
2 director of the department of water resources, a rating flume, water teleme-  
3 try system, or other measuring device at such point as is most practical in  
4 such canal, ditch, wellhead or pipeline for the purpose of assisting the  
5 watermaster or department in determining the amount of water that may be  
6 diverted into said canal, ditch, wellhead or pipeline from the stream, well  
7 or other source of public water. Plans for such headgates, rating flumes,  
8 water telemetry system, or other measuring devices shall be approved by the  
9 department of water resources.

10 (2) If an appropriator determines that installation and maintenance  
11 of a measuring device required by the director would be burdensome for his  
12 diversion, the appropriator may, upon approval of the director, execute an  
13 agreement with the director and submit to the director such information and  
14 technical data concerning the diversion and pumping facilities as the di-  
15 rector determines necessary to establish the relationship of power usage to  
16 water withdrawal by any pump used to divert public water.

17 (3) Any appropriator or user of the public waters of the state of Idaho  
18 that neglects or refuses to construct or maintain such headgates, control-  
19 ling works, or measuring devices, or has not executed an agreement in lieu  
20 of a measuring device as provided in subsection (2) of this section, upon  
21 receiving ten (10) days' notice from the director of the department of wa-  
22 ter resources within which to begin and diligently pursue to completion the  
23 construction or installation of the required device or devices or to begin  
24 and diligently pursue to completion a remedy to such defects as exist in  
25 accordance with said notice, then the director of the department of water  
26 resources may order the duly qualified and acting watermaster of the water  
27 district to shut off and refuse to deliver at the point of diversion, the  
28 water owned by such appropriator or user until the user does construct and  
29 maintain such headgates, controlling works or measuring devices or remedy  
30 the defects which exist or the director may take action pursuant to section  
31 42-1701B, Idaho Code, to enforce the requirement to construct, install or  
32 maintain such devices.

33 (4) The appropriators or users of the public waters of the state of  
34 Idaho shall be given a reasonable time within which to complete construction  
35 of such headgates, controlling works or measuring devices, depending ~~upon~~ on  
36 the size and extent thereof, when due diligence has been used in the prose-  
37 cution of such work.

38 (5) All appropriators of the public waters of the state of Idaho who are  
39 given thirty (30) days' written notice by the director prior to the beginning  
40 of the irrigation season but no later than March 15 of any year, shall mea-  
41 sure their water diversions and report said diversions annually thereafter  
42 on a form approved by the director of the department of water resources.  
43 Such report shall include: a legal description of the point of diversion,  
44 the number assigned to each water right diverting from the public waters  
45 of the state, the maximum authorized rate of diversion, the maximum rate  
46 at which diversions have been made during the reporting period, the total  
47 volume diverted during the reporting period, and a description of the phys-  
48 ical changes to the diversion works that have been made during the reporting  
49 period. The appropriator shall furnish each year the depth to water in any  
50 well prior to commencement of pumping, the depth to water during the pumping

1 period, and the pressure in the pipe distribution system during diversion if  
2 the well is not free flowing. When the director of the department of water  
3 resources determines that any person is in substantial violation of any pro-  
4 vision of this section or any rule, permit, condition of approval or order  
5 issued or promulgated pursuant to this section, the director may commence an  
6 administrative enforcement action by issuing a written notice of violation  
7 in accordance with the provisions of section 42-1701B, Idaho Code. Subsec-  
8 tions (5) and (6) of this section shall not apply to:

9 (a) ~~any~~ Any appropriator or water user with respect to a water right in-  
10 cluded in an active water district created pursuant to chapter 6, title  
11 42, Idaho Code, the annual report of which meets the reporting require-  
12 ments of section 42-708, Idaho Code;

13 (b) ~~any~~ Any irrigation district or ground water district having shown  
14 to the satisfaction of the director that they are currently making and  
15 recording sufficient measurements of their diversions with measuring  
16 methods acceptable to the director and upon their agreement to provide  
17 an annual report of their diversions to the director in substantially  
18 the same form as required in section 42-708, Idaho Code; and

19 (c) ~~any~~ Any water right included in an active water measurement dis-  
20 trict created pursuant to this chapter.

21 (6) The director of the department of water resources shall collect  
22 a report processing fee of twenty-five dollars (\$25.00) per diversion re-  
23 quired to be reported, including those diversions covered by an agreement  
24 in lieu of a measuring device as provided in subsection (2) of this section.  
25 Such fee shall be submitted with the annual report of diversions and well  
26 data. All such fees received by the department shall be deposited in the wa-  
27 ter administration account created pursuant to section 42-238a, Idaho Code,  
28 for use by the department to collect, analyze and report water use informa-  
29 tion and to regulate water withdrawal and use.

30 (7) All domestic uses, as defined in section 42-111, Idaho Code, and all  
31 stock watering uses, as defined in section 42-1401A, Idaho Code, shall be ex-  
32 empt from the measuring device installation and maintenance, measuring and  
33 reporting requirements of this section.

34 SECTION 6. An emergency existing therefor, which emergency is hereby  
35 declared to exist, this act shall be in full force and effect on and after  
36 July 1, 2025.