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**S1083: Idaho’s Domestic Use Exemption
 Identifying Challenges; Developing Solutions**

The Law:

- Generally, Idaho Law requires an Application for Permit for new water uses.
- Once approved, the right is administered in priority – including potential curtailment in times of shortage.
- However, domestic uses (*see insert*) do not require an application and are not subject to administration.

**Domestic Use Defined to Include
 (I.C. § 42-111)**

- Up to 13,000 gallons per day
- 1 home
- 1/2 acre irrigation
 (generally used for lawns, gardens, trees, shrubs, and/or small pastures)

The Challenge:

- Idaho faces groundwater declines throughout the state – including the Eastern Snake Plain, the Wood River Valley, Mountain Home, and several North Idaho aquifers.
- IDWR has designated many areas as Ground Water Management Areas or Critical Ground Water Areas and has issued moratoriums on new water right development.
- The State and water communities have spent tens of millions of dollars addressing declining aquifer through recharge, infrastructure upgrades, fallowing acres, etc.
- This has led to extensive litigation.

Year	Dom. Wells
2004	4,184
2005	4,508
2006	4,143
2007	3,805
2008	2,449
2009	1,650
2010	1,344
2011	1,131
2012	1,144
2013	1,665
2014	1,955
2015	2,120
2016	2,338
2017	2,319
2018	2,512
2019	2,859
2020	3,520
2021	4,295
2022	4,102
2023	3,653
TOT.	55,696

The Numbers:

- Idaho has seen a dramatic increase in domestic exempt wells, with over 55,000 since 2004 (see graph for the last 20 years).
- This equates to over 27,500 acres of unregulated irrigation

The Collaborative Effort

- For over 3 years, IWUA has engaged cities, counties, developers, realtors, state agencies, the Farm Bureau, well drillers, and other stakeholders.
- Seeking to find collaborative solutions to various stakeholder concerns.

Idaho’s water user community has asked the question: Is it time to do something different?

We believe the answer is yes. S1083 was developed to address several concerns relating to the use of domestic exempt wells.

The Concern #1 (Fairness in Administration): Each year, the State and water users spend millions of dollars to address declining ground water supplies. Since 2004, over 27,500 acres of domestic exempt irrigation has been developed in Idaho. These domestic exempt uses are not subject to curtailment and do not contribute to efforts to resolve ground water concerns.

The Solution #1: Creating I.C. § 42-227(4)

- In areas designated as Ground Water Management Areas, Critical Ground Water Areas, or Moratorium Areas, ***the domestic use exemption will only apply to in-home and livestock uses.***
- In these areas, any irrigation or other uses would require an Application for Permit, including possible mitigation, and will be subject to administration.
- Outside of these areas, the domestic use exemption will remain unchanged.

The Concern #2 (Water Quality): Each new well is an additional opportunity for contaminants to reach Idaho's aquifer.

The Solution #2: Creating I.C. § 42-111(3)

- Allows multiple domestic exempt uses for in-home purposes to be combined into 1 well.
- Historically, separate wells were required for each use.
- Permitting requirements for shared / community wells and public water systems remains unchanged.

The Concern #3 (Enforcement): Current statutory authorities are ineffective at enforcing compliance with the domestic use exemption

The Solution #3: Creating I.C. § 42-1701C

- Establishes a streamlined process for ensuring compliance with the domestic use exemption. Elements include:
 - Notice of possible violation
 - Opportunity to respond and correct any violation
 - Increased penalties for failure to correct noncompliance

The Concern #4 (Local Government Clarity): There is a need to clarify authorities relative to development and water.

The Solution #4: Amendments to Local Government Code Sections

- Requires compatibility for systems installed within 1-mile of municipal service area
- Requires that irrigation water remain with the land following development
- Authorizing consideration of water conditions in planning efforts

Other amendments are proposed to improve readability and clean up redundant or outdated language.



S1083 Q&A

Legislation RE: Idaho's Domestic Well Exemption

Was this legislation developed through a collaborative process?

Yes. For over 3-years, IWUA engaged water users (surface and ground), cities, counties, well drillers, developers, realtors, and others in an effort to find a meaningful solution that will work for Idaho stakeholders.

Will this legislation impact existing domestic uses?

In part. Limitations on new exempt domestic uses will only apply to those developed after the enactment of this legislation. However, the newly created section 42-1701C establishes a streamlined mechanism for enforcing compliance with the domestic use exemption and will apply to all exempt domestic uses.



Moratorium Areas in Idaho

Will this legislation limit the scope of all exempt domestic wells?

No. This legislation only limits the use of exempt domestic wells to areas designated as ground water management areas, critical ground water areas, or moratorium areas (see maps). In those areas, the domestic use exemption only applies to in-home and livestock uses within subdivisions. Irrigation or other uses will require a water right.

The legislation does not impact the domestic use exemption anywhere else in the state or for uses outside of subdivisions.



GWMA / CWMA in Idaho

Why does this only apply to subdivisions?

Subdivisions represent the largest use of exempt domestic wells in Idaho and place significant pressure on local aquifers. Throughout our collaborative discussions, workgroup members discussed multiple paths forward. Ultimately, settling on restricting the use in subdivisions.

Will this legislation really benefit Idaho's ground water? Isn't domestic use just a fraction of overall use (particularly compared to irrigation)?

Over 90% of Idaho's water is used for agricultural purposes, like irrigation. Each of these uses have water rights that are subject to administration (including curtailment) in times of

shortage. Furthermore, Idaho's irrigation communities have committed significant time and money to address impacts to water supplies.

Domestic and municipal uses account for 2-3% of Idaho's total water use. Like ag water users, municipalities have water rights that are administered and have committed significant time and money to address their impacts to Idaho's water supplies.

The use of water for exempt domestic purposes is not insignificant. Since 2004, nearly 56,000 new exempt domestic wells were drilled – authorizing nearly 28,000 acres of irrigation. Like ag and municipal water users, all uses contributing to water supply challenges should be engaged in finding solutions.

Is it true exempt domestic wells are not subject to curtailment in times of shortage?

Yes. Exempt domestic uses are not subject to the Application for Permit requirements and, therefore, not subject to administration in times of shortage. See I.C. §§ 42-111 & 42-227.

Will this legislation impact private property rights or represent government overreach?

No. S1083 ensures that Idaho's water-related constitutional provisions, and the expectations created thereby, are satisfied.

The collaborative workgroup is mindful that Idahoans place a high value on private property rights – including water rights. See I.C. § 55-101 (“real property” includes water rights).

However, an interest in water is different than an interest in land. Specifically, while an individual may own land, water is owned by the State and a water right reflects the ability to use a portion of the State's water:

- *Art. XV, sec. 1: The state owns the waters within its borders and a water right reflects a right to use a portion of those waters. See also I.C. 42-101 (“All the waters of the state ... are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment”)*
- *Art. XV, sec. 1: The right to use water is “subject to the regulations and control of the state.”*
- *Art. XV, sec. 3: Those using water are entitled to have that water administered in priority – meaning that if there is not sufficient water, junior uses must be administered. “Priority of appropriation shall give the better right as between those using the water.” See also I.C. 42-106 (“As between appropriators, the first in time is first in right.”)*

Exempt domestic uses have historically not be subject to administration and S1083 will subject some future (new) domestic uses to regulation. That does not mean, however, that S1083 creates an impairment of private property rights or government overreach. As Idaho's constitution recognizes, any use of water constitutes a right to use the state's water subject to regulation and subject to priority administration. These fundamental rights extend to all existing and future water uses.