

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 16
ARTESIAN WELLS

42-1601. WELL NOT CONTROLLED A COMMON NUISANCE -- APPROVAL OF DIRECTOR -- RESERVOIRED WATER -- MAINTENANCE OF ARTESIAN WELLS. (1) Any person owning or controlling a flowing artesian well, which is not capped, equipped or furnished with such mechanical appliance as will readily control the flow of water from such well, shall be guilty of a misdemeanor and such well is hereby declared to be a common nuisance; and any person owning or controlling a flowing artesian well, which is capped, equipped or furnished with a mechanical appliance for arresting and preventing the flow of water therefrom, which cap, equipment or mechanical appliance is of a type that has not been approved by the director of the department of water resources, shall be guilty of a misdemeanor and such well is hereby declared to be a common nuisance: provided, however, that in cases where the waters of artesian wells are reservoiried and controlled so that waste is not committed and a common nuisance created and where the pressure of water in a reservoir automatically causes wells to cease to flow, such mechanical contrivances may be dispensed with by obtaining the consent of the director of the department of water resources.

(2) Any person owning or controlling an artesian well shall maintain the well to prevent waste or contamination of ground waters through leaky casings, pipes, fittings, valves, pumps, seals or through leakage around the outside of the casings, whether the leakage is above or below the land surface.

(3) The owner of the land on which the well is located shall be deemed to own the well unless a deed, covenant, contract, easement, or other documentation acceptable to the director is available to demonstrate that the well is owned by another.

(4) If a ground water management district created pursuant to chapter 51, title 42, Idaho Code, has adopted and is implementing a plan for the repair of leaking artesian wells acceptable to the director of the department of water resources, then the director of the department of water resources will not take any administrative or judicial action to require repair of a well within the ground water management district if the person owning the well is an active participant in the ground water management district.

[(42-1601) 1921, ch. 196, sec. 1, p. 399; I.C.A., sec. 41-1401; am. 1987, ch. 347, sec. 10, p. 753; am. 1995, ch. 294, sec. 1, p. 1036.]

42-1602. UNNECESSARY FLOW UNLAWFUL -- USE FOR DOMESTIC PURPOSES. It shall be unlawful for the owner, tenant, or occupant of the land upon which such well is situated to cause, permit, or suffer, such common nuisance, or suffer or permit it to remain or continue; and it shall be unlawful for any person owning, possessing or occupying any land, upon which is situated an artesian well, to cause, suffer or permit the water to unnecessarily flow from such well or to go to waste: provided, however, that it shall be lawful for any such person to insert a stop and waste cock, not exceeding one (1) inch in diameter, in the piping of such well and to take and use water therefrom through such stop and waste cock at any time for household, stock or domestic purposes.

[(42-1602) 1921, ch. 196, sec. 2, p. 399; I.C.A., sec. 41-1402.]

42-1603. APPLICATION FOR APPROVAL OF CONTROL DEVICE -- APPROVAL NECESSARY. Every person referred to in section 42-1602[, Idaho Code,] shall apply to the director of the department of water resources for the approval of any installed or proposed mechanical device for controlling the flow of water from such artesian well; and in such application shall describe the cap, equipment or mechanical appliance, with which such well is equipped or with which it is proposed to equip any such well, and shall change, alter or install only such equipment as shall be approved by the director of the department of water resources.

[(42-1603) 1921, ch. 196, sec. 3, p. 399; I.C.A., sec. 41-1403.]

42-1604. ARTESIAN WELL DEFINED. For the purposes of this chapter, an artesian well is defined as any well, as defined in subsection (b) of section 42-230, Idaho Code, which encounters pressurized ground water or low temperature geothermal resource under sufficient head to rise above the elevation at which it was first encountered whether or not the fluid flows at land surface. If the fluid level stands above land surface, the well is a flowing artesian well.

[(42-1604) 1921, ch. 196, sec. 4, p. 399; I.C.A., sec. 41-1404; am. 1987, ch. 347, sec. 11, p. 754.]

42-1605. ENFORCEMENT PROCEDURE -- INJUNCTIVE RELIEF -- CRIMINAL PENALTIES. (1) When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. The director may petition the district court for injunctive relief in order to prevent damage pending the outcome of enforcement proceedings before the director.

(2) Criminal penalties. Any person who willfully or negligently violates any of the provisions of this chapter shall, for each offense, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than three hundred dollars (\$300) and not more than one thousand dollars (\$1,000). Each day upon which such violation occurs shall constitute a separate violation.

[(42-1605) 1921, ch. 196, sec. 5, p. 399; I.C.A., sec. 41-1405; am. 1987, ch. 347, sec. 12, p. 754; am. 1993, ch. 216, sec. 34, p. 617; am. 1998, ch. 173, sec. 7, p. 606.]

42-1607. INVENTORY OF ARTESIAN WELLS -- PLUGGING WELLS. (1) The director of the department of water resources shall initiate a program to inventory and locate artesian wells throughout the state.

(2) The director of the department of water resources shall plug abandoned artesian wells or artesian wells where the owner cannot be ascertained.

(3) For artesian wells which are not in compliance with Idaho minimum well construction standards, the owner shall be required to have the well repaired in compliance with Idaho minimum well construction standards promulgated pursuant to section 42-238, Idaho Code, so as to preclude the wasting or commingling of water. The repairs shall be paid for by the owner of the

well, and if repairs are not made within a maximum of one (1) year following notification, the director of the department of water resources may order the owner to plug the well. The director upon good cause shown may grant an additional time period not in excess of two (2) years for the owner to make repairs of the well. If the well is not plugged within thirty (30) days of the order, or other longer time period as provided in the order, the director may plug or cause the well to be plugged at the owner's expense. For the period of July 1, 1987, to June 30, 1992, the director of the department of water resources shall promulgate rules to implement a cost-sharing program to assist owners of wells which have been ordered repaired or plugged pursuant to this subsection. The rules shall provide that up to fifty percent (50%) of the cost of the repairs or plugging shall be paid by the department of water resources based on an applicant's ability to pay and moneys available for this purpose.

(4) Any person owning or controlling an artesian well which has been ordered repaired or plugged by the director of the department of water resources pursuant to subsection (3) of this section shall be liable for the costs of the repair or plugging if it was undertaken by the department of water resources. All moneys owed under the provisions of this section shall be paid to the director. The director shall charge interest on the amount owed in an amount no greater than twelve percent (12%) per annum. The director shall deposit all moneys collected into the water administration account. Moneys owed pursuant to the provisions of this section shall be collected in a civil action brought in the district court in accordance with subsection (5) of this section.

(5) Any person aggrieved by a final order of the director entered pursuant to the provisions of this section may appeal to the district court within twenty-eight (28) days of the issuance of the order. The appeal shall be heard and determined in accordance with chapter 52, title 67, Idaho Code. The director through the attorney general may petition the district court for injunctive relief or a temporary restraining order to prevent irreparable damage pending the outcome of proceedings before the director pursuant to the provisions of this section. The director through the attorney general may commence a civil action in the district court to enforce the provisions of any final order of the director issued pursuant to the provisions of this section.

[42-1607, added 1987, ch. 347, sec. 13, p. 756; am. 1993, ch. 216, sec. 35, p. 618.]