

IN THE SENATE

SENATE BILL NO. 1278

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO WATER; AMENDING SECTION 42-201, IDAHO CODE, TO PROVIDE THAT A
2 PERSON OR ENTITY OPERATING A CANAL OR CONDUIT FOR IRRIGATION OR OTHER
3 BENEFICIAL USES AUTHORIZED BY A WATER RIGHT THAT PERMITS WATER TO BE
4 DIVERTED FROM A NATURAL WATERCOURSE FOR SUCH PURPOSES SHALL NOT BE RE-
5 QUIRED TO OBTAIN AN ADDITIONAL WATER RIGHT FOR THE INCIDENTAL USE OF
6 THAT SAME WATER WHERE THE WATER IS DIVERTED FOR IRRIGATION OR OTHER
7 BENEFICIAL USE AND THEREAFTER USED TO GENERATE HYDROELECTRICITY IN THE
8 CANAL OR CONDUIT, TO PROVIDE CONDITIONS, TO PROVIDE THAT THE INCIDENTAL
9 HYDROPOWER USE SHALL BE JUNIOR TO AND FULLY SUBORDINATED TO ALL EXISTING
10 AND FUTURE USES AND SHALL BE NONCONSUMPTIVE AND TO PROVIDE FOR CERTAIN
11 WRITTEN NOTICE.
12

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

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

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

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

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

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

39 (b) For forest practices as defined in section 38-1303(1), Idaho Code,
40 and forest dust abatement. Such forest practices and forest dust abate-
41 ment use is limited to two-tenths (0.2) acre-feet per day from a single
42 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 (9) Notwithstanding the provisions of subsection (2) of this section, a
2 person or entity operating a canal or conduit for irrigation or other benefi-
3 cial uses authorized by a water right that permits water to be diverted from a
4 natural watercourse for such purposes shall not be required to obtain an ad-
5 ditional water right for the incidental use of that same water where the wa-
6 ter is diverted for irrigation or other beneficial use and thereafter used to
7 generate hydroelectricity in the canal or conduit, if (a) the use for hydro-
8 electric purposes does not increase the rate of diversion of water from the
9 natural watercourse, and (b) the person or entity has the right to generate
10 electricity under a license or exemption issued under the federal power act,
11 a lease of power privileges or other authorization, agreement or contract
12 with reclamation or other federal, state or local governmental agency. The
13 incidental hydropower use shall be junior to and fully subordinated to all
14 existing and future uses and shall be nonconsumptive. To qualify for this
15 exemption, the person or entity must give written notice to the department
16 of water resources and the watermaster describing the hydropower use, loca-
17 tion and capacity of the project upon completion of the project. The notice
18 must include a copy of the order or document authorizing the project. The no-
19 tice must also certify that the incidental use of water for hydropower pur-
20 poses under the existing water right meets all the requirements of this sub-
21 section.