

IN THE SENATE

SENATE BILL NO. 1056

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO GROUND WATER DISTRICTS; REPEALING SECTION 42-5244, IDAHO CODE,  
2 RELATING TO DELINQUENT ASSESSMENTS AND NONPAYMENT OF MITIGATION COSTS;  
3 AMENDING CHAPTER 52, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SEC-  
4 TION 42-5244A, IDAHO CODE, TO PROVIDE FOR THE APPORTIONMENT OF MITIGA-  
5 TION PLAN OBLIGATIONS AND TO PROVIDE FOR SEPARATE MITIGATION PLANS BY  
6 NONIRRIGATORS; AND AMENDING CHAPTER 52, TITLE 42, IDAHO CODE, BY THE  
7 ADDITION OF A NEW SECTION 42-5244B, IDAHO CODE, TO PROVIDE FOR DELIN-  
8 QUENT ASSESSMENTS AND NONCOMPLIANCE WITH APPORTIONMENT OF MITIGATION  
9 PLAN OBLIGATIONS, TO PROVIDE FOR ACTION BY THE DIRECTOR, AND TO PROVIDE  
10 FOR HEARINGS.  
11

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

13 SECTION 1. That Section [42-5244](#), Idaho Code, be, and the same is hereby  
14 repealed.

15 SECTION 2. That Chapter 52, Title 42, Idaho Code, be, and the same is  
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
17 ignated as Section 42-5244A, Idaho Code, and to read as follows:

18 42-5244A. APPORTIONMENT OF MITIGATION PLAN OBLIGATIONS. (1) The board  
19 of directors may apportion among district members mitigation plan obliga-  
20 tions requiring district members to limit the amount of water diverted under  
21 their respective ground water rights or perform other actions to mitigate  
22 material injury to senior priority water rights caused by ground water use  
23 within the district.

24 (2) Each member shall bear a proportionate share of the district's to-  
25 tal mitigation obligation. The proportionate share shall be based on:

26 (a) The ratio which the quantity of water the member is authorized to  
27 divert under the member's ground water right(s) bears to the total quan-  
28 tity of water authorized for diversion under the ground water rights of  
29 all members of the district; or

30 (b) The ratio which the number of acres the member is authorized to ir-  
31 rigate under the member's ground water right bears to the total number  
32 of acres authorized for irrigation under the ground water rights of all  
33 members of the district.

34 (3) The board shall adjust each member's proportionate share of the  
35 district's obligation based on priority date, unless the mitigation plan  
36 benefits all members equally. The board may additionally adjust a member's  
37 proportionate share of the district's obligation based on consumptive use  
38 under the member's ground water rights or other attributes of the member's  
39 ground water rights.

40 (4) Any nonirrigator who is a member of a ground water district, or  
41 whose ground water rights are appurtenant to property located within a

1 ground water district, may propose a separate mitigation plan to the di-  
2 rector. If the director approves the nonirrigator's mitigation plan, and  
3 the nonirrigator implements the mitigation plan, the nonirrigator shall be  
4 entitled to a credit for the contribution made by that nonirrigator's miti-  
5 gation plan toward the district's mitigation obligation as determined by the  
6 director.

7 SECTION 3. That Chapter 52, Title 42, Idaho Code, be, and the same is  
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
9 ignated as Section 42-5244B, Idaho Code, and to read as follows:

10 42-5244B. DELINQUENT ASSESSMENTS -- NONCOMPLIANCE WITH MITIGATION  
11 PLAN. A water user who is delinquent in the payment of any assessment under  
12 this chapter, or who has failed to comply with any apportionment of miti-  
13 gation obligations imposed by the board under this chapter, shall not be  
14 entitled to divert ground water until such delinquent assessment is paid in  
15 full and noncompliance is remedied in full. To commence enforcement, the  
16 district shall submit to the director a report documenting the delinquent  
17 assessment or noncompliance with the apportionment of mitigation plan obli-  
18 gations. For delinquent assessments, the report shall contain an accounting  
19 of the basis for the assessment, the apportionment of those assessments  
20 among district members, and the ground water user's delinquency in the pay-  
21 ment of those assessments. For noncompliance with the apportionment of  
22 mitigation plan obligations, the report shall identify the mitigation plan  
23 under which the mitigation plan obligations were apportioned, explain the  
24 basis for the apportionment of those obligations among district members,  
25 and document the water user's noncompliance with the apportioned mitigation  
26 obligations. If, after the director analyzes information in the report, the  
27 director concludes that the district has reasonably apportioned those as-  
28 sements based on the factors set forth in section 42-5232(7), Idaho Code,  
29 or has reasonably apportioned those mitigation plan obligations based on  
30 the factors set forth in section 42-5244A, Idaho Code, the director shall  
31 instruct the water master to curtail all ground water diversions by the  
32 water user for which assessments are delinquent or for which the user has  
33 not complied with the mitigation obligations apportioned to the user. Any  
34 person aggrieved by the action of the director and who has not previously  
35 been afforded an opportunity for a hearing on the matter shall be entitled  
36 to a hearing before the director to contest the action pursuant to section  
37 42-1701A(3), Idaho Code.