

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 382

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO WATER; AMENDING CHAPTER 14, TITLE 42, IDAHO CODE, BY THE ADDITION  
2 OF A NEW SECTION 42-1406C, IDAHO CODE, TO PROVIDE FOR THE BEAR RIVER WA-  
3 TER RIGHTS ADJUDICATION; AMENDING SECTION 42-1425, IDAHO CODE, TO PRO-  
4 VIDE FOR ACCOMPLISHED TRANSFERS REGARDING THE BEAR RIVER BASIN AND TO  
5 MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 42-1426, IDAHO CODE,  
6 TO REVISE PROVISIONS REGARDING ENLARGEMENTS.  
7

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

9 SECTION 1. That Chapter 14, Title 42, Idaho Code, be, and the same is  
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
11 ignated as Section 42-1406C, Idaho Code, and to read as follows:

12 42-1406C. BEAR RIVER WATER RIGHTS ADJUDICATION -- COMMENCEMENT. (1)  
13 Effective management of the waters of the Bear River basin requires that  
14 a comprehensive determination of the nature, extent, and priority of the  
15 rights of all users of surface and ground water be determined. Therefore,  
16 the director of the department of water resources is authorized to petition  
17 the district court to commence an adjudication within the terms of the Mc-  
18 Carran amendment, 43 U.S.C. 666, of the water rights from surface water and  
19 ground water sources in the Bear River basin. The petition shall describe  
20 the boundaries of the water source(s) to be adjudicated and contain a request  
21 that a commencement order be issued only if the court determines it is possi-  
22 ble to defer the adjudication of domestic and stock water rights as defined  
23 by subsections (4) and (11) of section 42-1401A, Idaho Code, within the terms  
24 of the McCarran amendment.

25 (2) For purposes of adjudicating water rights, the Bear River basin is  
26 defined as all waters of the state of Idaho, both ground water and surface  
27 water, flowing into or toward the Bear River or flowing toward the Great Salt  
28 Lake in the Great Basin.

29 (3) The adjudication shall be brought before a court of special ju-  
30 risdiction for water right adjudications. Unless otherwise ordered by the  
31 supreme court, special jurisdiction for the general adjudication authorized  
32 by this section shall reside in the Snake River Basin Adjudication district  
33 court of the fifth judicial district of the state of Idaho, in and for the  
34 county of Twin Falls. The clerk of the district court in which the petition  
35 is filed shall send to the supreme court a true and certified copy of the pe-  
36 tition. The supreme court, by order, shall assign the judge to preside over  
37 the general adjudication. Venue of the general adjudication shall be deter-  
38 mined by order or rule of the supreme court, and venue of hearings under the  
39 general adjudication shall be determined by order of the presiding judge.

40 (4) Once the district court issues an order that authorizes the di-  
41 rector to commence an investigation and determination of the water rights  
42 within the boundaries of the adjudication and defines the boundaries of

1 the adjudication, the director of the department of water resources shall  
2 proceed in the manner provided under the provisions of chapter 14, title  
3 42, Idaho Code, to the extent not inconsistent with the provisions of this  
4 section.

5 SECTION 2. That Section 42-1425, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 42-1425. ACCOMPLISHED TRANSFERS. (1) Legislative findings regarding  
8 accomplished transfers and the public interest.

9 (a) The legislature finds and declares that, prior to the commencement  
10 of the Snake River basin adjudication, ~~and~~ the northern Idaho adjudica-  
11 tions, and the Bear River basin adjudication, many persons entitled to  
12 the use of water or owning land to which water has been made appurtenant  
13 either by decree of the court or under provisions of the constitution  
14 and statutes of this state changed the place of use, point of diversion,  
15 nature or purpose of use, or period of use of their water rights without  
16 compliance with the transfer provisions of sections 42-108 and 42-222,  
17 Idaho Code.

18 (b) The legislature finds that many of these changes occurred with the  
19 knowledge of other water users and that the water has been distributed  
20 to the right as changed. The legislature further finds and declares  
21 that the continuation of the historic water use patterns resulting  
22 from these changes is in the local public interest provided no other  
23 existing water right was injured at the time of the change. Denial of  
24 a claim based solely upon a failure to comply with sections 42-108 and  
25 42-222, Idaho Code, where no injury or enlargement exists, would cause  
26 significant undue financial impact to a claimant and the local economy.  
27 Approval of the accomplished transfer through the procedure set forth  
28 in this section avoids the harsh economic impacts that would result from  
29 a denial of the claim.

30 (c) The legislature further finds and declares that examination of  
31 these changes by the director through the procedures of section 42-222,  
32 Idaho Code, would be impractical and unduly burdensome. The more  
33 limited examination of these changes provided for in this section,  
34 constitutes a reasonable procedure for an expeditious review by the  
35 director while ensuring that the changes do not injure other existing  
36 water rights or constitute an enlargement of use of the original right.

37 (2) Any change of place of use, point of diversion, nature or purpose of  
38 use, or period of use of a water right by any person entitled to use of water  
39 or owning any land to which water has been made appurtenant, either by decree  
40 of the court or under the provisions of the constitution and statutes of this  
41 state, prior to November 19, 1987, the date of commencement of the Snake  
42 River basin adjudication, ~~and~~ prior to January 1, 2006, for the northern  
43 Idaho adjudications authorized by section 42-1406B, Idaho Code, and prior  
44 to the date of commencement of the Bear River basin adjudication authorized  
45 by section 42-1406C, Idaho Code, may be claimed in the applicable general  
46 adjudication even though the person has not complied with sections 42-108  
47 and 42-222, Idaho Code, provided no other water rights existing on the date  
48 of the change were injured and the change did not result in an enlargement of  
49 the original right. Except for the consent requirements of section 42-108,

1 Idaho Code, all requirements of sections 42-108 and 42-222, Idaho Code, are  
2 hereby waived in accordance with the following procedures:

3 (a) If an objection is filed to a recommendation for accomplished  
4 change of place of use, point of diversion, nature or purpose of use, or  
5 period of use, the district court shall remand the water right to the  
6 director for further hearing to determine whether the change injured  
7 a water right existing on the date of the change or constituted an en-  
8 largement of the original right. After a hearing, the director shall  
9 submit a supplemental report to the district court setting forth his  
10 findings and conclusions. If the claimant or any person who filed an  
11 objection to the accomplished transfer is aggrieved by the director's  
12 determination, they may seek review before the district court. If the  
13 change is disallowed, the claimant shall be entitled to resume use of  
14 the original water right, provided such resumption of use will not cause  
15 injury or can be mitigated to prevent injury to existing water rights.  
16 The unapproved change shall not be deemed a forfeiture or abandonment of  
17 the original water right.

18 (b) This section is not applicable to any claim based upon an enlarge-  
19 ment of use.

20 SECTION 3. That Section 42-1426, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 42-1426. ENLARGEMENTS -- WAIVER OF MANDATORY PERMIT REQUIREMENTS. (1)  
23 Legislative findings regarding enlargements:

24 (a) The legislature finds that ~~prior to the commencement of the Snake~~  
25 ~~River basin adjudication and several adjudications of water rights were~~  
26 commenced or will be commenced in the state of Idaho subsequent to the  
27 mandatory permit system provided in sections 42-201 and 42-229, Idaho  
28 Code, persons. These adjudications include the following, with associ-  
29 ated commencement dates:

30 (i) Snake River basin adjudication, November 19, 1987;

31 (ii) Coeur d'Alene-Spokane River basin adjudication, November  
32 12, 2008;

33 (iii) Palouse River basin adjudication, March 1, 2017;

34 (iv) Clark Fork-Pend Oreille River basin adjudication, not yet  
35 commenced; and

36 (v) Bear River basin adjudication, not yet commenced.

37 Persons entitled to the use of water or owning any land to which water  
38 has been made appurtenant by decree, license or constitutional appro-  
39 priation have, through water conservation and other means, enlarged the  
40 use of said water without increasing the rate of diversion and without  
41 complying with the mandatory permit system adopted by the legislature.  
42 Enlargements have been done with the knowledge of other water users,  
43 and water has been distributed based upon the right as enlarged. Ju-  
44 nior water users made appropriations based upon a water system that  
45 reflected these enlarged uses. Thus, the legislature further finds and  
46 declares that it is in the public interest to waive the mandatory permit  
47 requirements for these enlargements in use prior to the commencement  
48 of a general adjudication, ~~so~~ as long as such enlargements in use did  
49 not increase the rate of diversion of the original water right or exceed

1 the rate of diversion for irrigation provided in section 42-202, Idaho  
2 Code, after the enlargement of use, and the enlargement of use did not  
3 reduce the quantity of water available to other water rights existing on  
4 the date of the enlargement in use.

5 (b) The legislature further finds that it is in the public interest to  
6 waive certain statutory provisions for the appropriation of water that  
7 has been diverted and applied to beneficial use to ~~insure~~ ensure the  
8 economic and agricultural base in the state of Idaho as it existed on the  
9 date of the commencement of ~~the Snake River basin~~ an adjudication and to  
10 maintain historic water use patterns existing on that date.

11 (2) The mandatory permit requirements of sections 42-201 and ~~or~~  
12 42-229, Idaho Code, are waived, and a new water right may be decreed for the  
13 enlarged use of the original water right based upon the diversion and appli-  
14 cation to beneficial use, with a priority date as of the date of completion of  
15 the enlargement of use for any enlargement occurring on or before ~~November~~  
16 ~~19, 1987~~ the commencement date of an adjudication; provided however, that  
17 the rate of diversion of the original water right and the separate water  
18 right for the enlarged use, combined, shall not exceed the rate of diversion  
19 authorized for the original water right; and further provided, that the  
20 enlargement in use did not injure water rights existing on the date of the  
21 enlargement of use. An enlargement may be decreed if conditions directly  
22 related to the injury can be imposed on the original water right and the new  
23 water right that mitigate any injury to a water right existing on the date  
24 of enactment of this act. If injury to a water right later in time cannot be  
25 mitigated, then the new right for the enlarged use shall be advanced to a date  
26 one (1) day later than the priority date for the junior water right injured  
27 by the enlargement. It is further provided that any such enlargement of use  
28 allowed in a general adjudication shall not constitute an abandonment or  
29 forfeiture of the original water right to the extent of current use.

30 (3) The director shall publish a notice of enlargement of water right  
31 for all water rights recommended under this section. The notice shall con-  
32 tain a summary of the notice of claim and shall be published in the same  
33 manner as notices for applications to appropriate water in section 42-203A,  
34 Idaho Code. Any person who has filed an application for a water right prior  
35 to the enactment of this act or who has been issued a permit for a water right  
36 prior to ~~enactment of this act~~ commencement of an adjudication but who has  
37 not filed a claim in an adjudication shall have thirty (30) days from the date  
38 of last publication of the notice of enlargement of a water right under this  
39 section to file a petition with the department of water resources to assert  
40 any claimed injury from the enlargement. No appeal of the determination of  
41 the department shall be allowed. If the applicant or permittee is dissat-  
42 isfied with the determination of the department on any claim of injury, the  
43 sole remedy is to intervene in the general adjudication and assert their  
44 claim of injury in an objection to the water right.