

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 687

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE KOOTENAI RIVER; AMENDING CHAPTER 14, TITLE 42, IDAHO CODE, BY  
2 THE ADDITION OF A NEW SECTION 42-1406D, IDAHO CODE, TO PROVIDE FOR THE  
3 KOOTENAI RIVER WATER RIGHTS ADJUDICATION; AMENDING SECTION 42-1425,  
4 IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS REGARDING THE KOOTENAI  
5 RIVER BASIN ADJUDICATION; AMENDING SECTION 42-1426, IDAHO CODE, TO  
6 REVISE PROVISIONS REGARDING ADJUDICATION COMMENCEMENT DATES; AND  
7 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
8

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

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

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

26 (2) The adjudication shall be brought in any district court in which any  
27 part of the water source is located or before a court of special jurisdic-  
28 tion for water right adjudications. Unless otherwise ordered by the supreme  
29 court, special jurisdiction for the general adjudication authorized by this  
30 section shall reside in the Snake River Basin Adjudication district court of  
31 the fifth judicial district of the state of Idaho, in and for the county of  
32 Twin Falls. The clerk of the district court in which the petition is filed  
33 shall send to the supreme court a true and certified copy of the petition.  
34 The supreme court, by order, shall assign the judge to preside over the gen-  
35 eral adjudication. Venue of the general adjudication shall be determined by  
36 order or rule of the supreme court and venue of hearings under the general ad-  
37 judication shall be determined by order of the presiding judge.

38 (3) Once the district court issues an order that authorizes the di-  
39 rector to commence an investigation and determination of the water rights  
40 within the boundaries of the adjudication and defines the boundaries of  
41 the adjudication, the director of the department of water resources shall

1 proceed in the manner provided under the provisions of this chapter to the  
2 extent not inconsistent with the provisions of this section.

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

5 42-1425. ACCOMPLISHED TRANSFERS. (1) Legislative findings regarding  
6 accomplished transfers and the public interest.

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

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

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

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

1 of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance  
2 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 several adjudications of water rights  
25 were commenced or will be commenced in the state of Idaho subsequent  
26 to the mandatory permit system provided in sections 42-201 and 42-229,  
27 Idaho Code. These adjudications include the following, with associated  
28 commencement dates:

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

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

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

33 (iv) Clark Fork-Pend Oreille River basin adjudication, ~~not yet~~  
34 ~~commenced; and June 15, 2021;~~

35 (v) Bear River basin adjudication, ~~not yet commenced. June 15,~~  
36 ~~2021; and~~

37 (vi) Kootenai River basin adjudication, not yet commenced.

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

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

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

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

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

46 SECTION 4. An emergency existing therefor, which emergency is hereby  
47 declared to exist, this act shall be in full force and effect on and after  
48 July 1, 2024.