

IN THE HOUSE OF REPRESENTATIVES

HOUSE CONCURRENT RESOLUTION NO. 22

BY RESOURCES AND CONSERVATION COMMITTEE

A CONCURRENT RESOLUTION

1 STATING FINDINGS OF THE LEGISLATURE AND RESOLVING THAT, CONSISTENT WITH THE
2 PRIOR APPROPRIATION DOCTRINE AS DEFINED BY IDAHO LAW, THE IDAHO DEPART-
3 MENT OF WATER RESOURCES BE DIRECTED TO MANAGE THE EASTERN SNAKE PLAIN
4 AQUIFER IN A MANNER THAT PROTECTS THE INTERESTS OF SENIOR WATER USERS,
5 MINIMIZES THE NEED FOR CURTAILMENTS, PROVIDES PREDICTABILITY AND STA-
6 BILITY FOR WATER USERS, AND SECURES THE PUBLIC INTEREST IN OPTIMUM USE
7 OF IDAHO'S WATER RESOURCES.
8

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

10 WHEREAS, the waters of the State of Idaho are owned by the state; and
11 WHEREAS, the prior appropriation doctrine as set forth in Idaho's Con-
12 stitution consists of the "bedrock principles of priority of right and bene-
13 ficial use"; and

14 WHEREAS, priority of right represents the principle that "first in time
15 is first in right"; and

16 WHEREAS, beneficial use represents "(t)he policy of the law of this
17 state to secure the maximum use and benefit, and least wasteful use, of its
18 water resources"; and

19 WHEREAS, section 7, Article XV, of the Constitution of the State of
20 Idaho affirms the policy that Idaho's waterways should be managed to achieve
21 "optimum development of water resources in the public interest"; and

22 WHEREAS, section 42-226, Idaho Code, provides: "The traditional policy
23 of the state of Idaho, requiring the water resources of this state to be de-
24 voted to beneficial use in reasonable amounts through appropriation, is af-
25 firmed with respect to the ground water resources of this state as said term
26 is hereinafter defined and, while the doctrine of 'first in time is first in
27 right' is recognized, a reasonable exercise of this right shall not block
28 full economic development of underground water resources"; and

29 WHEREAS, the Idaho Supreme Court has acknowledged that "(t)he entire
30 water distribution system under title 42, Idaho Code, is to further the state
31 policy of securing the maximum use and benefit of its water resources"; and

32 WHEREAS, Idaho's prior appropriation doctrine can and should be applied
33 in a manner that honors both bedrock principles of the prior appropriation
34 doctrine by protecting the interests of senior users while also securing the
35 public interest in maximum beneficial use of Idaho's water resources; and

36 WHEREAS, Idaho continues to experience periods of drought that, when
37 combined with widespread changes in water use practices over time, have led
38 to reduced spring flows and severe conflict over the use and management of
39 the vast Eastern Snake Plain Aquifer (ESPA), and the Idaho Department of
40 Water Resources (IDWR) has threatened to shut off water to hundreds of thou-
41 sands of acres of farmland along with cities and businesses; and

42 WHEREAS, the threat of large-scale water rights curtailment has created
43 instability and harmed Idaho's agricultural economy, and actual curtail-

1 ment would cause enormous economic harm to Idaho's communities, businesses,
2 lending institutions, and the state as a whole; and

3 WHEREAS, section 42-101, Idaho Code, provides: "Water being essential
4 to the industrial prosperity of the state, and all agricultural development
5 throughout the greater portion of the state depending upon its just appor-
6 tion to, and economical use by, those making a beneficial application of the
7 same, its control shall be in the state, which, in providing for its use,
8 shall equally guard all the various interests involved."

9 NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Ses-
10 sion of the Sixty-seventh Idaho Legislature, the House of Representatives
11 and the Senate concurring therein that, consistent with the prior appropri-
12 ation doctrine as defined by Idaho law, IDWR be directed to manage the ESPA
13 in a manner that protects the interests of senior water users, minimizes
14 the need for curtailments, provides predictability and stability for water
15 users, and secures the public interest in optimum use of Idaho's water re-
16 sources.

17 BE IT FURTHER RESOLVED that in conjunctively managing the ESPA, IDWR
18 be directed to optimize the available water supply through efforts such as
19 increased storage capacity, the use of modern technology to more effectively
20 manage water supplies, geologic research in the ESPA, targeted recharge, and
21 infrastructure projects that facilitate an increased capacity for drought
22 resilience and flood control through proactive conjunctive management of
23 water resources, thereby keeping as much farmland in production and as many
24 businesses in operation as possible within the context of priority right
25 administration.