

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 608

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO WATER RIGHTS; AMENDING SECTION 42-201, IDAHO CODE, TO PROVIDE AN  
2 EXCEPTION FROM WATER RIGHTS REQUIREMENTS FOR CERTAIN MUNICIPALITIES,  
3 MUNICIPAL PROVIDERS, SEWER DISTRICTS AND REGIONAL PUBLIC ENTITIES OP-  
4 ERATING PUBLICLY OWNED TREATMENT WORKS, TO REQUIRE MUNICIPAL PROVIDERS  
5 AND SEWER DISTRICTS TO PROVIDE NOTICE TO THE DEPARTMENT OF WATER RE-  
6 SOURCES IF CERTAIN LAND APPLICATION IS TO TAKE PLACE, TO PROVIDE THAT  
7 NOTICE SHALL BE ON FORMS FURNISHED BY THE DEPARTMENT AND TO PROVIDE FOR  
8 INCLUSION OF ALL REQUIRED INFORMATION; AND AMENDING SECTION 42-221,  
9 IDAHO CODE, TO PROVIDE A FEE FOR FILING NOTICE OF LAND APPLICATION OF  
10 EFFLUENT.  
11

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

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

15 42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL DIVERSION AND  
16 APPLICATION OF WATER -- USES FOR WHICH WATER RIGHT NOT REQUIRED -- EXCLUSIVE  
17 AUTHORITY OF DEPARTMENT. (1) All rights to divert and use the waters of this  
18 state for beneficial purposes shall hereafter be acquired and confirmed un-  
19 der the provisions of this chapter and not otherwise. And after the passage  
20 of this title all the waters of this state shall be controlled and adminis-  
21 tered in the manner herein provided. Such appropriation shall be perfected  
22 only by means of the application, permit and license procedure as provided in  
23 this title; provided, however, that in the event an appropriation has been  
24 commenced by diversion and application to beneficial use prior to the effec-  
25 tive date of this act it may be perfected under such method of appropriation.

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

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

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

38 (b) For forest practices as defined in section 38-1303(1), Idaho Code,  
39 and forest dust abatement. Such forest practices and forest dust abate-  
40 ment use is limited to two-tenths (0.2) acre-feet per day from a single  
41 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 SECTION 2. That Section 42-221, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 42-221. FEES OF DEPARTMENT. The department of water resources shall  
4 collect the following fees which shall constitute a fund to pay for legal  
5 advertising, the publication of public notices and for investigations, re-  
6 search, and providing public data as required of the department in the per-  
7 formance of its statutory duties:

8 A. For filing an application for a permit to appropriate the public wa-  
9 ters of this state:

10 1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20  
11 acre feet or less ..... \$100

12 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s.  
13 or for a storage volume greater than 20 acre feet but not exceeding 100  
14 acre feet ..... \$250

15 3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s.,  
16 or for a storage volume greater than 100 acre feet but not exceeding  
17 2,000 acre feet ..... \$250  
18 plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet  
19 or part thereof over the first 1.0 c.f.s. or 100 acre feet.

20 4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s.  
21 or for a storage volume greater than 2,000 acre feet but not exceeding  
22 10,000 acre feet ..... \$1,010  
23 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet  
24 or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

25 5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0  
26 c.f.s., or for a storage volume greater than 10,000 acre feet but not ex-  
27 ceeding 50,000 acre feet ..... \$2,610  
28 plus \$10.00 for each additional c.f.s. or part thereof or 100 acre feet  
29 or part thereof over the first 100 c.f.s. or 10,000 acre feet.

30 6. For a quantity greater than 500 c.f.s., or for a storage volume  
31 greater than 50,000 acre feet .....\$6,610  
32 plus \$2.00 for each additional 1.0 c.f.s. or part thereof or 100 acre  
33 feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

34 B. For filing an application for an extension of time within which to  
35 resume the use of water under a vested water right .....\$100

36 C. For filing application for amendment of permit .....\$100

37 D. 1. For filing claim to use right under section 42-243, Idaho  
38 Code ..... \$100

39 2. For filing a late claim to use a water right under section 42-243,  
40 Idaho Code, where the date filed with the department of water resources  
41 or, the postmark if mailed to the department of water resources, is:

42 i. After June 30, 1998 ..... \$250

43 ii. After June 30, 2005 ..... \$500

44 iii. For every ten (10) years after June 30, 2005, an addi-  
45 tional ..... \$500

46 E. For filing an assignment of permit .....\$25.00

47 F. For readvertising application for permit, change, exchange, or ex-  
48 tension to resume use .....\$50.00

49 G. For certification, each document .....\$1.00

- 1 H. For making photo copies of office records, maps and documents for  
2 public use ..... A reasonable charge as determined by the department.
- 3 I. For filing request for extension of time within which to submit proof  
4 of beneficial use on a water right permit .....\$50.00
- 5 J. For tasks requiring in excess of one (1) hour research or for comput-  
6 erized data provided for public use ..... A reasonable charge as determined  
7 by the department.
- 8 K. For filing proof of beneficial use of water and requests for water  
9 right license examinations, a fee based upon the rate of diversion claimed in  
10 the proof of beneficial use:
- 11 1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20  
12 acre feet or less ..... \$50.00  
13 except no fee shall be charged for domestic use for which a permit is not  
14 required.
- 15 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s.,  
16 or for a storage volume greater than 20 acre feet, but not exceeding 100  
17 acre feet .....\$100
- 18 3. For a quantity greater than 1.0 c.f.s., or for a storage volume  
19 greater than 100 acre feet ..... \$100  
20 plus \$25.00 for each additional c.f.s. or part thereof, or 100 acre feet  
21 or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maxi-  
22 mum fee not to exceed \$600.
- 23 L. For filing a protest or request to intervene in a protes-  
24 ted matter .....\$25.00
- 25 M. For filing an application to alter a stream channel pursuant to chap-  
26 ter 38, title 42, Idaho Code:
- 27 1. Application for recreational dredge permits by residents of the  
28 state .....\$10.00
- 29 2. Application for recreational dredge permits by nonresidents of the  
30 state .....\$30.00
- 31 3. Other applications .....\$20.00
- 32 N. For receipt of all notices of application within a designated area, a  
33 reasonable annual charge as determined by the department.
- 34 O. For filing an application to change the point of diversion, place,  
35 period or nature of use of water under a vested water right:
- 36 1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20  
37 acre feet or less .....\$200
- 38 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s.,  
39 or for a storage volume greater than 20 acre feet but not exceeding 100  
40 acre feet .....\$500
- 41 3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s.,  
42 or for a storage volume greater than 100 acre feet but not exceeding  
43 2,000 acre feet .....\$500  
44 plus \$80.00 for each additional c.f.s. or part thereof or 100 acre feet  
45 or part thereof over the first 1.0 c.f.s. or 100 acre feet.
- 46 4. For a quantity greater than 20.0 c.f.s. but not exceeding 100  
47 c.f.s., or for a storage volume greater than 2,000 acre feet but not  
48 exceeding 10,000 acre feet .....\$2,020  
49 plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet  
50 or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

1           5. For a quantity greater than 100 c.f.s. but not exceeding 500 c.f.s.,  
 2           or for a storage volume greater than 10,000 acre feet but not exceeding  
 3           50,000 acre feet .....\$5,220  
 4           plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet  
 5           or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6           6. For a quantity greater than 500 c.f.s., or for a storage volume  
 7           greater than 50,000 acre feet .....\$13,220  
 8           plus \$4.00 for each additional c.f.s. or part thereof or 100 acre feet  
 9           or part thereof over the first 500 c.f.s. or 50,000 acre feet.

10          7. For any application to change the nature of use of water under one (1)  
 11          or more vested water right(s), an additional fee of \$250 shall apply.

12          P. For filing a notice of land application of effluent as required by  
 13          section 42-201(8), Idaho Code .....\$150

14          All fees received by the department of water resources under the provi-  
 15          sions of this chapter shall be transmitted to the state treasurer for deposit  
 16          in the water administration account.