

IN THE SENATE

SENATE BILL NO. 1345

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO WATER; AMENDING SECTION 42-201, IDAHO CODE, TO REVISE EXEMPTION PROVISIONS RELATING TO THE RELEASE AND DIVERSION OF WATER, TO PROVIDE FOR RELEASES AND DIVERSIONS FROM NATURAL WATERCOURSES, STORAGE RESERVOIRS AND CANALS FOR DESIGNATED PURPOSES, TO PROVIDE FOR COORDINATION WITH OWNERS RELATING TO SPECIFIED DIVERSIONS AND RELEASES, TO PROVIDE FOR RELEASES AND DIVERSIONS FROM NATURAL WATERCOURSES FOR DESIGNATED PURPOSES, TO PROHIBIT CERTAIN DIVERSIONS UNDER SPECIFIED CONDITIONS, TO PROVIDE FOR RELEASES AND DIVERSIONS FOR FLOOD CONTROL, TO REMOVE A PROVISION RELATING TO A PROHIBITION OF DIVERSION UNDER SPECIFIED CIRCUMSTANCES AND TO PROVIDE THAT CERTAIN DIVERSIONS AND RELEASES OF WATER SHALL NOT BE ATTRIBUTED OR CHARGED TO THE SATISFACTION OF A WATER RIGHT UNLESS SPECIFIC CONDITIONS EXIST.

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

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

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

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

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

(a) From a natural watercourse, a storage reservoir or a canal to extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire. Diversions and releases from storage reservoirs and water delivery and drainage facilities pursuant to this subsection (3) (a) shall, to the

1 extent practicable, be coordinated with the owner thereof to prevent  
2 injury to beneficial uses of water pursuant to water rights.

3 (b) ~~From a natural watercourse f~~For forest practices as defined in sec-  
4 tion 38-1303(1), Idaho Code, and forest dust abatement. Such forest  
5 practices and forest dust abatement use is limited to two-tenths (0.2)  
6 acre-feet per day from a single watercourse. For purposes of this sub-  
7 section (3) (b), no person shall divert water from a canal or other ir-  
8 rigation facility while the water is lawfully diverted, captured, con-  
9 veyed, used or otherwise physically controlled by the appropriator.

10 (c) From a natural watercourse or a storage reservoir or into a water  
11 delivery or drainage facility for flood control to protect life or prop-  
12 erty from injury or damage resulting from flooding.

13 (4) ~~For purposes of subsection (3) (b) of this section, no person shall~~  
14 ~~divert water from a canal or other irrigation facility while the water is~~  
15 ~~lawfully diverted, captured, conveyed, used or otherwise physically con-~~  
16 ~~trolled by the appropriator~~ Diversions and releases of water pursuant to  
17 subsection (3) of this section shall not be attributed or charged to the sat-  
18 isfaction of a water right unless the water released or diverted is put to the  
19 beneficial use at the place of use described in the water right.

20 (5) If water is to be diverted from a natural watercourse within a wa-  
21 ter district, or from a natural watercourse from which an irrigation deliv-  
22 ery entity diverts water, a person diverting water pursuant to subsection  
23 (3) (b) of this section shall give notice to the watermaster of the intent  
24 to divert water for the purposes set forth in said subsection. In the event  
25 that the water to be diverted pursuant to subsection (3) (b) of this section  
26 is not within a water district, but an irrigation delivery entity diverts wa-  
27 ter from the same natural watercourse, the required notices shall be given to  
28 said irrigation delivery entity. For uses authorized in subsection (3) (a)  
29 of this section, notice shall not be required but may be provided when it is  
30 reasonable to do so.

31 (6) A water right holder, who determines that a use set forth in subsec-  
32 tion (3) of this section is causing a water right to which the holder is en-  
33 titled to be deprived of water to which it may be otherwise entitled, may pe-  
34 tition the director of the department of water resources to order cessation  
35 of or modification of the use to prevent injury to a water right. Upon such  
36 a petition, the director shall cause an investigation to be made and may hold  
37 hearings or gather information in some other manner. In the event that the  
38 director finds that an injury is occurring to a water right, he may require  
39 the use to cease or be modified to ensure that no injury to other water rights  
40 occurs. A water right holder feeling aggrieved by a decision or action of the  
41 director shall be entitled to contest the action of the director pursuant to  
42 section 42-1701A(3), Idaho Code.

43 (7) This title delegates to the department of water resources exclusive  
44 authority over the appropriation of the public surface and ground waters of  
45 the state. No other agency, department, county, city, municipal corporation  
46 or other instrumentality or political subdivision of the state shall enact  
47 any rule or ordinance or take any other action to prohibit, restrict or reg-  
48 ulate the appropriation of the public surface or ground waters of the state,  
49 and any such action shall be null and void.

1           (8) Notwithstanding the provisions of subsection (2) of this section,  
2 a municipality or municipal provider as defined in section 42-202B, Idaho  
3 Code, a sewer district as defined in section 42-3202, Idaho Code, or a re-  
4 gional public entity operating a publicly owned treatment works shall not be  
5 required to obtain a water right for the collection, treatment, storage or  
6 disposal of effluent from a publicly owned treatment works or other system  
7 for the collection of sewage or stormwater where such collection, treatment,  
8 storage or disposal, including land application, is employed in response to  
9 state or federal regulatory requirements. If land application is to take  
10 place on lands not identified as a place of use for an existing irrigation  
11 water right, the municipal provider or sewer district shall provide the de-  
12 partment of water resources with notice describing the location of the land  
13 application, or any change therein, prior to land application taking place.  
14 The notice shall be upon forms furnished by the department of water resources  
15 and shall provide all required information.