

HOUSE BILL NO. 545[View Bill Status](#)[View Bill Text](#)[View Statement of Purpose / Fiscal Impact](#)

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~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

Bill Status

H0545.....by RESOURCES AND CONSERVATION
 WATER RIGHTS ADJUDICATION - NORTHERN IDAHO - Adds to and amends existing
 law relating to water to provide for Northern Idaho water rights
 adjudication; to revise fee provisions for filing notice of claims with the
 Director of the Department of Water Resources; to provide legislative
 findings relating to accomplished transfers and the public interest
 regarding Northern Idaho adjudications; to provide that certain changes of
 place of use, points of diversion, nature or purpose of use, or period of
 use of a water right may be claimed in the Northern Idaho adjudications;
 and to provide for objections to recommendations for specified accomplished
 changes.

02/02 House intro - 1st rdg - to printing

02/03 Rpt prt - to Res/Con

02/24 Rpt out - rec d/p - to 2nd rdg

02/27 2nd rdg - to 3rd rdg

03/02 3rd rdg - PASSED - 64-1-5

AYES -- Anderson, Andrus, Barraclough, Barrett, Bastian, Bayer,
 Bedke, Bell, Bilbao, Black, Boe, Bolz, Brackett, Bradford, Cannon,
 Chadderdon, Clark, Collins, Deal, Denney, Edmunson, Ellsworth,
 Eskridge, Field(23), Garrett, Hart, Henbest, Henderson, Jaquet, Kemp,
 Lake, LeFavour, Loertscher, Martinez, Mathews, Miller, Mitchell,
 Moyle, Nielsen, Nonini, Pasley-Stuart, Pence, Raybould, Ring, Ringo,
 Roberts, Rusche, Rydalch, Sali, Sayler, Schaefer, Shepherd(2),
 Shepherd(8), Shirley, Skippen, Smith(30), Smith(24), Smylie,
 Snodgrass, Stevenson, Trail, Wills, Wood, Mr. Speaker

NAYS -- Harwood

Absent and excused -- Block, Crow, Field(18), McGeachin, McKague

Floor Sponsors - Clark & Sayler

Title apvd - to Senate

Bill Text

|||| LEGISLATURE OF THE STATE OF IDAHO ||||
 Fifty-eighth Legislature Second Regular Session - 2006

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 545

ENVIRONMENTAL QUALITY COUNCIL

March 17, 2006

Exhibit 2

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO WATER; AMENDING CHAPTER 14, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1406B, IDAHO CODE, TO PROVIDE FOR SPECIFIED NORTHERN IDAHO WATER RIGHTS ADJUDICATIONS; AMENDING SECTION 42-1414, IDAHO CODE, TO REVISE FEE PROVISIONS FOR FILING NOTICE OF CLAIMS WITH THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES; AND AMENDING SECTION 42-1425, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS RELATING TO ACCOMPLISHED TRANSFERS AND THE PUBLIC INTEREST REGARDING NORTHERN IDAHO ADJUDICATIONS, TO PROVIDE THAT CERTAIN CHANGES OF PLACE OF USE, POINTS OF DIVERSION, NATURE OR PURPOSE OF USE, OR PERIOD OF USE OF A WATER RIGHT MAY BE CLAIMED IN THE NORTHERN IDAHO ADJUDICATIONS AND TO PROVIDE FOR OBJECTIONS TO RECOMMENDATIONS FOR SPECIFIED ACCOMPLISHED CHANGES.

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

SECTION 1. That Chapter 14, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW SECTION**, to be known and designated as Section 42-1406B, Idaho Code, and to read as follows:

42-1406B. NORTHERN IDAHO WATER RIGHTS ADJUDICATIONS -- COMMENCEMENT. (1) Effective management of the waters of northern Idaho requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water be determined. Therefore, the director of the department of water resources shall petition the district court to commence adjudications within the terms of the McCarran amendment, 43 U.S.C. section 666, of the water rights from surface water and ground water sources in northern Idaho through initiation of three (3) proceedings. Separate petitions shall be filed for water rights adjudications for each of the following river basins, and related ground water sources whether or not hydraulically connected to a surface water source, within Idaho: the Coeur d'Alene-Spokane river basin, the Palouse river basin, and the Kootenai and Clark Fork-Pend Oreille river basins. The filing of each petition shall be contingent on legislative funding approval. Each petition shall describe the boundaries of the water source or water sources to be adjudicated.

(2) The adjudication shall be brought in any district court in which any part of the water source is located or before a court of special jurisdiction for water right adjudications. Unless otherwise ordered by the supreme court, special jurisdiction for the water rights general adjudications authorized by this section shall reside in the Snake River Basin Adjudication district court of the fifth judicial district of the state of Idaho, in and for the county of Twin Falls. The clerk of the district court in which the petition is filed shall send to the supreme court a true and certified copy of the petition. The supreme court, by order, shall assign the judge to preside over the general adjudication. Venue of the general adjudication shall be determined by order or rule of the supreme court and venue of hearings under the general adjudication shall be determined by order of the presiding judge.

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(3) Upon issuance of an order by the district court which authorizes the director to commence an investigation and determination of the various water rights to be adjudicated from the water source or water sources, and which defines the boundaries of the source or sources within the state to be adjudicated, the director of the department of water resources shall proceed in the manner provided under the provisions of chapter 14, title 42, Idaho Code, to the extent not inconsistent with the provisions of this section.

SECTION 2. That Section 42-1414, Idaho Code, be, and the same is hereby amended to read as follows:

10 42-1414. FEES FOR FILING NOTICE OF CLAIMS WITH THE DIRECTOR. (1) In order
11 to provide an adequate and equitable cost-sharing formula for financing the
12 costs of adjudicating water rights the department of water resources shall
13 accept no notice of claim required under the provisions of section 42-1409,
14 Idaho Code, unless such notice of claim is submitted with a filing fee based
15 upon the fee schedule set forth below. Failure to pay the variable water use
16 fee in accordance with the timetable provided shall be cause for the depart-
17 ment to reject and return the notice of claim to the claimant. The fee sched-
18 ular set forth below applies to adjudication proceedings commenced or enlarged
19 on or after January 1, 1985.

- 20 (a) Flat fee per claim filed:
 - 21 (i) Claims for domestic and/or stock watering rights based on per-
22 mit, license, decree or statutory claim \$250.00
 - 23 (ii) Claims for all other rights \$5100.00
- 24 (b) Additional variable water use fee for claims filed based upon acre-
25 age, power generating capacity, c.f.s., or equivalent volume of water:
 - 26 (i) Irrigation use (one fee irrespective of number of
27 claims): \$ 12.00 per acre
 - 28 (ii) Power: \$ ~~2,507.00~~ per kilowatt of capacity
29 (manufacturer's nameplate rating)
 - 30 (iii) Aquaculture: \$ 120.00 per c.f.s.
 - 31 (iv) Municipal, industrial, commercial, mining, heating, cooling: ..
32 \$1200.00 per c.f.s.
 - 33 (v) Public instream flow, public lake level maintenance, wildlife: .
34 \$1200.00 per
35 c.f.s.

36 (c) ~~Payment of a variable water use fee of more than one thousand dollars~~
37 ~~(\$1,000) may be spread out over as many as five (5) annual equal payments~~
38 ~~with ten percent (10%) interest accruing on the unpaid balance.~~ All fees
39 collected by the department pursuant to this section shall be placed in
40 the water resources adjudication account established in section 42-1777,
41 Idaho Code.

42 (2) If a claimant increases in an amended notice of claim the amount of
43 water claimed, the amount of land irrigated, or the kilowatt capacity of the
44 generating facility, the claimant shall pay upon filing the amended notice of
45 claim an additional variable fee in accordance with the rates set forth in
46 subsection (1) of this section. Claimants shall be entitled to a return of
47 filing fees or late fees only where the fee was miscalculated at the time the
48 original or amended notice of claim was filed.

49 (3) If a claimant files a notice of claim after the date set by the
50 director in the notice mailed or served in accordance with subsections (2),
51 (3), or (4) of section 42-1408, Idaho Code, or with subsection (7) of section
52 42-1409, Idaho Code, the claimant shall pay the fee set forth in subsection
53 (1) of this section, and in addition, the amount of ~~fifty~~ one hundred dollars

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1 (\$~~50,100~~) or fifteen percent (15%) of the original filing fee, whichever is
2 greater. The director may waive the late processing fee or a portion thereof
3 for good cause.

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

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

8 (a) The legislature finds and declares that prior to the commencement of
9 the Snake River basin adjudication, and the northern Idaho adjudications,
10 many persons entitled to the use of water or owning land to which water
11 has been made appurtenant either by decree of the court or under provi-
12 sions of the constitution and statutes of this state changed the place of
13 use, point of diversion, nature or purpose of use, or period of use of
14 their water rights without compliance with the transfer provisions of sec-

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

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

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

48 (a) If an objection is filed to a claim recommendation for accomplished
 49 change of place of use, point of diversion, nature or purpose of use or
 50 period of use, the district court shall remand the water right to the
 51 director for further hearing to determine whether the change injured a
 52 water right existing on the date of the change or constituted an enlarge-
 53 ment of the original right. After a hearing, the director shall submit a

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1 supplemental report to the district court setting forth his findings and
 2 conclusions. If the claimant or any person who filed an objection to the
 3 accomplished transfer is aggrieved by the director's determination, they
 4 may seek review before the district court. If the change is disallowed,
 5 the claimant shall be entitled to resume use of the original water right,
 6 provided such resumption of use will not cause injury or can be mitigated
 7 to prevent injury to existing water rights. The unapproved change shall
 8 not be deemed a forfeiture or abandonment of the original water right.

9 (b) This section is not applicable to any claim based upon an enlargement
 10 of use.

Statement of Purpose / Fiscal Impact

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STATEMENT OF PURPOSE

RS 15705

This legislation authorizes the initiation of general water

rights adjudication for those portions of northern Idaho not included within the Snake River Basin. The legislation authorizes the adjudication of all rights to the use of water from surface water and ground water sources whether or not hydraulically connected within the Coeur d'Alene-Spokane River Basin, the Palouse River Basin and the Kootenai and Clark Fork-Pend Oreille River Basins.

The Ground Water Management Plan Advisory Committee for the Rathdrum Prairie-Spokane Aquifer recommended the adjudication of water rights as an element of the Management Plan for the aquifer. The Legislature's approval of the Department of Water Resources' budget for fiscal year 2006 included direction to the Department to work with the Rathdrum Ground Water Management Plan Advisory Committee and local elected officials to determine the feasibility, cost and potential funding mechanisms to begin the adjudication of water rights in the Coeur d'Alene Basin. (2005 Idaho Session Laws, Chapter 172, Section 4) This legislation providing for the adjudication of all water rights in northern Idaho, subject to funding availability, is the result of the directed coordination.

FISCAL NOTE

The projected cost for the adjudication of all water rights in the remaining un-adjudicated basins in northern Idaho is \$16.2 million over a nine year period, plus funding for the negotiation of federal claims. The legislation proposes to double the existing adjudication claim fees as established by statute in 1985 for the Snake River Basin Adjudication. The claim filing fees are anticipated to provide for about one third of the cost of the northern Idaho adjudication. This percentage is similar to the funding provided by fees in the Snake River Basin Adjudication. The cost for FY 2007 is projected to be \$1.335 million, to be provided from the general fund. It is anticipated that funds from claim fees will be collected beginning in FY 2008.

Contact

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Rep. George Saylor

Co-Sponsors: Reps. Eric Anderson, George Eskridge, Mary Lou Shepherd, Phil Hart, Marge Chadderdon, Frank Henderson and Bob Nonini. Senators Shawn Keough, Mike Jorgenson, and Dick Compton

STATEMENT OF PURPOSE/FISCAL NOTE

H 545