IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. _____

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO WATER RIGHTS; AMENDING SECTION 42-201, IDAHO CODE, TO PROVIDE AN EXCEPTION FROM WATER RIGHTS REQUIREMENTS FOR REMEDIATION OF HAZARDOUS SUBSTANCES OR PETROLEUM FROM WATER, TO REQUIRE NOTICE BE PROVIDED TO THE DEPARTMENT OF WATER RESOURCES, TO PROVIDE THAT NOTICE SHALL BE ON FORMS FURNISHED BY THE DEPARTMENT AND TO PROVIDE FOR INCLUSION OF ALL REQUIRED INFORMATION, TO PROVIDE THAT THE DIRECTOR MAY ORDER THE OPERATOR OF A REMEDIATION DIVERSION TO SHOW CAUSE WHY THE DIVERSION WILL NOT INJURE OR IS NOT INJURING AN EXISTING WATER RIGHT, TO PROVIDE THAT THE DIRECTOR MAY, AFTER CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, ISSUE AN ORDER REQUIRING THAT THE REMEDIATION NOT COMMENCE OR THAT REMEDIATION CEASE UNLESS CONDITIONS IDENTIFIED BY THE DIRECTOR OR MITIGATION APPROVED BY THE DIRECTOR CAN PREVENT INJURY; AND AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR FILING NOTICE.

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 diverted from a natural watercourse and used at any time, with or without a water right:

(a) 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;

(b) For forest practices as defined in section 38-1303(1), Idaho Code, and forest dust abatement. Such forest practices and forest dust abatement use is limited to two-tenths (0.2) acre-feet per day from a single watercourse.

(c) For the sole purpose of removing a hazardous substance or petroleum, as those terms are defined in section 39-7203, Idaho Code, from water or preventing the migration of a hazardous substance or petroleum through water, in response to regulatory requirements governing the clean up or removal of released hazardous substances or petroleum and in conjunction with an approved remediation plan. A notice of remediation diversion shall be filed with the director of the department of water resources prior to diverting water. The notice shall provide a general description of the proposed remediation activity including the location of the diversion, the quantity of water to be diverted, the plan for the water once it is remediated and the anticipated term of the remediation activity. The notice shall be upon forms furnished by the department of water resources and shall provide all required information. A copy of the approved remediation plan shall accompany the notice. The director may give such notice to other potentially affected water users as the director deems appropriate. Upon receipt of the notice of remediation diversion, or anytime after commencement of the remediation diversion, if the director determines the diversion may injure or may be injuring an existing water right, the director may issue an order requiring the operator of the remediation diversion to show cause why the diversion will not injure or is not injuring an existing water right. If the director determines that injury will occur or is occurring, the director, after consultation with the director of the department of environmental quality, may issue an order requiring that remediation not commence or that remediation cease, unless conditions identified by the director or mitigation approved by the director can prevent injury.

(4) For purposes of subsection (3)(b) of this section, no person shall divert water from a canal or other irrigation facility while the water is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator.

(5) If water is to be diverted from a natural watercourse within a water district, or from a natural watercourse from which an irrigation delivery entity diverts water, a person diverting water pursuant to subsection (3)(b) of this section shall give notice to the watermaster of the intent to divert water for the purposes set forth in said subsection. In the event that the water to

be diverted pursuant to subsection (3)(b) of this section is not within a water district, but an irrigation delivery entity diverts water from the same natural watercourse, the required notices shall be given to said irrigation delivery entity. For uses authorized in subsection (3)(a) of this section, notice shall not be required but may be provided when it is reasonable to do so.

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

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

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

SECTION 2. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

42-221. Fees of department. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the department in the performance of its statutory duties:

A. For filing an application for a permit to appropriate the public waters of this state:

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

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

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet $250

plus $40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet $1,010

plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet $2,610

plus $10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet $6,610

plus $2.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

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

C. For filing application for amendment of permit $100

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

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

i. After June 30, 1998 $250

ii. After June 30, 2005 $500

iii. For every ten (10) years after June 30, 2005, an additional $500

E. For filing an assignment of permit $25.00

F. For readvertising application for permit, change, exchange, or extension to resume use $50.00

G. For certification, each document $1.00

H. For making photo copies [photocopies] of office records, maps and documents for public use A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit $50.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use

A reasonable charge as determined by the department.

K. For filing proof of beneficial use of water and requests for water right license examinations, a fee based upon the rate of diversion claimed in the proof of beneficial use:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less $50.00

except no fee shall be charged for domestic use for which a permit is not required.

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

3. For a quantity greater than 1.0 c.f.s., or for a storage volume greater than 100 acre feet $100

plus $25.00 for each additional c.f.s. or part thereof, or 100 acre feet or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maximum fee not to exceed $600.

L. For filing a protest or request to intervene in a protested matter $25.00

M. For filing an application to alter a stream channel pursuant to chapter 38, title 42, Idaho Code:

1. Application for recreational dredge permits by residents of the state $10.00

2. Application for recreational dredge permits by nonresidents of the state $30.00

3. Other applications $20.00

N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

O. For filing an application to change the point of diversion, place, period or nature of use of water under a vested water right:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less $200

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $500

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet $500

plus $80.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s., or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet $2,020

plus $40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100 c.f.s. but not exceeding 500 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet $5,220

plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet $13,220

plus $4.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 500 c.f.s. or 50,000 acre feet.

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

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

Q. For filing a notice of remediation diversion as required by section 42-201(3)(c), Idaho Code $150

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

STATEMENT OF PURPOSE

RS_____

Water remediation projects help protect public health and the environment by removing hazardous substances or petroleum from contaminated water. Although water remediation projects are clearly beneficial, there has been legal uncertainty surrounding whether a water right is required to divert water for remediation projects. This legislation clarifies that an operator of a remediation project does not need to go through the water right application process with the Idaho Department of Water Resources ("IDWR") if the sole purpose of the diversion of water is to remove a hazardous substance or petroleum in response to state or federal regulatory requirements. A notice of remediation diversion would be required to be filed with IDWR prior to diverting water. The director of IDWR retains jurisdiction over any diversion of water and may require that the diversion cease unless injury can be addressed through conditions or mitigation.

FISCAL NOTE

The notice process includes a filing fee of $150 so IDWR can enter and maintain records of remediation diversions. No impact to the General Fund or any other fund.

Contact:
Name: Jeff Peppersack
Office: Idaho Department of Water Resources
Phone: (208) 287-4948

Statement of Purpose/Fiscal Impact

42-234. Managed ~~G~~ground water recharge -- Authority of department to grant permits and licenses -- Promulgation of rules.

(1) It is the policy of the state of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state. The legislature deems it essential, therefore, that water projects designed to advance this policy be given maximum support. The legislature finds that the use of water to recharge ground water basins in accordance with Idaho law and the state water plan may enhance the full realization of our water resource potential by furthering water conservation and increasing the water available for beneficial use.

(2) The legislature hereby declares that the appropriation of water for purposes of managed ground water recharge shall constitute a beneficial use of water. The director of the department of water resources is authorized to issue permits and licenses for the purpose of managed ground water recharge, which is defined as the intentional diversion and use of water for the ~~sole~~ purpose of recharging ground water basins, pursuant to the provisions of this chapter and in compliance with other applicable Idaho law and the state water plan.

(3) The Idaho water resource board is authorized to promulgate state-wide and basin-specific rules governing the use of water rights for managed ground water recharge designed to protect, sustain and enhance the water resources of the state of Idaho, while ensuring the optimum development ~~and augmentation~~ of the water resources of this state.

(a) The board shall promulgate rules governing the use of water rights for managed ground water recharge to the Eastern Snake Plain Aquifer (ESPA). The rules shall provide standards for prioritizing projects that enhance and augment the ESPA and improve water supplies in furtherance of the ESPA comprehensive aquifer management plan (CAMP) hydrologic goals identified in policy 4D (conjunctive management of the ESPA and Snake River) of the 2012 state water plan. In promulgating managed ground water recharge rules for the ESPA, the board shall consider the following: i. the optimum use and development of unappropriated stream flows and the optimum augmentation of the ground water resource; ii. the ESPA CAMP goal of sustaining and enhancing the ESPA and hydraulically connected reaches of the Snake River; iii. the State minimum flows at Murphy gage; and iv. managed ground water recharge not interfering with the optimal storage of water in the Snake River reservoir system.

(b) Rules developed by the board pursuant to this section shall be administered by the director of the department of water resources and shall be consistent with rules developed pursuant to section 42-1762B, Idaho Code, for the creation of an aquifer credit program related to ground water recharge.

(~~3~~4) The director of the department of water resources may regulate the amount of water which may be diverted for recharge purposes and may reduce such amount, even though there is sufficient water to supply the entire amount originally authorized by permit or license. ~~To facilitate necessary financing of an aquifer recharge project, the director may fix a term of years~~

~~in the permit or license during which the amount of water authorized to be diverted shall not be reduced by the director under the provisions of this subsection.~~

(~~4~~5) To ensure that other water rights are not injured by the operations of a~~n~~ ~~aquifer~~ managed ground water recharge project, the director of the department of water resources shall have the authority to approve, disapprove or require alterations in the methods employed to achieve managed ground water recharge. In the event that the director determines that the methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

(~~5~~6) The legislature further recognizes that incidental ground water recharge benefits are often obtained from the diversion and use of water for various beneficial purposes. However, such incidental recharge may not be used as the basis for claim of a separate or expanded water right. Incidental recharge of aquifers which occurs as a result of water diversion and use that does not exceed the vested water right of water right holders is in the public interest. The values of such incidental recharge shall be considered in the management of the state's water resources.

(7) Managed ground water recharge or aquifer credits from managed ground water recharge shall not be the basis for approval of an application for permit for a new water right unless: (a) the application satisfies the criteria of chapter 2, title 42, Idaho Code, and is consistent with rules promulgated pursuant to section 42-234(3), if such rules have been promulgated; (b) there is reasonable certainty the managed ground water recharge or aquifer credits will provide a sufficient supply of water to sustain the diversion and use of water proposed by the permit application; and (c) the proposed diversion and use of water is in furtherance of any applicable comprehensive aquifer management plan and consistent with any applicable aquifer credit program.

(8) Nothing contained in this section shall prevent a water user from using a water right for a mitigation plan as provided under the department's conjunctive management rules or from using a water right as mitigation in conjunction with a new water right application or transfer.

(9) If the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned or managed by an irrigation district, no application for managed ground water recharge may be approved by the director of the department of water resources without the consent of such corporation or irrigation district.

42-1762B. Aquifer credit defined -- Aquifer credit program authorized – Rules authorized.

(1) Aquifer credit is defined as credit for that portion of water that accrues from managed ground water recharge that may be used for mitigation for either existing water rights or new appropriations of water.

(2) The Idaho water resource board is authorized to develop an aquifer credit program to be managed as part of the board's water supply bank established pursuant to section 42-1761, Idaho Code. As part of the aquifer credit program, the board is authorized to establish and maintain methods to calculate and track the accrual of aquifer credits, to track expenditures of aquifer credits to mitigate for existing water rights or new appropriations of water as the mitigation may be approved by the director of the department of water resources, and to compensate the contributors of the aquifer credits from the proceeds of the sale of their credits. The board is authorized to adopt fee rules necessary to provide a source of revenue to operate the aquifer credit program.

(3) The board is authorized to adopt state-wide and basin-specific rules governing the accrual of aquifer credits under the aquifer credit program in compliance with chapter 52, title 67, Idaho Code, and consistent with the rules developed pursuant to section 42-234(3), Idaho Code. The rules shall be consistent with any approved comprehensive aquifer management plan (CAMP) or plans for the basin or basins covered by the rules.

(a) The board shall adopt rules governing the accrual of aquifer credits on the Eastern Snake Plain Aquifer (ESPA). For credit in the ESPA, whether using natural flow or stored water, the managed ground water recharge must further the ESPA CAMP hydrologic goals identified in policy 4D (conjunctive management of the ESPA and Snake River) of the 2012 state water plan.

(4) For purposes of the board's aquifer credit program, the allocation of the benefits of managed ground water recharge identified and confirmed through modeling and measurements shall be determined by the board.

(5) The board shall not allow aquifer credits for incidental recharge.

(6) The board may enter into contracts with others to exercise the board's managed ground water recharge rights and participate in the aquifer credit program. The board may provide a preference to those parties who help achieve the board's hydrologic goals identified in an approved comprehensive aquifer management plan for the basin.

(7) Nothing contained in this section shall prevent a water user from using a water right for a mitigation plan as provided under the department's conjunctive management rules or from using a water right as mitigation in conjunction with a new water right application or transfer.

STATEMENT OF PURPOSE

The legislation addresses three main topics. First, the legislation authorizes the Idaho Water Resource Board ("Board") to promulgate rules governing managed ground water recharge. Promulgation of the rules is discretionary for all parts of the state except for the Eastern Snake Plain Aquifer ("ESPA"). The legislation guides the Board on the appropriate scope of the rules. Second, the legislation provides direction to the Director of Idaho Department of Water Resources ("IDWR") by clarifying that a new application for permit based on managed ground water recharge or aquifer credits must show that there is a reasonable certainty the managed ground water recharge or aquifer credits will provide a sufficient supply of water to sustain the new water use into the future. Lastly, the legislation authorizes the Board to create an aquifer credit program as part of the Board's currently existing water supply bank and to promulgate rules related to the aquifer credit program. The aquifer credit program is discretionary for all parts of the state except for the ESPA. The program will allow water users to seek aquifer credits for conducting managed ground water recharge which will also benefit Idaho's aquifers. Aquifer credits will be confirmed through modeling and measurements. The determination of how credits will accrue will be established by the Board through rulemaking initiated after passage of the authorizing legislation.

The legislation does not prevent someone from using an existing water right for mitigation purposes. Water users can still use: 1) an existing water right as part of a mitigation plan submitted under the conjunctive management rules; 2) an existing water right as mitigation for a new application for permit; 3) an existing water right as mitigation in a transfer. If a water user wants to try to use credits or an existing recharge right as mitigation for a new water right, they may but will be required to show that there is reasonable certainty the recharge will provide a supply sufficient to sustain the new application.

FISCAL IMPACT

There is no immediate fiscal impact from this legislation. The legislation vests authority in the Idaho Water Resource Board to promulgate rules to establish fees to finance the operation of the aquifer credit program.

HOUSE BILL NO. _____

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO A REVISION IN THE DEFINITION OF AN INJECTION WELL; AMENDING CHAPTER 39, TITLE 42, IDAHO CODE, TO CLARIFY THAT AN INJECTION WELL DOES INCLUDE WELLS THAT HAVE BEEN USED FOR THE PRODUCTION OF OIL, GAS OR GEOTHERMAL PRODUCTION ACTIVITIES.

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

SECTION 1. That Chapter 39, Title 42, Idaho Code, be, and the same is hereby amended to read as follows:

42-3902. DEFINITIONS. Whenever used in this chapter:

(1) "Aquifer" means any geologic formation that will yield water to a well in sufficient quantities to make production of water from the formation feasible for beneficial use, except when the water in such formation results solely from injection through a deep or shallow injection well.

(2) "Class II injection well" means a deep injection well used to inject fluids:

(a) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) For enhanced recovery of oil or natural gas; or

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(3) "Deep injection well" means an injection well which is more than eighteen (18) feet in vertical depth below land surface.

(4) "Director" means the director of the department of water resources.

(5) "Drinking water source" means an aquifer which contains water having less than ten thousand (10,000) mg/l total dissolved solids and has not been exempted from this designation by the director of the department of water resources.

(6) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gaseous or any other form or state.

(7) "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is mappable at the earth's surface or traceable in the subsurface.

(8) "Hazardous waste" means any fluid or combination of fluids, excluding radioactive wastes, which because of quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illness; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties, but do not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows.

(9) "Injection" means the subsurface emplacement of fluids through an injection well, but excludes the following:

(a) The underground injection of natural gas for purposes of storage; and

(b) The underground injection of fluids or propping agents, other than diesel fuels, pursuant to hydraulic fracturing operations related to oil, gas or geothermal production activities.

(10) "Injection well" means any feature that is operated to allow injection which also meets at least one (1) of the following criteria:

(a) A bored, drilled or driven shaft whose depth is greater than the largest surface dimension;

(b) A dug hole whose depth is greater than the largest surface dimension;

(c) An improved sinkhole; or

(d) A subsurface fluid distribution system.

Provided however, that "injection well" does not mean or include any well ~~drilled~~used for oil, gas or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations.

(11) "Irrigation waste water" means excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tailwater, as well as natural drainage resulting from precipitation, snowmelt and floodwaters.

(12) "Licensed driller" means any person holding a valid license to drill water wells in Idaho as provided and defined in section 42-238, Idaho Code.

(13) "Operate" means to allow fluids to enter an injection well by action or by inaction of the operator.

(14) "Operator" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district or federal agency who operates or proposes to operate any injection well.

(15) "Owner" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, or federal agency owning land on which any injection well exists or is proposed to be constructed.

(16) "Radioactive material" means any material, solid, liquid or gas which emits radiation spontaneously.

(17) "Radioactive waste" means any fluid which contains radioactive material in concentrations which exceed those established for discharges to water by 10 CFR 20.

(18) "Shallow injection well" means an injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface.

(19) "Sanitary waste" means any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. The term does not include industrial, municipal, commercial or other nonresidential process fluids.

(20) "Surface runoff water" means runoff water from the natural ground surface and cropland. Runoff from urbanized areas, such as streets, parking lots, airports, and runoff from

animal feedlots, agricultural processing facilities and similar facilities are not included within the scope of this term.

STATEMENT OF PURPOSE

RS 22393

The Idaho Department of Water Resources ("IDWR") is amending Idaho Code, Section 42-3902 (10) to clarify the definition of an "injection well" by replacing the term "drilled" with "used." The change is necessary to clarify IDWR's authority to regulate underground oil and gas production wells that are converted to injection wells and used for the injection of waste fluids. The EPA has advised IDWR that EPA approval of Idaho's Underground Injection Well Rules may be at risk unless the definition is clarified.

FISCAL NOTE

There is no impact on the General Fund or other accounts.

Contact:

Tim Luke
Water Resources, Dept. of
287-4959

Statement of Purpose / Fiscal Note

HOUSE BILL NO. _____

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO THE RETURN OF APPLICATIONS TO APPROPRIATE WATER IN MORATORIUM AREAS; AMENDING CHAPTER 18, TITLE 42, IDAHO CODE, TO PROVIDE THE DIRECTOR WITH THE AUTHORITY TO RETURN PENDING APPLICATIONS BACK TO THE APPLICANTS IF DIRECTOR DETERMINES THAT THE WATER SUPPLY IN A MORATORIUM AREA IS FULLY APPROPRIATED OR INSUFFICIENT FOR THE PURPOSES FOR WHICH THE APPLICATIONS ARE SOUGHT TO BE APPROPRIATED.

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

SECTION 1. That Chapter 18, Title 42, Idaho Code, be, and the same is hereby amended to read as follows:

42-1805. Additional duties. In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to interstate and international water rights affecting Idaho water resources; and to cooperate with all agencies, now existing or hereafter to be formed, within the state or within other jurisdictions, in matters affecting the development of the water resources of this state.

(2) To prepare a present and continuing inventory of the water resources of this state, ascertain means and methods of conserving and augmenting these and determine as accurately as possible the most effective means by which these water resources may be applied for the benefit of the people of this state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the director of the department of environmental quality as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the director of the department of environmental quality and his staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the director of the department of environmental quality reports and information prepared by him pertaining to water quality programs, and proposed rules pertaining to water quality programs.

(c) The director shall make available to the director of the department of environmental quality and the director of the department of environmental quality shall make available to the director all notices of hearings relating to the promulgation of rules relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notices of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan. The director may order that pending applications submitted prior to and after the effective date of a moratorium order should be returned to the applicant without processing if the director determines that the water supply in the moratorium area is fully appropriated or insufficient for the purposes for which the applications are sought to be appropriated.

(8) To promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department.

(9) To seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate (a) those provisions of law relating to all aspects of the appropriation of water, distribution of water, headgates and measuring devices; or (b) the administrative or judicial orders entered in accordance with the provisions of law.

(10) To develop, coordinate and provide, through contract or by other means, for weather modification projects involving cloud seeding that are designed to increase the water supplies of the state by enhancing natural precipitation and which conform to state water planning objectives. To accomplish these purposes the director is authorized to accept and use funds acquired through legislative appropriation or by gift, grant, contribution or funding received from any private or public individual or entity. All funds accepted under this provision shall be transmitted to the state treasurer for deposit in the water administration fund and shall be reserved and made available until expended as ordered by the director for weather modification purposes determined by the director to be beneficial.

(11) To develop and implement a plan for data gathering to determine any effect of the weather modification efforts in which the department is involved.

STATEMENT OF PURPOSE

RS_____

The Idaho Department of Water Resources ("IDWR") is amending Idaho Code Section 42-1805 (7) to provide the Director of IDWR with the authority to return pending applications to appropriate water back to the applicants when the applications seek to divert water in an area where a moratorium order has been issued. This change is necessary to reduce the number of applications held by IDWR in fully appropriated areas and to avoid holding unprocessed applications in areas that become fully appropriated in the future. Presently, IDWR is holding approximately 640 applications in the moratorium area of the Eastern Snake River Plain and it is unlikely that the moratorium order will be withdrawn.

FISCAL NOTE

Returning applications may include a refund of the application fee. Most of the 640 applications held in the Eastern Snake River Plain have not incurred advertising or other costs associated with processing of the applications. Refunds would likely total approximately $50,000 from the Water Management fee account. Processing the returned applications and associated refunds could be accomplished over multiple years to reduce the fiscal impact in any given year.

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Statement of Purpose/Fiscal Impact