

LEGISLATURE OF THE STATE OF IDAHO

Sixtieth Legislature

First Regular Session - 2009

IN THE SENATE

SENATE BILL NO. 1185

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO GROUND WATER RECHARGE; AMENDING SECTION 42-234,  
2 IDAHO CODE, TO DELETE REFERENCE TO PROJECTS AND TO REFERENCE  
3 PERMITS AND LICENSES, TO REVISE A LEGISLATIVE FINDING, TO REVISE A  
4 LEGISLATIVE DECLARATION RELATING TO BENEFICIAL USE, TO AUTHORIZE  
5 THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES TO ISSUE  
6 CERTAIN PERMITS AND LICENSES, TO DELETE REFERENCE TO CERTAIN  
7 PRIORITY AND DEPLETION PROVISIONS, TO PROVIDE THAT THE DIRECTOR  
8 MAY REGULATE AND REDUCE THE AMOUNT OF WATER WHICH MAY BE  
9 DIVERTED FOR RECHARGE PURPOSES, TO PROVIDE THAT THE DIRECTOR  
10 MAY FIX A TERM OF YEARS IN CERTAIN PERMITS OR LICENSES DURING  
11 WHICH THE AMOUNT OF WATER AUTHORIZED TO BE DIVERTED SHALL NOT  
12 BE REDUCED, TO AUTHORIZE THE DIRECTOR TO APPROVE, DISAPPROVE  
13 OR REQUIRE ALTERATIONS IN METHODS EMPLOYED TO ACHIEVE GROUND  
14 WATER RECHARGE AND TO PROVIDE THAT THE DIRECTOR SHALL ORDER  
15 THE CESSATION OF OPERATIONS UNDER CERTAIN CIRCUMSTANCES;  
16 REPEALING SECTION 42-4201A, IDAHO CODE, RELATING TO THE DIRECTOR'S  
17 AUTHORITY TO ISSUE PERMITS AND LICENSES RELATING TO THE  
18 RECHARGE OF GROUND WATER BASINS; AND AMENDING SECTIONS  
19 42-4223, 42-5225 AND 43-343, IDAHO CODE, TO PROVIDE CORRECT CODE  
20 REFERENCES.  
21

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

23 SECTION 1. That Section 42-234, Idaho Code, be, and the same is hereby amended to  
24 read as follows:

25 42-234. GROUND WATER RECHARGE ~~PROJECTS~~ - AUTHORITY OF  
26 DEPARTMENT TO GRANT PERMITS AND LICENSES. (1) It is the policy of the  
27 state of Idaho to promote and encourage the optimum development and augmentation of the  
28 water resources of this state. The legislature deems it essential, therefore, that water projects  
29 designed to advance this policy be given maximum support. The legislature finds that the  
30 ~~projects use of water~~ to recharge ground water basins in accordance with Idaho law and the  
31 state water plan may enhance the full realization of our water resource potential by furthering  
32 water conservation and increasing the water available for beneficial use.

33 (2) The legislature hereby declares that the appropriation ~~and underground storage~~  
34 of water for purposes of ground water recharge shall constitute a beneficial use ~~and hereby~~  
35 ~~authorizes~~ of water. The director of the department of water resources is authorized to issue  
36 a permits and licenses for the appropriation and underground storage of unappropriated waters  
37 in an area purpose of ground water recharge, pursuant to the provisions of this chapter and  
38 in compliance with other applicable Idaho law and the state water plan. The rights acquired

~~pursuant to any permit and license obtained as herein authorized shall be secondary to all prior perfected water rights, including those water rights for power purposes that may otherwise be subordinated by contract entered into by the governor and Idaho power company on October 25, 1984, and ratified by the legislature pursuant to section 42-203B, Idaho Code. Any right so granted shall be subject to depletion for surface storage or direct uses after a period of years sufficient to amortize the investment of the appropriator.~~

(3) 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) To ensure that other water rights are not injured by the operations of an aquifer 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 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) 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.

SECTION 2. That Section 42-4201A, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 42-4223, Idaho Code, be, and the same is hereby amended to read as follows:

42-4223. CONTRACTS TO RECEIVE BENEFITS. Any privately owned electrical generating company, or any person or entity who has acquired or is in the process of acquiring a right to appropriate water downstream from the boundaries of the district may enter into a contract with the board of directors of the aquifer recharge district for the receipt of benefits from the district. The consideration to be paid by any company, person or entity so contracting shall be as specified in the contract. Approval of any such contract by the director of the department of water resources shall be required before the contract shall become effective.

A contract executed and approved as herein provided may be used by the department of water resources as the basis for issuance of a permit to the electrical generating company or downstream appropriator for the appropriation and storage of such water as shall become available thereto as a result of the functioning of the district. Water appropriated under any such permit shall be deemed to be stored water and the use and manner of appropriation thereof shall be subject to all applicable limitations and restrictions imposed by law, including the

1 provisions of subsection (3) of section 42-4201 or subsection (3) of section ~~42-4201A~~ 42-234,  
2 Idaho Code.

3 Prior to the formation of the aquifer recharge district, any such electrical generating  
4 company or downstream appropriator may file with the director of the department of water  
5 resources a letter of intent to enter into such a contract.

6 SECTION 4. That Section 42-5225, Idaho Code, be, and the same is hereby amended to  
7 read as follows:

8 42-5225. AUTHORITY TO CONSTRUCT AND OPERATE GROUND WATER  
9 RECHARGE OR STORAGE PROJECT. Any ground water district organized under the laws of  
10 this state is authorized in section ~~42-4201A~~ 42-234, Idaho Code, to file an application with the  
11 department to acquire water rights or to appropriate the unappropriated waters of the state for  
12 the purpose of storing waters in, or recharging, ground water basins within the district to aid in  
13 the efficient irrigation of district lands, to serve domestic, commercial, municipal or industrial  
14 uses within the district, or to carry out a mitigation plan. Upon approval of the application for  
15 permit by the director, the district shall proceed in the manner provided by law to construct and  
16 operate the ground water storage or recharge project. The construction and operation of the  
17 project shall be subject to such additional conditions and limitations as shall be imposed by the  
18 director pursuant to sections 42-203A, 42-222 and ~~42-4201A~~ 42-234, Idaho Code.

19 SECTION 5. That Section 43-343, Idaho Code, be, and the same is hereby amended to  
20 read as follows:

21 43-343. AUTHORITY TO CONSTRUCT AND OPERATE GROUND WATER  
22 RECHARGE PROJECT. Any irrigation district heretofore or hereafter organized under the laws  
23 of this state, having received and affirmatively acted upon a petition to construct a ground water  
24 recharge improvement project in the manner provided by sections 43-328, 43-329 and 43-330,  
25 Idaho Code, is authorized by section ~~42-4201A~~ 42-234, Idaho Code, to file an application with  
26 the department of water resources to appropriate the unappropriated waters of the state for the  
27 purpose of recharging ground water basins within the district to aid in the efficient irrigation of  
28 district lands. Upon approval of the application for permit by the director of the department  
29 of water resources, the district shall proceed in the manner provided by the irrigation district  
30 laws of the state to construct and operate the recharge project. The construction and operation  
31 of the project shall be subject to such additional conditions and limitations as shall be imposed  
32 by the director of the department of water resources pursuant to sections ~~42-203~~ 42-203A and  
33 ~~42-4201A~~ 42-234, Idaho Code.

## **STATEMENT OF PURPOSE**

### **RS18934**

The legislation clarifies that the Swan Falls Agreement does not preclude use of water for aquifer recharge by removing the reference to the Swan Falls Agreement in Idaho Code § 42-234 and repealing Idaho Code § 42-4201A. This legislation consolidates into Idaho Code § 42-234 the authority provided to the director of the department of water resources by Idaho Code § 42-4201A over the appropriation and diversion of water for recharge, and the operation of aquifer recharge projects. This legislation affirms that ground water recharge rights will be issued in compliance with Idaho law and the state water plan, and that the director may regulate the methods of operation of recharge projects to prevent the creation of conditions adverse to the beneficial use of water under existing water rights.

### **FISCAL NOTE**

This legislation imposes no fiscal burden on the general fund.

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