

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 70

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO THE ADJUDICATION OF WATER RIGHTS; AMENDING CHAPTER 14, TITLE 42,  
 2 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1406A, IDAHO CODE, TO PRO-  
 3 VIDE FOR THE COMMENCEMENT OF AN ADJUDICATION OF THE WATER RIGHTS OF THE  
 4 SNAKE RIVER BASIN; AMENDING SECTION 42-1409, IDAHO CODE, TO PROVIDE THAT  
 5 IN AN ORDER REQUESTING JOINDER OF CLAIMANTS TO WATER IN A SYSTEM, THE  
 6 ORDER SHALL INDICATE THAT A NOTICE OF CLAIM NEED NOT BE FILED FOR A WATER  
 7 RIGHT EVIDENCED BY A VALID APPLICATION OR PERMIT ON FILE WITH THE DEPART-  
 8 MENT OF WATER RESOURCES FOR WHICH PROOF OF BENEFICIAL USE HAS NOT BEEN  
 9 FILED AND TO PROVIDE THAT A COURT IN A SUBSEQUENT ORDER OF JOINDER SHALL  
 10 AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES TO ORDER A  
 11 NOTICE OF CLAIM TO BE FILED ON EACH PERMIT FOR WHICH PROOF OF BENEFICIAL  
 12 USE HAS BEEN FILED PRIOR TO FILING WITH THE COURT OF THE REPORT OF PRO-  
 13 POSED FINDING OF WATER RIGHTS REQUIRED BY LAW; AMENDING SECTION 42-1414,  
 14 IDAHO CODE, TO MODIFY THE SCHEDULE OF FEES FOR FILING A NOTICE OF CLAIM IN  
 15 A WATER RIGHTS ADJUDICATION PROCEEDING AND TO PROVIDE A PROCEDURE FOR  
 16 COLLECTION OF THE FEES; AND AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY  
 17 THE ADDITION OF A NEW SECTION 42-1777, IDAHO CODE, TO PROVIDE FOR THE CRE-  
 18 ATION OF THE WATER RESOURCES ADJUDICATION ACCOUNT.  
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20 Be It Enacted by the Legislature of the State of Idaho:

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

24 42-1406A. SNAKE RIVER BASIN ADJUDICATION -- COMMENCEMENT. (1) Effective  
 25 management in the public interest of the waters of the Snake River basin  
 26 requires that a comprehensive determination of the nature, extent and priority  
 27 of the rights of all users of surface and ground water from that system be  
 28 determined. Therefore, the director of the department of water resources shall  
 29 petition the district court to commence an adjudication within the terms of  
 30 the McCarran amendment, 43 U.S.C. section 666, of the water rights of the  
 31 Snake River basin either through initiation of a new proceeding or the  
 32 enlargement of an ongoing adjudication proceeding. The petition shall  
 33 describe:

- 34 (a) The boundaries of the system within the state to be adjudicated;
- 35 (b) Any class of water users within the system and the boundaries of any
- 36 hydrologic sub-basins within the system for which the director intends to
- 37 proceed separately with respect to the actions required or authorized to
- 38 be taken pursuant to sections 42-1408 through 42-1414, Idaho Code; and
- 39 (c) The uses of water, if any, within the system that are recommended to
- 40 be excluded from the adjudication proceeding.

41 (2) Upon issuance of an order by the district court which:

- 42 (a) Authorizes the director to commence an investigation and determi-
- 43 nation of the various water rights to be adjudicated within the system;

- 1 (b) Defines the boundaries of the system within the state to be adjudi-  
2 cated;
- 3 (c) Defines the classes of water users within the system and the bounda-  
4 rries of any hydrologic sub-basins within the system for which proceedings  
5 may advance separately pursuant to sections 42-1408 through 42-1414, Idaho  
6 Code; and
- 7 (d) Defines any uses of water excluded from the adjudication proceedings;  
8 the adjudication shall proceed in the manner provided under the provisions  
9 of chapter 14, title 42, Idaho Code, with the exception of sections  
10 42-1406 and 42-1407, Idaho Code.

11 SECTION 2. That Section 42-1409, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 42-1409. ORDER -- NOTICE -- CLAIM. Upon completion of the director of the  
14 department of water resources' investigation under section 42-1408, Idaho  
15 Code, he shall be authorized to request the district judge to join all claim-  
16 ants to water from the system. Upon entering of the order authorizing the  
17 joinder of any claimant by the director of the department of water resources,  
18 a copy of the court's order authorizing the determination of water rights from  
19 the water system, together with a summons and the order requiring joinder,  
20 shall be served upon each claimant by publication in a newspaper of general  
21 circulation published in the county in which the use is located for three (3)  
22 consecutive weeks and a copy of the summons, petition, and order shall be sent  
23 by certified mail to each claimant at his last known post-office address as  
24 shown by the records of the county in which land is located. Where there is no  
25 newspaper published in a county in which a use is located, then notice shall  
26 be published in a newspaper having general circulation in the county and one  
27 which will most likely give notice to the person served. The order of joinder  
28 shall direct each claimant to file a notice of claim with the director of the  
29 department of water resources. The notice of claim shall be upon forms fur-  
30 nished by the department of water resources and shall be signed by the claim-  
31 ant and verified on oath and shall include the following:

- 32 (a) the name and post-office address of the claimant;
- 33 (b) the quantity of water claimed to be used in cubic feet per second or  
34 the quantity of water stored in acre-feet per year;
- 35 (c) the date of priority claimed and the date when the water was first  
36 applied to beneficial use, and if the right is founded upon a license or  
37 permit, the number thereof;
- 38 (d) the legal description of the location of the diversion works;
- 39 (e) the nature of the use and the period of the year when water is used  
40 for such purposes;
- 41 (f) a legal description of the place of use;
- 42 (g) the dates of any changes or enlargements in use, including the dimen-  
43 sions of the diversion works as originally constructed and as enlarged;
- 44 (h) such other facts as the director of the department of water resources  
45 may require to show the extent and nature of the right and show compliance  
46 with the law in acquiring the right claimed.

47 The order shall also direct the claimant to file his notice of claim with  
48 the director of the department of water resources within sixty (60) days of  
49 the date of such service, and shall indicate that a notice of claim need not  
50 be filed for a water right evidenced by a valid application or permit on file

1 with the department for which proof of beneficial use has not been filed.

2 The court in a subsequent order of joinder shall authorize the director of  
3 the department of water resources to order a notice of claim to be filed on  
4 each permit for which proof of beneficial use has been filed prior to filing  
5 with the court the report of proposed finding of water rights required in  
6 section 42-1410, Idaho Code. The maps prepared by the director of the depart-  
7 ment of water resources under section 42-1408, Idaho Code, shall be available  
8 at the office of the director of the department of water resources and at such  
9 places as he shall designate, for the purpose of aiding any claimant to the  
10 water in preparing and filing his claim.

11 SECTION 3. That Section 42-1414, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 42-1414. FEES FOR FILING NOTICE OF CLAIM. In order to provide an adequate  
14 and equitable cost-sharing formula for financing the costs of adjudicating  
15 water rights tThe department of water resources shall accept no notice of  
16 claim required under the provisions of section 42-1409, Idaho Code, unless  
17 such notice of claim is submitted with a filing fee based upon the quantity of  
18 water claimed which shall be determined on the same basis as the fee for  
19 filing an application for a permit to appropriate the public waters of this  
20 state as provided in section 42-221, Idaho Code, except that where such claim  
21 is in connection with a water right established pursuant to a valid permit or  
22 license previously issued by the department of water administration or a water  
23 right which has previously been adjudicated by a state or federal court, the  
24 claimant shall pay a filing fee of only ten dollars (\$10.00). Provided, how-  
25 ever, that no filing fee shall be required with any notice of claim when pro-  
26 ceedings for adjudication involving such claim were under way when this act,  
27 Chapter 153, Laws of 1971, was enacted fee schedule set forth below. Failure  
28 to pay the variable water use fee in accordance with the timetable provided  
29 shall be cause for the department to reject and return the notice of claim to  
30 the claimant. The fee schedule set forth below applies to adjudication pro-  
31 ceedings commenced or enlarged on or after January 1, 1985, and to adjudica-  
32 tion proceedings for which a proposed finding of water rights has not been  
33 filed with the appropriate district court by the department of water resources  
34 prior to January 1, 1985.

35 (1) Flat fee per claim filed:

- 36 (a) Claims for domestic and/or stockwatering rights ..... \$ 25.00
- 37 (b) Claims for all other rights ..... \$ 50.00

38 (2) Additional variable water use fee for claims filed based upon acreage,  
39 power generating capacity, c.f.s., or equivalent volume of water:

- 40 (a) Irrigation use (one fee irrespective of number
- 41 of claims): ..... \$ 1.00 per acre
- 42 (b) Power: ..... \$ 3.50 per kilo-
- 43 watt of capacity (manufacturer's nameplate rating)
- 44 (c) Aquaculture: ..... \$ 10.00 per c.f.s.
- 45 (d) Municipal, industrial, commercial, mining,
- 46 heating, cooling: ..... \$100.00 per c.f.s.
- 47 (e) Public instream flow, public lake level
- 48 maintenance, wildlife: ..... \$100.00 per c.f.s.

49 (3) Payment of a variable water use fee of more than one thousand dollars  
50 (\$1,000) may be spread out over as many as five (5) annual equal payments with

1 ten percent (10%) interest accruing on the unpaid balance. All fees collected  
2 by the department pursuant to this section shall be placed in the water  
3 resources adjudication account established in section 42-1777, Idaho Code.

4 SECTION 4. That Chapter 17, Title 42, Idaho Code, be, and the same is  
5 hereby amended by the addition thereto of a NEW SECTION, to be known and  
6 designated as Section 42-1777, Idaho Code, and to read as follows:

7 42-1777. WATER RESOURCES ADJUDICATION ACCOUNT. A water resource adjudi-  
8 cation account is hereby created and established in the agency asset fund.  
9 Fee moneys in the account are to be utilized by the department of water  
10 resources, upon appropriation by the legislature, to pay the costs of the  
11 department attributable to general water rights adjudications conducted pur-  
12 suant to chapter 14, title 42, Idaho Code.

13 The state treasurer is directed to invest all moneys in the account. All  
14 interest or other income accruing from such investment shall accrue to the  
15 account.

STATEMENT OF PURPOSE

RS 10961C.4

This legislation calls for a general adjudication of the Snake River Basin. This adjudication would include all tributary regions above Murphy gage and as much of the remainder of the basin as is necessary to obtain U.S. consent to include all federal claims in the adjudication under the terms of the McCarran Amendment. The legislation further sets a schedule of claim fees to be paid when water right holders file their claim in the district court. These claim fees would be deposited into a Water Resources Adjudication Account, a dedicated fund created by this act.

FISCAL NOTE

An appropriation of \$1,000,000 is required in FY 1986 to enable the Department of Water Resources to commence the adjudication process, notify water right holders, and begin receiving the claim fees which will finance the remainder of the adjudication.

In addition, the state would be required to pay \$1,901,320 in claim fees for minimum streamflow rights held by the Idaho Water Resource Board for the state. Water Resource Board actions to increase the winter streamflow at Murphy gage from 3300 to 5600 cfs and to create a minimum streamflow of 13,000 cfs at Lime Point would add an additional \$230,000 and \$1,300,050 for a total General Account obligation in future years of \$3,431,370. These claim fees would be due in FY 1987 with the option of deferring payment over five years with 10 percent interest on the unpaid balance.

STATEMENT OF PURPOSE/FISCAL NOTE

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