

HOUSE BILL NO. 748, As Amended

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Daily Data Tracking History

H0748aa.....by RESOURCES AND CONSERVATION
NATURAL WATERWAYS - Amends and adds to existing law to provide that the use of natural waterways is subject to measurement, regulation and reporting; and to provide that a person seeking to exchange rights to the use of water between existing water rights or with a water source shall make application for such an exchange with the Department of Water Resources

02/18 House intro - 1st rdg - to printing

02/19 Rpt prt - to Res/Con

02/26 Rpt out - to Gen Ord

03/04 Rpt out amen - to engros

03/05 Rpt engros - 1st rdg - to 2nd rdg as amen

03/06 2nd rdg - to 3rd rdg as amen

03/09 3rd rdg as amen - PASSED - 67-0-3

AYES -- Alltus, Barraclough, Barrett, Bell, Bieter, Bivens, Black(15), Black(23), Boe, Bruneel, Callister, Campbell, Chase, Clark, Crane, Crow, Cuddy, Deal, Denney, Ellsworth, Gagner, Geddes, Gould, Hadley, Hansen, Henbest, Hornbeck, Jaquet, Jones(9), Jones(22), Judd, Kellogg, Kempton, Kendell, Kjellander, Kunz, Lake, Linford, Loertscher, Mader, Marley, McKague, Meyer, Miller, Mortensen, Newcomb, Pischner, Pomeroy, Reynolds, Richman, Ridinger, Robison, Sali, Schaefer, Stevenson, Stoicheff, Stone, Stubbs, Taylor, Tilman, Tippets, Trail, Watson, Wheeler, Wood, Zimmermann, Mr Speaker
NAYS -- None

Absent and excused -- Field(13), Field(20), Jones(20),

Floor Sponsor - Linford

Title apvd - to Senate

03/10 Senate intro - 1st rdg as amen - to Res/Env

03/16 Rpt out - rec d/p - to 2nd rdg as amen

03/17 2nd rdg - to 3rd rdg as amen

03/19 3rd rdg as amen - PASSED - 33-0-2

AYES--Andreason, Boatright, Branch, Bunderson, Burtenshaw, Cameron, Crow, Danielson, Darrington, Deide, Dunklin, Frasure, Geddes, Hawkins, Ingram, Ipsen, Keough, King, Lee, McLaughlin, Noh, Parry, Richardson, Riggs, Risch, Sandy, Schroeder, Stennett, Sweeney, Thorne, Twiggs, Wheeler, Whitworth

NAYS--None

Absent and excused--Hansen, Sorensen

Floor Sponsor - Lee

Title apvd - to House

03/20 To enrol - rpt enrol - Sp signed
03/20 Pres signed - to Governor
03/30 Governor signed
Session Law Chapter 424
Effective: 07/01/98

Bill Text

H0748

	LEGISLATURE OF THE STATE OF IDAHO	
Fifty-fourth Legislature		Second Regular Session - 1998

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 748, As Amended

BY RESOURCES AND CONSERVATION COMMITTEE

1 AN ACT
2 RELATING TO WATER EXCHANGES AND COMMINGLED WATER; AMENDING SECTION 42-105,
3 IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS, TO PROVIDE THAT THE USE OF NAT-
4 URAL WATERWAYS TO CONVEY WATER IS SUBJECT TO REGULATION, MEASUREMENT AND
5 REPORTING, AND TO PROVIDE THAT A PERSON SEEKING TO EXCHANGE RIGHTS TO THE
6 USE OF WATER BETWEEN EXISTING WATER RIGHTS OR WITH A WATER SOURCE SHALL
7 MAKE APPLICATION UNDER THE PROVISIONS OF SECTION 42-240, IDAHO CODE; AND
8 AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
9 42-240, IDAHO CODE, TO PROVIDE A PROCEDURE FOR FILING WITH THE DEPARTMENT
10 OF WATER RESOURCES AN APPLICATION TO EXCHANGE WATER FROM A SURFACE WATER
11 SOURCE WITH OTHER WATER FROM A SURFACE WATER SOURCE, AND TO PROVIDE FOR
12 THE PAYMENT OF A FILING FEE, PUBLICATION OF NOTICE, PROTEST AND HEARING,
13 DECISION BY THE DIRECTOR AND OPPORTUNITY FOR JUDICIAL REVIEW.

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

15 SECTION 1. That Section 42-105, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 42-105. USE OF NATURAL ~~CHANNELS~~ WATERWAYS --
18 MEASUREMENT OF COMMINGLED WATER -- ~~APPLICATION FOR~~ APPROVAL
19 OF RIGHT TO EXCHANGE WATER. (1) The water ~~to which~~
20 that a person ~~may be~~ is entitled
21 to divert by reason of a valid ~~permit or~~
22 ~~license issued by the department of water resources of~~ water right
23 ~~heretofore established by diversion and application to beneficial use~~
24 ~~under the constitution of this state~~ may be turned into the channel of
25 ~~another stream~~ a natural waterway and mingled with
26 its water, and then reclaimed, ~~and water may be turned into any ditch,~~
27 ~~natural channel or waterway from reservoirs or other sources of water supply,~~
28 ~~and such water may be substituted or exchanged for an equal amount of water~~
29 ~~diverted from the stream, creek or river into which such water flows, or any~~
30 ~~tributary thereof,~~ but in reclaiming the water so mingled, ~~or~~
31 ~~diverting water in lieu thereof from any such stream, creek, river or tribu-~~
32 ~~tary,~~ the amount of water to which prior appropriators may be entitled
33 shall not be diminished, and due allowance shall be made for loss by evapora-
34 tion and seepage. ~~Approval of any such exchange of water shall be~~

35 ~~obtained by filing application for permit to appropriate water under the pro-~~
 36 ~~visions of section 42-202, Idaho Code, in the event the water to be exchanged~~
 37 ~~is unappropriated public water, or by filing an application to exchange water~~
 38 ~~as provided in this act in the event the water to be exchanged has been previ-~~
 39 ~~ously appropriated by the applicant under the constitution or statutes of this~~
 40 ~~state. In no case, however, shall any such exchange of water be approved by~~
 41 ~~the department of water resources until the department has received an agree-~~
 42 ~~ment in form approved by the attorney general signed by the person proposing~~
 43 ~~the exchange and each person or organization owning rights to water with whom~~

2

1 ~~such exchange is proposed to be made~~ The use of natural waterways
 2 to commingle and reclaim water shall be subject at all times to the supervi-
 3 sion and control of the director of the department of water resources and
 4 shall be subject to the regulation of the watermaster within an established
 5 water district. The amounts of water turned into or diverted from all natural
 6 waterways are subject to the requirement of measurement and reporting.

7 (2) The water that a person is entitled to divert by reason of a valid
 8 water right, or water that a person is seeking to appropriate, may be
 9 exchanged for water under another water right, or for other water from the
 10 same or another source, as hereinafter provided:

11 (a) If the applicant intends to exchange water the applicant is entitled
 12 to divert under an existing valid water right for any other water,
 13 approval of the exchange shall be obtained by filing an application under
 14 the provisions of section 42-240, Idaho Code;

15 (b) If the applicant proposes to exchange water that the applicant is
 16 seeking to appropriate, approval of the exchange shall be obtained by fil-
 17 ing an application to appropriate water under section 42-202, Idaho Code.
 18 The proposed exchange shall be described in the application and the appli-
 19 cation shall be processed in accordance with the provisions of section
 20 42-203A, Idaho Code. If the application seeks to exchange the water to be
 21 appropriated with water available under another water right, the applica-
 22 tion shall be accompanied by an agreement to exchange signed by the owner
 23 of the existing water right. An exchange with water under an existing
 24 water right cannot result in an enlargement in use of the existing right

25 -----
 26 (3) ~~Any such~~ An exchange of water
 27 hereafter made without the approval of the department of water resources as
 28 provided in this ~~act~~ section shall be invalid.
 29 Nothing in this section shall affect the right a person may have or may obtain
 30 to turn water into a ditch or other artificial conveyance and reclaim the
 31 water.

32 SECTION 2. That Chapter 2, Title 42, Idaho Code, be, and the same is
 33 hereby amended by the addition thereto of a NEW SECTION, to be
 34 known and designated as Section 42-240, Idaho Code, and to read as follows:

35 42-240. APPLICATION FOR RIGHT TO EXCHANGE WATER -- FILING FEE -- NOTICE
 36 -- PROTEST -- HEARING -- APPROVAL OR DENIAL -- APPEAL. (1) Any person holding
 37 a right for the use of surface water may make application to the director of
 38 the department of water resources to exchange water authorized to be diverted
 39 under the right with the same or a different source, or with water authorized
 40 to be diverted under one (1) or more other rights from the same source or
 41 another surface water source. If the application proposes an exchange with
 42 water under another water right, the application shall be accompanied by an
 43 agreement in writing subscribed by the person proposing the exchange and each
 44 person or organization owning rights to water with whom the exchange is pro-

45 posed to be made.

46 (2) The application shall be upon forms furnished by the department and
47 shall contain such information as shall enable the director to determine the
48 nature of the proposed exchange, and shall be accompanied by the statutory
49 filing fee provided under section 42-221, Idaho Code, for an application to
50 change a vested water right.

51 (3) Upon receipt of the application, it shall be the duty of the director
52 to examine the same and, if otherwise proper, to cause notice of the proposed
53 exchange to be published in the same manner as applications under section

3

1 42-203A, Idaho Code. The notice shall fully describe the nature of the pro-
2 posed exchange of water and shall advise that anyone who wishes to protest
3 shall file notice of protest in accordance with the provisions of section
4 42-203A, Idaho Code.

5 (4) Upon the receipt of any protest it shall be the duty of the director
6 to investigate the same and to conduct a hearing thereon. The director shall
7 also advise the watermaster of the district in which the exchange is proposed,
8 if a district exists, and the watermaster shall notify the director of the
9 watermaster's recommendations on the application. The director shall not take
10 final action on the application or exchange until the director has received
11 the recommendations of the watermaster, including recommended conditions nec-
12 essary for the exchange of water to be properly administered and regulated.

13 (5) The director shall examine all the evidence and available information
14 and shall approve the exchange in whole, or in part, or upon conditions, pro-
15 vided no other water rights are injured thereby, the exchange does not consti-
16 tute an enlargement in use of the original right or rights, the exchange is
17 consistent with the conservation of water resources within the state of Idaho,
18 and the exchange is in the local public interest as defined in section
19 42-203A, Idaho Code. Unless otherwise provided in a written agreement between
20 the applicant and other right holders, the director shall condition approval
21 of an exchange so that the exchange will not be operative during times when
22 water is not available to satisfy the exchange, and that during these times
23 the right to use water automatically reverts to the place of use authorized
24 under the water rights. A copy of the approved application for exchange shall
25 be provided to the applicant and the watermaster, and the applicant shall be
26 authorized upon receipt thereof to make the exchange in accordance with the
27 conditions set forth by the director. Should an approved exchange thereafter
28 be discontinued, the applicant or the applicant's successor in interest must
29 so notify the director and the district watermaster.

30 (6) In the absence of a contrary agreement by the parties to an exchange,
31 when the director has approved a right to exchange storage water for the natu-
32 ral flow of a stream or other water supply, the storage water shall be deliv-
33 ered in preference to any exchange rights subsequently approved using the same
34 storage water right.

35 (7) Any person or persons feeling themselves aggrieved by a final order
36 or final action of the director under this section may, if a protest was filed
37 and hearing held thereon, seek judicial review pursuant to section
38 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the
39 applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code,
40 for the purpose of contesting the action of the director and may seek judicial
41 review of the final order of the director following the hearing pursuant to
42 section 42-1701A(4), Idaho Code.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 08106

In 1986, Section 42-240, Idaho Code, providing an administrative procedure for the exchange of water rights was inadvertently repealed. The general authority for such exchanges remains in Section 42-105, Idaho Code. The administrative procedure should be returned to allow water users to exchange water rights to enhance the coordinated use of available water supplies.

FISCAL NOTE

The administrative cost of processing exchanges will be covered by a filing fee paid by the applicant.

CONTACT: Representative Golden Linford
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STATEMENT OF PURPOSE/FISCAL NOTE

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