

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 144

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO IRRIGATION AND DRAINAGE; AMENDING SECTION 42-202B, IDAHO CODE, TO DEFINE A TERM; AND AMENDING SECTION 42-238, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIREMENTS RELATING TO WELL CONSTRUCTION STANDARDS, TO PROVIDE CERTAIN NOTICE REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 42-202B, Idaho Code, be, and the same is hereby amended to read as follows:

42-202B. DEFINITIONS. Whenever used in this title, the term:

(1) "Artesian water" means any water that is confined in an aquifer under pressure so that the water will rise in the well casing or drilled hole above the elevation of the surrounding static water table, and includes water of nonflowing wells.

(2) "Consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use is not an element of a water right. Consumptive use does not include any water that falls as precipitation directly on the place of use. Precipitation shall not be considered to reduce the consumptive use of a water right. "Authorized consumptive use" means the maximum consumptive use that may be made of a water right. If the use of a water right is for irrigation, for example, the authorized consumptive use reflects irrigation of the most consumptive vegetation that may be grown at the place of use. Changes in consumptive use do not require a transfer pursuant to section 42-222, Idaho Code.

(23) "Digital boundary" means the boundary encompassing and defining an area consisting of or incorporating the place of use or permissible place of use for a water right prepared and maintained by the department of water resources using a geographic information system in conformance with the national standard for spatial data accuracy or succeeding standard.

(34) "Local public interest" is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

(45) "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution.

(56) "Municipal provider" means:

(a) A municipality that provides water for municipal purposes to its residents and other users within its service area;

(b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho

1 authorized to supply water for municipal purposes, and which does sup-  
2 ply water, for municipal purposes to users within its service area; or

3 (c) A corporation or association which supplies water for municipal  
4 purposes through a water system regulated by the state of Idaho as a  
5 "public water supply" as described in section 39-103(12), Idaho Code.

6 (~~67~~) "Municipal purposes" refers to water for residential, commercial,  
7 industrial, irrigation of parks and open space, and related purposes, ex-  
8 cluding use of water from geothermal sources for heating, which a municipal  
9 provider is entitled or obligated to supply to all those users within a ser-  
10 vice area, including those located outside the boundaries of a municipality  
11 served by a municipal provider.

12 (~~78~~) "Planning horizon" refers to the length of time that the de-  
13 partment determines is reasonable for a municipal provider to hold water  
14 rights to meet reasonably anticipated future needs. The length of the plan-  
15 ning horizon may vary according to the needs of the particular municipal  
16 provider.

17 (~~89~~) "Reasonably anticipated future needs" refers to future uses of  
18 water by a municipal provider for municipal purposes within a service area  
19 which, on the basis of population and other planning data, are reasonably  
20 expected to be required within the planning horizon of each municipality  
21 within the service area not inconsistent with comprehensive land use plans  
22 approved by each municipality. Reasonably anticipated future needs shall  
23 not include uses of water within areas overlapped by conflicting comprehen-  
24 sive land use plans.

25 (~~910~~) "Service area" means that area within which a municipal provider  
26 is or becomes entitled or obligated to provide water for municipal purposes.  
27 For a municipality, the service area shall correspond to its corporate lim-  
28 its, or other recognized boundaries, including changes therein after the  
29 permit or license is issued. The service area for a municipality may also  
30 include areas outside its corporate limits, or other recognized boundaries,  
31 that are within the municipality's established planning area if the con-  
32 structed delivery system for the area shares a common water distribution  
33 system with lands located within the corporate limits. For a municipal  
34 provider that is not a municipality, the service area shall correspond to the  
35 area that it is authorized or obligated to serve, including changes therein  
36 after the permit or license is issued.

37 SECTION 2. That Section 42-238, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 42-238. WELL DRILLERS' LICENSES AND OPERATOR PERMITS. (1) The direc-  
40 tor of the department of water resources is hereby vested with the duties  
41 relating to the licensing of well drillers and operators of well drilling  
42 equipment as provided for in this act so as to protect the ground water re-  
43 sources against waste and contamination. Qualifications for well drillers  
44 and operators of well drilling equipment shall be adopted by rule of the wa-  
45 ter resource board.

46 (2) It shall be unlawful for any person to drill a well in Idaho, in-  
47 cluding wells excepted under sections 42-227 and 42-228, Idaho Code, without  
48 first complying with the provisions of this chapter. It shall be unlawful  
49 for any person to abandon a well in Idaho without first obtaining a driller's

1 license or receiving a waiver of the license requirement from the director  
2 of the department of water resources. Authorization is required from the di-  
3 rector prior to the abandonment and the person abandoning the well shall sub-  
4 mit to the director a report describing the abandonment.

5 (3) For the purpose of this act, a "person" shall be defined as any indi-  
6 vidual who drills or abandons any well for himself or another in this state;  
7 it shall also be defined as any firm, copartnership, corporation or associa-  
8 tion which drills or abandons, or contracts to drill or abandon any well for  
9 hire or otherwise in this state.

10 (4) A driller's license shall be obtained by filing with the director  
11 an application in writing on a form provided by the director accompanied by a  
12 two hundred dollar (\$200) application fee.

13 (5) The director shall require that an applicant for a driller's li-  
14 cense successfully pass a written or oral examination, and be required to  
15 submit references and other detailed information describing past drilling  
16 experience to allow the director to determine if the applicant is qualified  
17 to drill wells in the state.

18 (6) The water resource board shall adopt rules for licensing and re-  
19 newal of licenses of well drillers in compliance with chapter 52, title 67,  
20 Idaho Code. The board is authorized to adopt rules on professional respon-  
21 sibility and continuing education requirements, not to exceed twenty (20)  
22 hours during each licensing period. Notwithstanding other provisions of  
23 this chapter, the director may refuse to issue or renew a driller's license  
24 permanently or for a designated period of time if the driller has previously  
25 constructed wells improperly or constructed a well without a valid driller's  
26 license. The rules may also allow for the director to issue a license with  
27 limitations on the type, size or depth of wells the applicant is authorized  
28 to construct. A copy of the proposed rules for licensing of well drillers  
29 shall be furnished to each well driller holding a current license at the time  
30 such proposed rules are promulgated or modified. The rules shall provide for  
31 the consideration of such factors as the applicant's:

32 (a) Knowledge of Idaho water laws and the rules of the water resource  
33 board in connection with the drilling of wells including proper well  
34 construction standards and procedures;

35 (b) Knowledge of the various types of drilling tools and their use;

36 (c) General knowledge of underground geology and ground water hydrol-  
37 ogy and their relation to well construction;

38 (d) Ownership or access to equipment capable of adequately construct-  
39 ing a well;

40 (e) Knowledge of types of well casing and their use;

41 (f) Knowledge of special well drilling problems and their solution,  
42 including additional requirements for licensing for drillers who con-  
43 struct wells in areas of drilling concern or for the production of low  
44 temperature geothermal resources as defined in section 42-233, Idaho  
45 Code, and for the production of geothermal resources as provided in  
46 chapter 40, title 42, Idaho Code;

47 (g) Previous drilling experience; and

48 (h) History of compliance with well drilling laws and rules.

49 (7) If it is determined that the applicant for a driller's license is  
50 not qualified, the director shall deny the application. If it is determined

1 that the applicant is qualified, a license shall be issued upon the filing  
2 with the director of a surety bond or cash bond in the penal sum of not less  
3 than five thousand dollars (\$5,000), or more than twenty thousand dollars  
4 (\$20,000) as determined by the director based on the applicant's history of  
5 compliance with well drilling laws and rules, the size and depth of the wells  
6 the applicant proposes to drill, the complexity of the wells, the resource to  
7 be recovered, the area of operation of the applicant, and other relevant fac-  
8 tors the director determines are in the public interest. The surety or cash  
9 bond shall be conditioned upon the proper compliance with the provisions of  
10 this chapter, chapter 40, title 42, Idaho Code, and rules promulgated pur-  
11 suant thereto. Such bond shall be made payable to the director.

12 (8) Employees of drilling firms, copartnerships, corporations or asso-  
13 ciations are authorized to operate drilling equipment for the driller after  
14 obtaining an operator's permit from the director. Such employees shall be  
15 designated as operators.

16 (a) A driller is responsible for adequate supervision of the operators  
17 during the construction of each well. A driller shall be responsible  
18 for the work of the operators employed by the driller.

19 (b) An operator shall only operate drilling equipment for the driller  
20 listed on the operator's permit.

21 (c) An operator's permit shall be obtained by filing with the director  
22 an application in writing on a form provided by the director accompanied  
23 by a twenty-five dollar (\$25.00) application fee.

24 (d) The applicant for an operator's permit shall successfully complete  
25 a written or oral examination.

26 (e) The water resource board shall adopt rules for the issuance, revo-  
27 cation and renewal of an operator's permit in accordance with chapter  
28 52, title 67, Idaho Code. The board is also authorized to adopt rules on  
29 professional responsibility and continuing education requirements not  
30 to exceed twenty (20) hours during each permitting period. The rules  
31 shall consider such factors as:

32 (i) Knowledge of Idaho water laws and the rules of the water re-  
33 source board in connection with the drilling of wells;

34 (ii) Demonstrated previous compliance with well drilling laws and  
35 rules including well construction standards; and

36 (iii) General understanding of well drilling equipment, well con-  
37 struction techniques, basic geology and map reading.

38 (9) Driller's licenses and operator's permits issued under this sec-  
39 tion shall expire on March 31 in the second year after issuance or upon re-  
40 vocation of the license by the director as provided for in this act. The  
41 driller's license can be renewed effective April 1 of every other year upon  
42 written application on forms provided by the director and the filing of a one  
43 hundred dollar (\$100) renewal fee plus a fifteen dollar (\$15.00) renewal fee  
44 for each operator employed by the licensed driller. Drillers renewing li-  
45 censes in 1997 shall be assessed a licensing fee prorated monthly based upon  
46 the annual fee schedule. Thereafter, driller licenses and operator permits  
47 will be renewed upon expiration for a two (2) year period. Documents demon-  
48 strating compliance with the continuing education requirements of the rules  
49 shall be submitted to the director along with other license and permit re-  
50 newal documents. The renewal request must be accompanied by a new bond or

1 evidence that the previous bond is still in effect. The renewal may then  
2 be granted by the director if he determines that the driller or operator has  
3 complied with the rules promulgated pursuant to this act. The fees collected  
4 for the licensing of well drillers and permitting of operators are nonre-  
5 fundable and shall be deposited in the water administration fund with the  
6 state treasurer with other fees collected by the director.

7 (10) The licensed driller and permitted operators shall have a card on  
8 hand, provided by the director, to indicate that the driller or operator  
9 is presently licensed or permitted at all times when he is operating the  
10 drilling equipment. The director may also require other identification to  
11 be posted on the drilling equipment as he deems helpful in the administration  
12 of this act.

13 (11) Well driller's report. In order to enable a comprehensive survey  
14 of the extent and occurrence of the state's ground water resource, every well  
15 driller is hereby required to keep available for inspection at the well site  
16 a daily well log and pertinent data concerning each well, and its construc-  
17 tion or abandonment, that is constructed or abandoned under the driller's  
18 direction in Idaho, including wells excepted under sections 42-227 and  
19 42-228, Idaho Code, and complete a report on forms furnished by the direc-  
20 tor. These reports shall be properly prepared and signed by the driller and  
21 deposited with the director within thirty (30) days following the completion  
22 of the well. When the driller signs the report, the driller shall attest  
23 that all information on the report is accurate to the best of the driller's  
24 knowledge and that the driller has met all minimum well construction stan-  
25 dards, low temperature geothermal resource well construction standards,  
26 geothermal resource well construction standards and area of drilling con-  
27 cern standards as adopted by the water resource board. The reports shall  
28 become a permanent record in the office of the director for hydrologic and  
29 geologic analysis and research, and shall be available for public use. The  
30 report shall include such data as the director deems necessary to provide the  
31 information that will be valuable for future reference and study.

32 (12) Well construction standards. The water resource board shall adopt  
33 minimum standards for new well construction, modification and abandonment  
34 of existing wells, low temperature geothermal resource well construction  
35 and geothermal well construction in this state under the provisions of  
36 chapter 52, title 67, Idaho Code. Every licensed well driller will be fur-  
37 nished a copy of the adopted standards by the director and will be required  
38 to construct or abandon each well in compliance with the adopted standards.  
39 Such standards shall require each well to be so constructed as to protect  
40 the ground water of the state from waste and contamination and may include  
41 additional requirements for wells drilled in "areas of drilling concern" as  
42 designated in accordance with subsection (15) of this section. ~~Every li-~~  
43 ~~icensed well driller will be furnished a copy of the adopted standards by the~~  
44 ~~director, and will be required to construct or abandon each well in compli-~~  
45 ~~ance with the adopted standards~~ Such standards shall be consistent with all  
46 of the following:

47 (a) Use of approved sealing materials and required annular space. Well  
48 casings shall be sealed in the required annular space with approved ma-  
49 terial to prevent the possible downward movement of contaminated sur-  
50 face waters or other fluids in any annular space around the well casing.

1 Proper sealing is also required to prevent the movement of groundwater  
2 either upward or downward from zones of different pressure, temperature  
3 or quality within the well or outside the casing. Well drillers shall  
4 not be required to notify, by phone or otherwise, the Idaho department  
5 of water resources or any office thereof in advance of placing any annu-  
6 lar seal. All casing to be sealed shall be adequately centralized to en-  
7 sure uniform seal thickness around the well casing. Surface seals shall  
8 extend to not less than eighteen (18) feet.

9 (b) Sealing of wells. Sealing requirements described in this paragraph  
10 are minimum standards that apply to all wells. The director may estab-  
11 lish alternate minimum sealing requirements in specific areas when it  
12 can be determined through detailed studies of the local hydrogeology  
13 that a specific alternate minimum will provide protection of the ground  
14 water from waste and contamination. Before the director may establish  
15 such alternate minimum standards, he shall provide written notifica-  
16 tion to interested persons in the affected area by certified mail and  
17 shall allow for and accept input from such persons. Such notice shall  
18 also be published in two (2) consecutive weekly issues of a newspaper of  
19 general circulation in the affected area.

20 (i) Consolidated formations. When a water well is drilled into  
21 and acquires water from an aquifer that consists of consolidated  
22 formations that are above the water table, casing shall be in-  
23 stalled so that it extends and is sealed to a depth not less than  
24 eighteen (18) feet.

25 (ii) Unconsolidated formations without confining layers of clay.  
26 When a water well is drilled into and acquires water from an un-  
27 confined aquifer that is overlain with unconsolidated formations,  
28 such as sand and gravel without confining layers of clay, well cas-  
29 ing shall extend to at least five (5) feet below the water table and  
30 be sealed to a depth not less than eighteen (18) feet.

31 (c) Sealing artesian wells.

32 (i) Unconsolidated formations. When artesian water is encoun-  
33 tered in unconsolidated formations, the production zone or open  
34 interval shall be limited to zones of like pressure, temperature  
35 and quality. Well casing shall extend from land surface into the  
36 lowermost confining layer above the final production zone and  
37 shall be sealed in between aquifers:

38 1. From land surface to a depth of at least eighteen (18)  
39 feet; and

40 2. Through all confining layers; and

41 (A) A minimum of five (5) feet of seal material shall  
42 be placed into or through the lowermost confining layer  
43 above the production zone; or

44 (B) Five (5) feet into or through the lowermost confin-  
45 ing layer above the production zone.

46 3. If the well depth is less than thirty-eight (38) feet, the  
47 well shall be cased and sealed from land surface to the con-  
48 fining layer in direct contact with the production zone or to  
49 a depth of eighteen (18) feet, whichever is greater.

1           (ii) Consolidated formations. When artesian water is encountered  
2           in a consolidated formation, well casing shall be installed and  
3           sealed from land surface to a depth of at least eighteen (18) feet  
4           and if the consolidated formation is overlain by a permeable for-  
5           formation and water will rise above the consolidated formation, well  
6           casing shall extend and be sealed at least five (5) feet into the  
7           confining portion of the consolidated formation.

8           (iii) Control device. Pursuant to section 42-1603, Idaho Code, if  
9           the well flows at land surface, it shall be equipped with a con-  
10          trol device approved by the director so that the flow can be com-  
11          pletely stopped. If leaks occur around the well casing or adjacent  
12          to the well, the well shall be completed with seals, casing or ce-  
13          ment grout to eliminate the leakage.

14               1. Flowing artesian wells shall be equipped with an approved  
15               pressure gage fitting that will allow for measurement of  
16               shut-in pressure of a flowing well. All pressure gage fit-  
17               tings shall include control valves such that the pressure  
18               gage can be removed without resulting in artesian flow from  
19               the well.

20               2. The well driller shall not move his well drilling rig from  
21               the site until all requirements have been satisfied. Some  
22               mixing of water may be allowed to develop an adequate water  
23               well; however, the mixing shall be restricted to water zones  
24               of similar pressure, temperature and quality. The driller  
25               shall take precautions to case and seal out zones that may  
26               lead to waste or contamination.

27           (13) Penalties for violation. Drilling of a well without first obtain-  
28           ing a license as required in this section shall be a criminal misdemeanor,  
29           and the employees of the department of water resources are hereby empowered  
30           to issue Idaho uniform citations, as provided by the rules of the court for  
31           magistrate's division of the district court, to any person who drills a well  
32           without first obtaining the required license. When the director of the de-  
33           partment of water resources determines that any person is in substantial vi-  
34           olation of any provision of this section or any rule, permit, condition of  
35           approval or order issued or promulgated pursuant to this section, the direc-  
36           tor may commence an administrative enforcement action by issuing a written  
37           notice of violation in accordance with the provisions of section 42-1701B,  
38           Idaho Code. Failure of the driller to comply with the provisions of section  
39           42-238(11), Idaho Code, will allow the director to proceed to collect the  
40           necessary data on the well or wells in any manner available to him, and the  
41           cost of this data collection may be charged against the driller's bond in the  
42           amount of the expenses incurred up to the total amount of the bond.

43           (a) Failure of the driller to comply with the provisions of section  
44           42-238(11), Idaho Code, is also cause for the director to revoke an ac-  
45           tive license, or refuse to renew a license, until such time as the well  
46           driller's report or reports are properly completed and on file in the  
47           office of the director. If it is found that a driller has intentionally  
48           submitted inaccurate or false information in the signed well driller's  
49           report as provided in subsection (11) of this section, or has failed  
50           to file a report within the time frame required, the driller shall be

1 liable for a civil penalty as provided in section 42-1701B, Idaho Code.  
2 In addition, this shall be cause for the director to suspend an active  
3 license for a period not in excess of one (1) year or to not renew a li-  
4 cense.

5 (b) Failure of the driller to comply with the provisions of section  
6 42-238(12), Idaho Code, will allow the director to proceed to repair,  
7 reconstruct or abandon a well so that it complies with the adopted min-  
8 imum standards of well construction and abandonment, and the costs of  
9 this work may be charged against the driller's bond in the amount of the  
10 expenses incurred up to the total amount of the bond.

11 (c) Failure of the driller to comply with the provisions of section  
12 42-238(12), Idaho Code, is also cause for the director to revoke an  
13 active license or refuse to renew a license until such time as the well  
14 driller has repaired or reconstructed the well or wells so that they  
15 meet the adopted minimum standards. Any driller, well owner or well  
16 pump installer causing a well to be altered or modified so as to not  
17 meet the construction standards provided for under this section, shall  
18 be deemed to have violated the provisions of this section and shall be  
19 subject to the enforcement provisions of section 42-1701B, Idaho Code.  
20 The director may also require that the well driller present evidence to  
21 show that he and his equipment are now capable of constructing a well in  
22 a proper manner, before the license is renewed.

23 (14) Appeals. Refusal to issue, refusal to renew, or revocation of a  
24 well driller's license or operator's permit by the director shall be cause  
25 for the well driller to seek a public hearing before the water resource  
26 board. No formal petition shall be required from the affected driller or  
27 operator, but a simple statement, in writing, requesting a hearing shall be  
28 sufficient. The board shall notify the driller or operator, and the direc-  
29 tor, of the date set for the hearing, which shall be at least fifteen (15)  
30 days after the notice is sent by certified mail to the well driller or oper-  
31 ator at his address of record with the department. A certified transcript  
32 of the proceedings and the evidence received at such hearing shall be main-  
33 tained by the board. The board shall affirm, modify or reject the director's  
34 decision, and make its decision in the form of an order to the director. The  
35 hearing shall be conducted in accordance with chapter 52, title 67, Idaho  
36 Code, and rules of practice and procedure adopted by the water resource  
37 board. Any party to the hearing may seek judicial review of any final order  
38 of the water resource board pursuant to chapter 52, title 67, Idaho Code.

39 (15) Drilling in a designated "area of drilling concern." The director  
40 of the department of water resources may designate as he determines nec-  
41 essary, "areas of drilling concern" on an aquifer by aquifer basis within  
42 which drillers must comply with the additional requirements of this section.  
43 The director shall designate "areas of drilling concern" to protect public  
44 health and to prevent waste or contamination of ground or surface water be-  
45 cause of factors such as aquifer pressure, vertical depth of the aquifer,  
46 warm or hot ground water, or contaminated ground or surface waters. It is  
47 unlawful for any person not meeting the requirements of this subsection to  
48 drill a well for any purpose in a designated "area of drilling concern." Any  
49 person drilling a new well or deepening or modifying an existing well for any



1 purpose in an "area of drilling concern" as designated by the director as  
2 herein provided shall comply with the following additional requirements:

3 (a) Additional bonding requirements, as determined by the director, to  
4 ~~insure~~ ensure that the well is constructed or abandoned in compliance  
5 with the adopted standards for well construction.

6 (b) Additional experience and knowledge in drilling wells encountering  
7 warm water or pressurized aquifers as required by rules adopted by the  
8 water resource board.

9 (c) Document that specialized equipment needed to drill wells in "ar-  
10 eas of drilling concern," as determined by the director, is or will be  
11 available to the driller.

12 (d) Provide a notice of intent to drill, deepen or modify a well, submit  
13 plans and specifications for the well and a description of the drilling  
14 methods that will be used, as required by the director, and receive the  
15 written approval of the director before commencing to drill, deepen, or  
16 modify any well in a designated "area of drilling concern."

17 Prior to designating an "area of drilling concern," the director shall  
18 conduct a public hearing in or near the area to determine the public interest  
19 concerning the designation. The director shall provide written notice of  
20 the hearing to interested persons in the area by certified mail and such no-  
21 tice shall be published in two (2) consecutive weekly issues of a newspaper  
22 of general circulation in the area prior to the date set for hearing.

23 In the event an area has been designated as an "area of drilling concern"  
24 and the director of the department of water resources desires to remove such  
25 designation or modify the boundaries thereof, he shall likewise conduct a  
26 public hearing following similar publication of notice prior to taking such  
27 action.