

LEGISLATURE OF THE STATE OF IDAHO

Sixty-fourth Legislature

First Regular Session - 2017

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 319

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO WATER; AMENDING SECTION 42-202A, IDAHO CODE, TO PROVIDE FOR USES WHERE A TEMPORARY APPROVAL SHALL BE GRANTED, TO PROVIDE FOR DURATION OF APPROVAL, TO DEFINE A TERM AND TO PROVIDE THAT TEMPORARY APPROVAL SHALL NOT BE REQUIRED FOR RESERVOIR FLOOD CONTROL AUTHORIZED BY STATE OR FEDERAL LAWS; AND DECLARING AN EMERGENCY.

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

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

42-202A. TEMPORARY APPROVAL -- APPLICATION -- CRITERIA -- EXCEPTIONS. (1) Any person, association or corporation hereafter intending to use the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, for a minor use of short duration may make application to the department of water resources for temporary approval.

19 (3) The director of the department of water resources is not required
20 to publish notice of the application pursuant to the provisions of section
21 42-203A, Idaho Code, and is not required to make findings as provided in
22 section 42-203A or 42-203C, Idaho Code. The director may, however, give
23 notice of an application as he determines appropriate and may grant a tem-
24 porary approval upon completion of the application form, payment of the
25 filing fee, a determination by the director that the temporary approval can
26 be properly administered, a determination that other sources of water are
27 not available, a determination that approval is in the public interest and
28 a determination that the temporary approval will not injure public values
29 associated with the water source or any other water right. If the temporary
30 approval is within a water district, the director shall seek and consider the
31 recommendations of the watermaster before granting a temporary approval.
32 The director may issue a temporary approval with the conditions determined
33 by the director to be necessary to protect other water rights and the public
34 interest.

35 (4) The recipient of any temporary approval issued pursuant to the pro-
36 visions of this act shall assume all risk that the diversion and use of the
37 water may injure other water rights, or otherwise not comply with the crite-
38 ria described in section 42-203A(5), Idaho Code. Any applicant for a tempo-
39 rary approval who is aggrieved by a denial of the director of a temporary ap-
40 proval pursuant to this act may file an application to appropriate water as
41 provided in section 42-202, Idaho Code.

1 (5) A temporary approval shall only be granted for a use not intended to
2 become an established water right:

- 3 (a) For prevention of flood damage;
- 4 (b) For ground water recharge;
- 5 (c) For ground or surface water remediation; and or
- 6 (d) Ffor any other use which will not exceed a total diverted volume of
7 five (5) acre feet for the duration of the approval, which.

8 Approval of the uses set forth herein shall not exceed one (1) year.
9 "Remediation" is defined to be the removal of hazardous substances or petro-
10 leum, as those terms are defined in section 39-7203, Idaho Code, from water
11 in response to state or federal health and safety requirements. Approvals
12 issued under the provisions of this section constitute a waiver of the manda-
13 tory permit requirements of section 42-201(2), Idaho Code, and do not create
14 a continuing right to use water. Temporary approvals shall not be issued as
15 an interim water supply for a use which requires a continuing water supply.

16 (6) The provisions of this section do not require a temporary approval:
17 (a) before diverting and using water to extinguish or prevent the spread of
18 an existing wildfire on private or public lands, facilities or equipment,
19 including the use of water by personnel engaged in fighting an existing wild-
20 fire, or (b) for reservoir flood control authorized by state or federal laws.

21 SECTION 2. An emergency existing therefor, which emergency is hereby
22 declared to exist, this act shall be in full force and effect on and after its
23 passage and approval.