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IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 780

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO A COMPREHENSIVE STATE WATER PLAN; PROVIDING LEGISLATIVE INTENT; REPEALING SECTION 42-1731, IDAHO CODE; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 42-1730 AND 42-1731, IDAHO CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE INTENT AND TO DEFINE TERMS; AMENDING SECTION 42-1734, IDAHO CODE, TO DELETE PROVISIONS RELATING TO A STATE WATER PLAN; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 42-1734A, 42-1734B, 42-1734C, 42-1734D, 42-1734E, 42-1734F, 42-1734G, 42-1734H AND 42-1734I, IDAHO CODE, TO PROVIDE THAT THE WATER RESOURCE BOARD SHALL FORMULATE, ADOPT AND IMPLEMENT A COMPREHENSIVE STATE WATER PLAN AND TO PROVIDE WHAT THE PLAN SHALL CONTAIN; TO PROVIDE WATER RESOURCE BOARD PROCEDURES FOR ADOPTING A COMPREHENSIVE STATE WATER PLAN; TO PROVIDE THAT THE COMPREHENSIVE STATE WATER PLAN SHALL BE SUBMITTED TO VARIOUS FEDERAL AGENCIES AND ENTITIES AS THE STATEMENT OF POLICY REGARDING THE DEVELOPMENT OF WATER RESOURCES IN THE STATE OF IDAHO; TO PROVIDE FOR DESIGNATION OF INTERIM PROTECTED RIVERS; TO PROVIDE REMEDIES; TO PROVIDE THE EFFECT OF THE PLAN ON VESTED AND NONVESTED PROPERTY RIGHTS ON DIVERSION STRUCTURES AND ON THE RELICENSING OF CERTAIN EXISTING HYDROPOWER PROJECTS; TO PROVIDE THE EFFECT OF THE PLAN ON ESTABLISHING A WATER RIGHT; TO PROVIDE THE DESIGNATION OF INTERIM PROTECTED RIVERS AND TO PROVIDE THE STATUS OF A WATERWAY REGARDING THE NATIONAL WILD AND SCENIC RIVERS SYSTEM WHEN IT HAS BEEN DESIGNATED AS A PROTECTED RIVER.

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

SECTION 1. The legislature finds and declares that a central component of state sovereignty is the inherent right of the state to regulate and to control the natural resources of this state. In a state such as Idaho, it is essential that the state exercise its full authority to manage its water. To that end, it is the purpose of this act to provide for the full exercise of all the state's rights and responsibilities to manage its water resource.

The legislature is aware of the proposed protected areas program being considered by the pacific northwest electric power and conservation planning council regarding Idaho's rivers and streams. The legislature believes that water resource planning is a state function and therefore requests the Idaho representatives to the pacific northwest electric power and conservation planning council seek to limit the scope of the council's protected areas program in a manner not to conflict with, preempt or limit the efforts of the state of Idaho in water resource or land use planning.

SECTION 2. That Section 42-1731, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 42-1730 and 42-1731, Idaho Code, and to read as follows:

- 1 42-1730. STATEMENT OF PURPOSE. The legislature finds and declares that:
2 (1) The water resources and waterways of Idaho constitute a valuable
3 renewable resource;
4 (2) The welfare of the people of Idaho is dependent upon conservation,
5 development and optimum use of our water resources and waterways;
6 (3) State regulation of development and use of our water resources and
7 waterways is necessary to ensure water is available to meet the present and
8 future needs of the people of Idaho;
9 (4) The development of Idaho's water resources for hydropower, irriga-
10 tion, domestic, commercial, municipal, industrial and other uses in a manner
11 that considers competing uses and values provides important benefits to the
12 people of Idaho;
13 (5) Comprehensive planning is necessary to minimize conflicts between
14 competing uses and to ensure optimal protection of all beneficial uses of
15 water;
16 (6) A single state agency should formulate a comprehensive state water
17 plan;
18 (7) Selected rivers possessing outstanding fish and wildlife, recre-
19 ational, aesthetic, historic, cultural, natural or geologic values should be
20 protected for the public benefit and enjoyment;
21 (8) Section 401 of the federal clean water act gives the state certifica-
22 tion authority to regulate activities licensed or permitted by federal agen-
23 cies to insure the protection of the quality of state water; and
24 (9) The comprehensive state water plan required by this chapter shall not
25 alter any existing responsibilities, jurisdiction or planning functions of
26 state agencies established by state or federal law.
- 27 42-1731. DEFINITIONS. For the purpose of this chapter:
28 (1) "Alteration" means any activity using mechanized equipment that moves
29 or overturns gravel or earth.
30 (2) "Board" means the Idaho water resource board.
31 (3) "Comprehensive state water plan" means the plan adopted by the board
32 pursuant to section 42-1734A, Idaho Code, or a component of such plan devel-
33 oped for a particular water resource, waterway or waterways and approved by
34 the legislature.
35 (4) "Dredge or placer mining" means any dredge or other placer mining
36 operation to recover minerals with the use of a dredge boat or sluice washing
37 plant whether fed by bucket line as a part of such dredge or by a separate
38 dragline or any other method including, but not limited to, suction dredges
39 which are capable of moving more than two (2) cubic yards per hour of earth
40 material.
41 (5) "Hydropower project" means any development which uses a flow of water
42 as a source of electrical or mechanical power, or which regulates the flow of
43 water for the purpose of generating electrical or mechanical power. A
44 hydropower project development includes all powerhouses, dams, water conduits,
45 transmission lines, water impoundments, roads, and other appurtenant works and
46 structures.
47 (6) "Interim protected river" means a waterway designated pursuant to
48 section 42-1734D or 42-1734H, Idaho Code, as protected for up to two (2) years
49 while a component of the comprehensive state water plan is prepared for that
50 waterway.
51 (7) "Natural river" means a waterway which possesses outstanding fish and

1 wildlife, recreation, geologic or aesthetic values, which are free of substan-
2 tial existing man-made impoundments, dams or other structures, and of which
3 the riparian areas are largely undeveloped, although accessible in places by
4 trails and roads.

5 (8) "Protected river" means a waterway protected in the comprehensive
6 state water plan by designation as either a natural river or a recreational
7 river.

8 (9) "Recreational river" means a waterway which possesses outstanding
9 fish and wildlife, recreation, geologic or aesthetic values, and which might
10 include some man-made development within the waterway or within the riparian
11 area of the waterway.

12 (10) "Riparian area" means that area within one hundred (100) feet of the
13 mean highwater mark of a waterway.

14 (11) "State agency" means any board, commission, department or executive
15 agency of the state of Idaho.

16 (12) "Stream bed" means a natural water course of perceptible extent with
17 definite bed and banks, which confines and conducts the water of a waterway
18 which lies below and between the ordinary high water mark on either side of
19 that waterway.

20 (13) "Waterway" means a river, stream, creek, lake or spring, or a por-
21 tion thereof, and shall not include any tributary thereof.

22 SECTION 4. That Section 42-1734, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 42-1734. POWERS AND DUTIES. The board shall, subject to the provisions of
25 chapter 52, title 67, Idaho Code, have the following powers and duties:

26 (a) To have and exercise all of the rights, powers, duties and privi-
27 leges vested by article 15 XV, section 7, of the constitution of this state in
28 the water resource agency, and the water resource board, herein created, is
29 hereby constituted the water resource agency;

30 ~~(b) To progressively formulate an integrated, coordinated program for~~
31 ~~conservation, development, and use of all unappropriated water resources of~~
32 ~~this state, based upon studies and after public hearings in affected areas at~~
33 ~~which all interested parties shall be given the opportunity to appear, or to~~
34 ~~present written testimony in response to published proposals for such policy~~
35 ~~programs. A minimum of sixty (60) days shall be allowed between publication of~~
36 ~~a proposal and the date on which no further testimony on the proposal will be~~
37 ~~accepted. All comments in writing shall be preserved as a part of the record~~
38 ~~of the board. In adopting such program the board shall be guided by these cri-~~
39 ~~teria:~~

40 ~~(1) Existing rights, established duties, and the relative priorities of~~
41 ~~water established in article 15, section 3, of the constitution of Idaho,~~
42 ~~shall be protected and preserved;~~

43 ~~(2) Optimum development in the interest of and for the benefit of the~~
44 ~~state as a whole shall be achieved by integration and coordination of use~~
45 ~~of water and augmentation of existing supplies for all beneficial pur-~~
46 ~~poses;~~

47 ~~(3) Adequate and safe water supplies for human consumption and maximum~~
48 ~~supplies for other beneficial uses shall be preserved and protected;~~

49 ~~(4) Subject to the primary use of water for the beneficial uses now or~~
50 ~~hereafter prescribed by law, minimum stream flow for aquatic life and the~~
51 ~~minimization of pollution shall be fostered and encouraged and consider-~~

- 1 ~~ation shall be given to the development and protection of water recreation~~
 2 ~~facilities;~~
 3 ~~(5) Watershed conservation practices consistent with sound engineering~~
 4 ~~and economic principles shall be encouraged;~~
 5 ~~(6) To provide for review and reevaluation of the program on at least a~~
 6 ~~quinquennial basis, with amendments to be adopted in substantially the~~
 7 ~~same manner as original programs;~~
 8 (c2) To institute judicial proceedings to have water rights established
 9 by court decree on any stream, lake or underground water basin; in such pro-
 10 ceedings court costs of the action, including the survey and determination of
 11 water uses by the director of the department of water resources, shall be
 12 borne by the state;
 13 (d3) To appear, when requested by the governor, on behalf of and repre-
 14 sent the state in matters related to its duties in any proceeding, negotia-
 15 tion, or hearing involving the federal government or other state; provided,
 16 however, that compact commissions now established by law shall continue to act
 17 but in so doing shall report to it;
 18 (e4) To accept, receive, initiate, investigate, consider and promote such
 19 water projects as it deems to be in the public interest;
 20 (f5) To generate and wholesale hydroelectric power at the site of produc-
 21 tion if such power production is connected with another purpose for such proj-
 22 ect;
 23 (g6) To file applications and obtain permits in the name of the board, to
 24 appropriate, store, or use the unappropriated waters of any body, stream, or
 25 other surface or underground source of water for specific water projects. Such
 26 filings and appropriations by the board, or any water rights owned or claimed
 27 by the board, shall be made in the same manner and subject to all of the state
 28 laws relating to appropriation of water, with the exception that the board
 29 will not be required to pay any fees required by the laws of this state for
 30 its appropriations. The filings and appropriations by the board shall be sub-
 31 ject to contest or legal action the same as any other filing and appropriation
 32 and such filings and appropriations shall not have priority over or affect
 33 existing prior water rights of any kind or nature; provided that the board
 34 shall have the right to file for water rights with appropriate officials of
 35 other states as trustee for project users, and to do all things necessary in
 36 connection therewith;
 37 (h7) To finance said projects with revenue bonds or such moneys as may be
 38 available;
 39 (i8) To acquire, purchase, lease, or exchange land, rights, water rights,
 40 easements, franchises and other property deemed necessary or proper for the
 41 construction, operation and maintenance of water projects;
 42 (j9) To exercise, in accordance with the provisions of title 7, chapter
 43 7, Idaho Code, the right of eminent domain to acquire property necessary for
 44 the construction of projects, both land and water;
 45 (k10) To cooperate in all water studies, planning, research, or activi-
 46 ties with any state or local agency in this state, or any other state or any
 47 federal agency and to enter into contracts with federal, state and local gov-
 48 ernmental agencies to effect this purpose;
 49 ~~(l) When a comprehensive state water plan is adopted, copies thereof~~
 50 ~~shall be filed in the office of the governor and director of the department,~~
 51 ~~and published and distributed generally;~~
 52 (m11) To present to the governor for presentation to the legislature not
 53 later than the 30th of November of each November prior to the convening of a

1 regular legislative session the final report containing the complete plans,
 2 costs and feasibility estimates for any water project which the board recom-
 3 mends that the state construct in accordance with the ~~multiple-use-water~~
 4 ~~resource-policy-and~~ comprehensive state water plan; and to construct any water
 5 project specifically authorized by the legislature;

6 (n12) To enter into contracts with political subdivisions, municipal
 7 entities, individuals and others for the rehabilitation and repair of existing
 8 irrigation projects and irrigation facilities, the sale and or lease of water,
 9 use of water, water storage, electric power, or other service, to turn over
 10 projects to water users after pay-out and to lease facilities, sell, lease or
 11 dispose of surplus facilities subject to the provisions of applicable law;

12 (o13) To enter into contracts to effect the purposes of this act;

13 (p14) To sue and be sued;

14 (q15) To study and examine pollution of rivers, streams, lakes and ground
 15 water, and to advise, cooperate and counsel with the state board of health and
 16 welfare in a manner designed to avoid inhibition of economic development and
 17 at the same time insure the right of the people to comfortably enjoy our water
 18 resources and accomplish the establishment of water quality criteria;

19 (r16) To call upon any other state agency for cooperation, assistance or
 20 use of information available to such agency; provided, however, if such agency
 21 is required to make substantial expenditures in responding to such request,
 22 appropriate arrangements for compensation may be accomplished;

23 (s17) To issue revenue bonds for the rehabilitation and repair of exist-
 24 ing irrigation projects and irrigation facilities, and for water projects,
 25 pledge any revenues available to the board to secure said bonds, exclusive of
 26 any revenues derived from legislative appropriations, and pool revenues from
 27 one or more projects constructed, financed or operated by the board, or exist-
 28 ing irrigation project or facilities rehabilitated or repaired by the board;

29 (t18) To formulate and recommend, prior to each session of the legisla-
 30 ture, proposed legislation that may be necessary to assist it in effecting a
 31 proper plan for conservation, development and utilization of water resources
 32 and waterways and to report to each session of the legislature on the public
 33 business entrusted to its care and the financial affairs of the board. In the
 34 period between legislative sessions, the board shall deposit with the legisla-
 35 tive council statements describing all actions taken and projects undertaken
 36 by it;

37 (u19) To issue procedural and operative rules and regulations as may be
 38 necessary for the conduct of its business;

39 (v20) To appoint advisory boards when deemed desirable to aid in the exe-
 40 cution of its powers;

41 (w21) To take such other action as may be necessary to carry out its
 42 duties and powers under this act and the constitution of the state of Idaho;

43 (x22) To loan without prior legislative approval, the proceeds of the
 44 sale of revenue bonds to the local water project sponsor or sponsors; to enter
 45 into lease, sale or loan agreement; and to purchase all or a portion of, or
 46 participate in, loans, originated by private lending institutions.

47 SECTION 5. That Chapter 17, Title 42, Idaho Code, be, and the same is
 48 hereby amended by the addition thereto of NEW SECTIONS, to be known and desig-
 49 nated as Sections 42-1734A, 42-1734B, 42-1734C, 42-1734D, 42-1734E, 42-1734F,
 50 42-1734G, 42-1734H and 42-1734I, Idaho Code, and to read as follows:

51 (d)(1) 42-1734A. COMPREHENSIVE STATE WATER PLAN. (1) The board shall, subject

1 to legislative approval, progressively formulate, adopt and implement a com-
2 prehensive state water plan for conservation, development, management and
3 optimum use of all unappropriated water resources and waterways of this state
4 in the public interest. As part of the comprehensive state water plan, the
5 board may designate selected waterways as protected rivers as provided in this
6 chapter. The comprehensive state water plan shall be based upon studies and
7 public hearings in affected areas at which all interested parties shall be
8 given the opportunity to appear, or to present written testimony in response
9 to published proposals for such policy programs and proposed designations. A
10 minimum of sixty (60) days shall be allowed between publication of a proposal
11 and the date on which no further testimony on the proposal will be accepted.
12 All comments in writing shall be preserved as a part of the record of the
13 board. In adopting a comprehensive state water plan the board shall be guided
14 by these criteria:

- 15 (a) Existing rights, established duties, and the relative priorities of
16 water established in article XV, section 3, of the constitution of the
17 state of Idaho, shall be protected and preserved;
18 (b) Optimum economic development in the interest of and for the benefit
19 of the state as a whole shall be achieved by integration and coordination
20 of the use of water and the augmentation of existing supplies and by pro-
21 tection of designated waterways for all beneficial purposes;
22 (c) Adequate and safe water supplies for human consumption and maximum
23 supplies for other beneficial uses shall be preserved and protected;
24 (d) Subject to prior existing water rights for the beneficial uses now or
25 hereafter prescribed by law, minimum stream flow for aquatic life, recre-
26 ation and aesthetics and the minimization of pollution and the protection
27 and preservation of waterways in the manner hereafter provided shall be
28 fostered and encouraged and consideration shall be given to the develop-
29 ment and protection of water recreation facilities;
30 (e) Watershed conservation practices consistent with sound engineering
31 and economic principles shall be encouraged.

32 (2) The board may develop a comprehensive state water plan in stages
33 based upon waterways, river basins, drainage areas, river reaches, groundwater
34 aquifers, or other geographic considerations. The component of the comprehen-
35 sive state water plan prepared for particular water resources and waterways
36 shall contain, among other things, the following:

- 37 (a) A description of the water resources and waterway or waterways that
38 are the subject of the plan, including pertinent maps detailing the geo-
39 graphic area of the plan;
40 (b) A description of the significant resources of the water resources and
41 waterway or waterways;
42 (c) A description of the various existing and planned uses for these
43 resources including currently undeveloped areas of the waterway and future
44 plans for those areas, with a discussion of the advantages and disadvan-
45 tages associated with each planned use; and
46 (d) A discussion of goals, objectives, and recommendations for improving,
47 developing, or conserving the water resources and waterway or waterways in
48 relation to these resources, including an examination of how different
49 uses will promote the overall public interest, a statement as to the goals
50 the plan expects to achieve, and an analysis of how any specific recommen-
51 dations further those goals. A description of the methodology used in
52 developing the plan shall be included.
53 (3) The description of the resources and uses in subsections (2)(b) and

- 1 (2)(c) of this section shall contain, among other things:
- 2 (a) navigation;
 - 3 (b) power development;
 - 4 (c) energy conservation;
 - 5 (d) fish and wildlife;
 - 6 (e) recreational opportunities;
 - 7 (f) irrigation;
 - 8 (g) flood control;
 - 9 (h) water supply;
 - 10 (i) timber;
 - 11 (j) mining;
 - 12 (k) livestock watering;
 - 13 (l) scenic values;
 - 14 (m) natural or cultural features;
 - 15 (n) domestic, municipal, commercial and industrial uses; and
 - 16 (o) other aspects of environmental quality and economic development.
- 17 (4) The comprehensive state water plan may designate protected rivers.
- 18 Designations shall be based upon a determination by the board that the value
- 19 of preserving a waterway for particular uses outweighs that of developing the
- 20 waterway for other beneficial uses and shall specify whether a protected river
- 21 is designated as a natural or recreational river. The plan may also describe
- 22 those water resources and waterways which are not designated as protected
- 23 rivers.
- 24 (5) In designating a natural river, the board shall prohibit the follow-
- 25 ing activities:
- 26 (a) construction or expansion of dams or impoundments;
 - 27 (b) construction of hydropower projects;
 - 28 (c) construction of water diversion works;
 - 29 (d) dredge or placer mining;
 - 30 (e) alterations of the stream bed; and
 - 31 (f) mineral or sand and gravel extraction within the stream bed.
- 32 (6) In designating a recreational river, the board shall determine which
- 33 of the activities listed in subsection (5) of this section shall be prohibited
- 34 and may specify the terms and conditions under which activities that are not
- 35 prohibited may go forward.
- 36 (7) Any prohibition or terms and conditions imposed pursuant to subsec-
- 37 tions (5) and (6) of this section shall remain in effect until the legislature
- 38 acts upon the recommendation of the board as provided in section 42-1734B,
- 39 Idaho Code, or until the legislature revokes its earlier approval of a pro-
- 40 tected river by law.

- 41 42-1734B. BOARD PROCEDURES FOR ADOPTING A COMPREHENSIVE STATE WATER PLAN.
- 42 (1) Prior to the adoption of the comprehensive state water plan or any compo-
- 43 nent of the comprehensive plan, the board shall conduct hearings in the manner
- 44 provided in section 42-1734A, Idaho Code.
- 45 (2) In the preparation, adoption, and implementation of the comprehensive
- 46 state water plan, the board shall encourage the cooperation, participation,
- 47 and assistance of state agencies. The board also shall solicit economic,
- 48 energy, environmental, and other technical studies and recommendations from
- 49 state agencies with particular expertise. All agencies of the state of Idaho
- 50 shall cooperate with the board by providing requested existing information and
- 51 studies pertaining in any manner to any matters which are the subject of this
- 52 act. The board shall have discretion to balance all factors relevant to the

1 formulation, adoption and implementation of the comprehensive state water plan
2 and implementation and the designation of protected rivers.

3 (3) Any state agency may petition the board to amend the comprehensive
4 state water plan. The board shall review any petition filed pursuant to this
5 section within six (6) months after it is filed and shall either commence
6 action to amend the comprehensive plan or set forth its reasons for denying
7 the request in writing.

8 (4) All state agencies shall exercise their duties in a manner consistent
9 with the comprehensive state water plan. These duties include but are not
10 limited to the issuance of permits, licenses, and certifications; provided,
11 however, that nothing in this chapter shall be construed to affect the author-
12 ity of any state agency with respect to activities not prohibited by the com-
13 prehensive state water plan. The designation of a waterway as a natural or
14 recreation river shall not preclude the department of health and welfare from
15 establishing water quality standards for such waterway.

16 (5) When a comprehensive state water plan is adopted, copies thereof
17 shall be filed in the office of the governor and director of the department of
18 water resources, and published and distributed generally.

19 (6) The comprehensive state water plan and any component thereof devel-
20 oped for a particular waterway or waterways is subject to review and amendment
21 by the legislature of the state of Idaho by law at the regular session immedi-
22 ately following the board's adoption of the comprehensive state water plan or
23 component thereof. The board shall submit all subsequent modifications to the
24 legislature in the same manner as provided in this subsection.

25 (7) The board shall review and reevaluate the comprehensive state water
26 plan at least every five (5) years, with amendments to be adopted in the same
27 manner as the original plan.

28 (8) A protected river designated by the board shall not become a final
29 part of the comprehensive state water plan until approved by law. If the leg-
30 isature does not approve a protected river by law at the regular session
31 immediately following the board's designation of such protected river, then
32 the designation of such protected river shall terminate and any prohibition or
33 terms and conditions imposed on such protected river pursuant to subsection
34 (5) or (6) of section 42-1734A, Idaho Code, shall be terminated ten (10) days
35 following the end of the session. The failure to approve a protected river
36 shall not operate to invalidate a comprehensive plan or component thereof.
37 Nothing in this subsection shall prevent the legislature, however, from
38 approving such protected river and reinstating or modifying such prohibi-
39 tions or terms and conditions in a subsequent session.

40 (9) After adoption of a comprehensive plan or component thereof, the
41 board shall administer the implementation of the plan.

42 42-1734C. STATUS OF COMPREHENSIVE STATE WATER PLAN BEFORE FEDERAL AGEN-
43 CIES. The comprehensive state water plan required by this chapter shall be
44 submitted to the federal energy regulatory commission, and the pacific north-
45 west electric power and conservation planning council, and any other federal
46 agencies as the state water plan for the conservation, development, management
47 and optimum use of the state of Idaho's water resource.

48 42-1734D. DESIGNATION OF INTERIM PROTECTED RIVERS. (1) Prior to the
49 adoption of a comprehensive plan for a waterway, the board may designate a
50 waterway as an interim protected river. Any state agency may petition the
51 board to designate a waterway as an interim protected river. The board shall

1 promulgate procedural rules for designation of interim protected rivers. The
2 rules shall provide adequate notice to interested parties of any petitions
3 filed or actions contemplated pursuant to this act.

4 (2) The board shall determine whether the nominated waterway merits des-
5 ignation as an interim protected river. The board shall accept or reject a
6 nomination within six (6) months after it is filed. There shall be no review
7 of any board decision rejecting or accepting a nomination for an interim pro-
8 tected river. Designation of a waterway as an interim protected river shall be
9 based upon a determination that:

10 (a) It is probable that the waterway would be designated a protected
11 river in the comprehensive state water plan; and

12 (b) Interim protected river status is necessary to protect the values
13 that would support such waterway's designation as a protected river in a
14 comprehensive state water plan.

15 (3) In designating a waterway for interim protected river status, the
16 board shall indicate which of the activities listed in subsection 42-1734A(5),
17 Idaho Code, shall be prohibited.

18 (4) Interim protected river status shall remain in effect until the ear-
19 liest of:

20 (a) The adoption of a comprehensive state water plan for the waterway
21 designated as an interim protected river;

22 (b) Two (2) years following the designation of an interim protected river
23 unless extended by law;

24 (c) The revocation of a waterway's interim protected river status by law.

25 (5) Any person may petition the board for a determination that a particu-
26 lar proposed action or project will not significantly impair the values sup-
27 porting a waterway's designation as an interim protected river. The board
28 shall consider among other things environmental impact statements, technical
29 studies and any other relevant comments or recommendations prepared by the
30 petitioner for use before other state or federal agencies. The board may also
31 consider any other relevant information. If the board determines that the pro-
32 posed action or project will not significantly impair the values supporting a
33 waterway's designation as a protected river, then this section shall not apply
34 to such action or project, except that the board, after consultation with rel-
35 evant state agencies, may impose appropriate conditions on such action or
36 project. An aggrieved party may seek judicial review of the board's decision
37 pursuant to sections 67-5215 and 67-5216, Idaho Code.

38 (6) If a waterway is designated as an interim protected river, then the
39 board shall proceed to prepare a comprehensive state water plan for the water-
40 way. The board shall in preparing the state comprehensive water plan for the
41 waterway consider, after review of all relevant factors contained in section
42 42-1734A, Idaho Code, whether the designation should continue or whether modi-
43 fication of the designation is warranted.

44 (7) If the designation of a waterway as an interim protected river is
45 either revoked by law, or terminated as provided in this section, then the
46 waterway shall not be eligible for designation as an interim protected river
47 for a period of two (2) years following the revocation or termination of its
48 interim protected river status.

49 42-1734E. REMEDIES. (1) The attorney general, at the request of the
50 board, shall commence a civil action to enjoin any person violating any provi-
51 sion of this chapter and to recover actual damages in that amount required to
52 restore a protected river and its riparian area to a condition reasonably com-

1 parable to that existing prior to the violation.

2 (2) It shall be the duty of the attorney general to institute and prose-
3 cute all enforcement actions provided for in this chapter.

4 42-1734F. RIGHTS NOT AFFECTED. (1) No provision of this chapter, or any
5 rules or regulations promulgated pursuant to this chapter, shall in any way
6 limit, restrict, or conflict with approved applications for the appropriation
7 of water or with vested property rights existing on the date a waterway is
8 designated for protected river status or interim protected river status. For
9 the purpose of this chapter, nonvested rights shall include, but not be lim-
10 ited to, pending applications for state mining permits or mineral leases, and
11 pending applications for the appropriation of water.

12 (2) No provision of this chapter, or any rules or regulations promulgated
13 pursuant to this chapter shall bar a water user or his agent from cleaning,
14 maintaining or replacing a water diversion structure existing on or before the
15 date a river is designated as protected. A water user or his agent may remove
16 any obstructions from the stream channel, if such obstruction interferes with
17 the delivery of, or use of, water under any existing water right. The provi-
18 sions of this section do not relieve a person from complying with any other
19 applicable laws.

20 (3) Nothing in this act shall prevent or restrict the relicensing of
21 existing hydropower projects that have been previously licensed by the federal
22 energy regulatory commission and which have generated electricity. Any desig-
23 nation of waterways as interim protected rivers or protected rivers shall not
24 affect the operation or relicensing, including but not limited to the expan-
25 sion of capacity which does not enlarge existing boundaries or project
26 impoundments of any hydropower project existing and that has been previously
27 licensed by the federal energy regulatory commission and which have generated
28 electricity as of the date of the designation.

29 42-1734G. WATER RIGHTS. No provisions of this chapter, or any rules or
30 regulations promulgated pursuant to this chapter, shall be construed to estab-
31 lish a water right. Any water rights necessary to fulfill the purposes of this
32 chapter shall be obtained pursuant to the provision of chapter 2 or chapter
33 15, title 42, Idaho Code.

34 42-1734H. DESIGNATION OF PARTICULAR RIVERS AS INTERIM PROTECTED RIVERS.

35 (1) The board shall designate the following waterways as interim protected
36 rivers pursuant to section 42-1734D, Idaho Code:

37 (a) Priest River, from the Canadian Border to the confluence of Priest
38 Lake;

39 (b) South Fork of the Boise River, from Anderson Ranch Dam to Neal
40 Bridge;

41 (c) Snake River, from Section 5, Township 11 South, Range 20 East, B.M.
42 to King Hill;

43 (d) The following waterways within the Payette River Basin:

44 1. North Fork of the Payette River, from Cabarton Bridge to Banks;

45 2. South Fork of the Payette River, from the Sawtooth Wilderness
46 Boundary to Banks;

47 3. Main Payette River, from Banks to Black Canyon Dam; and

48 (e) Henry's Fork of the Snake River from its point of origin at Henry's
49 Lake to the point of its confluence with the backwaters of Ashton Reser-
50 voir.

1 (2) The board shall determine which of the activities listed in subsec-
2 tion (5) of section 42-1734A, Idaho Code, shall be prohibited.

3 42-1734I. DESIGNATION UNDER FEDERAL LAW. Designation of a waterway as a
4 protected river pursuant to this chapter shall not be a basis for seeking
5 inclusion of such waterway in the national wild and scenic rivers system pur-
6 suant to 16, United States Code section 1273(a)(ii) unless the act designating
7 the waterway as a protected river specifically requests the governor to seek
8 inclusion of the waterway in the national wild and scenic rivers system.

RELATIVE TO A COMPREHENSIVE STATE WATER PLAN; PROVIDING LEGISLATIVE INTENT;
REPEALING SECTION 42-1731, IDAHO CODE; AMENDING CHAPTER 17, TITLE 42,
IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 42-1730 AND 42-1731, IDAHO
CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE INTENT AND TO DEFINE TERMS;
AMENDING SECTION 42-1734, IDAHO CODE, TO DELETE PROVISIONS RELATING TO A
STATE WATER PLAN AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDI-
TION OF NEW SECTIONS 42-1734A, 42-1734B, 42-1734C, 42-1734D, 42-1734E,
42-1734F, 42-1734G, 42-1734H AND 42-1734I, IDAHO CODE, TO PROVIDE THAT THE
WATER RESOURCE BOARD SHALL FORMULATE, ADOPT AND IMPLEMENT A COMPREHENSIVE
STATE WATER PLAN AND TO PROVIDE WHAT THE PLAN SHALL CONTAIN; TO PROVIDE
SOME GENERAL GUIDELINE PROCEDURES FOR ADOPTING A COMPREHENSIVE STATE WATER
PLAN; TO PROVIDE THAT THE COMPREHENSIVE STATE WATER PLAN SHALL BE SUBMIT-
TED TO FEDERAL AGENCIES AND ENTITIES AS THE STATEMENT OF POLICY
REGARDING THE DEVELOPMENT OF WATER RESOURCES IN THE STATE OF IDAHO; TO
PROVIDE FOR DESIGNATION OF INTERIM PROTECTED RIVERS; TO PROVIDE REMEDIES;
TO PROVIDE THE EFFECT OF THE PLAN ON VESTED AND NONVESTED PROPERTY RIGHTS
ON STATE-OWNED STRUCTURES AND ON THE RELICENSING OF CERTAIN EXISTING
HYDROELECTRIC GENERATORS; TO PROVIDE THE EFFECT OF THE PLAN ON ESTABLISHING A
WATER RIGHT; TO PROVIDE THE DESIGNATION OF INTERIM PROTECTED RIVERS AND TO
PROVIDE THE STATUS OF A WATERWAY REGARDING THE NATIONAL WILD AND SCENIC
RIVERS SYSTEM WHEN IT HAS BEEN DESIGNATED AS A PROTECTED RIVER.

23 Be it enacted by the legislature of the State of Idaho:

24 SECTION 1. The legislature finds and declares that a central component of
25 state sovereignty is the inherent right of the state to regulate and to con-
26 trol the natural resources of this state. In a state such as Idaho, it is
27 essential that the state exercise its full authority to manage its water. To
28 that end, it is the purpose of this act to provide for the full exercise of
29 all the state's rights and responsibilities to manage its water resource.
30 The legislature is aware of the proposed protected areas program being
31 considered by the Pacific Northwest electric power and conservation planning
32 council regarding Idaho's rivers and streams. The legislature believes that
33 water resource planning is a state function and therefore requests the Idaho
34 representatives to the Pacific Northwest electric power and conservation plan-
35 ning council seek to limit the scope of the council's protected areas program
36 in a manner not to conflict with, preempt or limit the efforts of the state of
37 Idaho in water resource or land use planning.

38 SECTION 2. That Section 42-1731, Idaho Code, be, and the same is hereby
39 repealed.

40 SECTION 3. That Chapter 17, Title 42, Idaho Code, be, and the same is
41 hereby amended by the addition thereto of NEW SECTIONS, to be known and desig-
42 nated as Sections 42-1730 and 42-1731, Idaho Code, and to read as follows: