

TITLE 39  
HEALTH AND SAFETY  
CHAPTER 85

LAKE PEND OREILLE, PEND OREILLE RIVER, PRIEST LAKE AND PRIEST RIVER  
COMMISSION

39-8503. DUTIES OF THE COMMISSION. (1) The Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission shall have the duty to study, investigate and select ways and means of controlling the water quality and water quantity as they relate to waters of Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River for the communities' interests and interests of the state of Idaho and for the survival of the native species of fish contiguous to the Pend Oreille Priest Basin. Those species are bull trout, westslope cutthroat, mountain white fish, pike minnow and the forage base for bull trout and kokanee salmon. The commission shall have the authority to study, investigate, develop and select strategies with the department of water resources, the department of environmental quality, the department of fish and game, the department of lands, the United States fish and wildlife service, and the U.S. army corps of engineers for the preservation of the said species of native fish, scenic beauty, health, recreation, transportation and commercial purposes necessary and desirable for all the inhabitants of the state. The commission shall also have the authority to receive and direct any mitigation moneys into the Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission fund created in section 39-8504, Idaho Code.

(2) Nothing in this section shall be construed to authorize the commission to establish or require minimum stream flows or lake levels, which may only be established under the provisions of chapter 15, title 42, Idaho Code.

History:

[(39-8503) 39-8403, added 2003, ch. 231, sec. 1, p. 591; am. and redesig. 2004, ch. 318, sec. 9, p. 899.]

see  
Id Code  
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Payette Lake, or so much thereof as may be necessary to preserve said lake in its present condition. The preservation of said water in said lake for scenic beauty, health and recreation purposes necessary and desirable for all the inhabitants of the state is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the governor or the permit issued in connection therewith, and no proof of completion of any works of diversion shall be required, but license shall issue at any time upon proof of beneficial use to which said waters are now devoted.

Each succeeding governor in office shall be deemed to be a holder of such permit, in trust for the people of the state. [1925, ch. 83, § 1, p. 117; I.C.A., § 65-4001.]

**67-4302. Big Payette Lake — Lands devoted to health and recreational uses.** — The lands belonging to the state of Idaho between high and low water mark at said Big Payette Lake, as well as all other lands of the state adjacent to said lake, until the same are disposed of by the state board of land commissioners, are hereby declared to be devoted to a public use in connection with the preservation of said lake in its present condition as a health resort and recreation place for the inhabitants of the state and said public use is hereby declared to be a more necessary use than the use of said lands as a storage reservoir for irrigation or power purposes. [1925, ch. 83, § 2, p. 117; I.C.A., § 65-4002.]

**67-4303. Big Payette Lake — Separability of act.** — If any part of this act shall be adjudged to be invalid, such judgment shall not affect, impair or invalidate any part of the remainder. [1925, ch. 83, § 3, p. 117; I.C.A., § 65-4003.]

Compiler's notes. The words "this act" refer to S.L. 1925, ch. 83, which is compiled as §§ 67-4301 — 67-4303.

Section 4 of S.L. 1925, ch. 83 declared an emergency. Approved February 25, 1925.

**67-4304. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Appropriation of waters in trust for people.** — The governor is hereby authorized and directed to appropriate in trust for the people of the state of Idaho all the unappropriated water of Priest, Pend d'Oreille and Coeur d'Alene Lakes or so much thereof as may be necessary to preserve said lakes in their present condition. The preservation of said water in said lakes for scenic beauty, health, recreation, transportation and commercial purposes necessary and desirable for all the inhabitants of the state is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the governor or the permit issued in connection therewith, and no proof of completion of any works of diversion shall be required, but license shall issue at any time upon proof of beneficial use to which said waters are now devoted.

Each succeeding permit, in trust for the people of the state. [1925, ch. 83, § 65-4004.]

Cross ref. Our... in Priest River... Cited in: West... P.2d 1326 1975

**Tribal Land.**

Where action against the State officials and agents of the court quieting banks, and water courses within Coeur d'Alene R.

**67-4305. Lands devoted to the state or as all other lands disposed of by the state shall be devoted to a public use in their present condition as a health resort and recreation place for the inhabitants of the state and said public use is hereby declared to be a more necessary use than the use of said lands as a storage reservoir for irrigation or power purposes.**

Cited in: West... P.2d 1326 1975

**67-4306. Separability of act.** — If any part of this act shall be adjudged to be invalid, such judgment shall not affect, impair or invalidate any part of the remainder.

Compiler's notes refer to S.L. 1925, ch. 83, §§ 67-4304 —

**67-4307. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Appropriation of waters in trust for people.** — The governor is hereby authorized and directed to appropriate in trust for the people of the state of Idaho all the unappropriated water of Priest, Pend d'Oreille and Coeur d'Alene Lakes or so much thereof as may be necessary to preserve said lakes in their present condition. The preservation of said water in said lakes for scenic beauty, health, recreation, transportation and commercial purposes necessary and desirable for all the inhabitants of the state is hereby declared to be a beneficial use of such water.

Each succeeding governor in office shall be deemed to be a holder of such permit, in trust for the people of the state. [1927, ch. 2, § 1, p. 6; I.C.A., § 65-4004.]

**Cross ref.** Outlet control structure located in Priest River, § 70-501 et seq.

**Cited in:** West v. Smith, 95 Idaho 550, 511 P.2d 1326 (1973).

#### **Tribal Land.**

Where action was filed by Indian tribe against the State of Idaho and various state officials and agencies, seeking an order from the court quieting title in the tribe to the beds, banks, and waters of all navigable water-courses within the 1873 boundaries of the Coeur d'Alene Reservation, and the complaint

further sought to declare invalid all Idaho statutes and ordinances which regulated or affected in any way the disputed lands and waters, and to declare invalid the water right set forth in this section, the court found that the claims brought by the tribe were barred by the Eleventh Amendment to the United States Constitution, and the tribe had failed to state a claim upon which relief could be granted. Coeur D'Alene Tribe v. Idaho, 798 F. Supp. 1443 (D. Idaho 1992).

**67-4305. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Lands devoted to health and recreational use.** — The lands belonging to the state of Idaho between high and low water mark at said lakes as well as all other lands of the state adjacent to said lake, until the same are disposed of by the state board of land commissioners, are hereby declared to be devoted to a public use in connection with the preservation of said lakes in their present condition as a health resort and recreation place for the inhabitants of the state and said public use is hereby declared to be a more necessary use than the use of said lands as a storage reservoir for irrigation or power purposes. [1927, ch. 2, § 2, p. 6; I.C.A., § 65-4005.]

**Cited in:** West v. Smith, 95 Idaho 550, 511 P.2d 1326 (1973).

**67-4306. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Separability of act.** — If any part of this act shall be adjudged to be invalid, such judgment shall not affect, impair or invalidate any part of the remainder. [1927, ch. 2, § 3, p. 6; I.C.A., § 65-4006.]

**Compiler's notes.** The words "this act" refer to S.L. 1927, ch. 2, which is compiled as §§ 67-4304 — 67-4306. Section 4 of S.L. 1927, ch. 2 declared an emergency. Approved January 24, 1927.

**67-4307. Malad Canyon — Appropriation of waters in trust for people — Lands devoted to recreational use.** — The park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

The south half ( $\frac{1}{2}$ ) of the southwest quarter ( $\frac{1}{4}$ ), and the south half ( $\frac{1}{2}$ ) of the southeast quarter ( $\frac{1}{4}$ ), of section twenty-five (25), township six (6) south, range thirteen (13) east of the Boise Meridian; and

The north half ( $\frac{1}{2}$ ) of the northwest quarter ( $\frac{1}{4}$ ), and the northwest quarter ( $\frac{1}{4}$ ) of the northeast quarter ( $\frac{1}{4}$ ), of section thirty-six (36), township six (6) south, range thirteen (13) east of the Boise Meridian.

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the public domain and in the arid land states and territories to the use of the public for irrigation and other purposes, severed the land and waters constituting the public domain, allowing the lands to be patented separately, and subjected all non-navigable waters then a part of the public domain to the plenary control of the designated states, with the right in each to determine for itself what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain.

Section 1 of the 1944 Flood Control Act (Public Law 14--79th Congress - 1st Session) contains a declaration of policy and provides a procedure which recognizes the rights and interests of the states in the Federal programs of water development. The procedure therein specified affords an opportunity for states to comment on and make recommendations with respect to proposed plans for Federal projects. In practice this procedure has been most effective in integrating the affairs of the Government and the states in water development. The policy statement of Section 1 of the 1944 enactment (often called the O'Mahoney-Millikin Amendment) reads as follows:

"That in connection with the exercise of jurisdiction over the rivers of the Nation through the construction of works of improvement, for navigation or flood control, as herein authorized, it is hereby declared to be the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control, as herein authorized to preserve and protect to the fullest possible extent established and potential uses, for all purposes,