

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, February 25, 2019

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Heider, Vice Chairman Brackett, Senators Bair, Johnson, Mortimer, Patrick, Guthrie, Stennett, and Jordan

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Heider** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

**MINUTES APPROVAL:** **Senator Bair** moved to approve the Minutes of February 11th, 2019. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**Senator Guthrie** moved to approve the Minutes of February 13th, 2019. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**S 1056** **Lynn Tominaga**, Idaho Groundwater Association, presented **S 1056** that gives the Director of the Idaho Department of Water Resources (IDWR) the ability to curtail groundwater for failure to pay assessments or participate in an approved mitigation plan.

**DISCUSSION:** **Senators Mortimer, Stennett and Jordan** asked if there was a written agreement between IGWA and the IDWR in respect to **S 1056's** new fiscal note. **Mr. Tominaga** responded that they currently do not have anything written as a contract or Memorandum of Understanding (MOU). The two parties just have a verbal agreement to determine the litigation costs. **Mr. Tominaga** further stated the ground water districts have the ability to asses their users if they know the costs. **Senator Guthrie** asked what happens to wells outside of ground water districts and asked for a description of the "clawback" method. **Mr. Tominaga** referred to TJ Budge, the attorney for IGWA, to answer this question. **Mr. Budge** responded this legislation only governs groundwater districts, only affects groundwater district members, and has no effect on a well located outside of a groundwater district.

**TESTIMONY:** **TJ Bingham**, a farmer from Blackfoot, Idaho, spoke in opposition to **S 1056**.

**DISCUSSION:** **Vice Chairman Brackett** asked Mr. Bingham if he had any suggestions on improving this legislation. **Mr. Bingham** responded that he believes the law should be left the way it is and that the water districts have the tools they need to go after the money that they think they're owed.

**Senator Patrick** asked Mr. Bingham if his issues are with his ground water district and not the State of Idaho. **Mr. Bingham** responded that his problem is with his water district and not the State of Idaho, and he wants to keep the relationship that way.

**Senator Mortimer** asked about the mitigation process in Mr. Bingham's district, how that process works, and whether or not Mr. Bingham felt that he was given proper notice to mitigate. **Mr. Bingham** responded that the process has changed over the years. The water district used to have a tiered assessment system for priority dates. Currently in Mr. Bingham's district, the tier was 10 percent for irrigated acres for senior water rights, 12 percent for middle water rights, and 14 percent for junior water rights. For the last question, **Mr. Bingham** answered that he did not feel that he was given proper notice to mitigate his water levels.

**TESTIMONY:** **Paul Arrington**, Idaho Water Users Association, spoke in favor of **S 1056**.

**DISCUSSION:** **Senator Mortimer** asked what protections there are for people who disagree with IDWR or ground water district decisions. To answer this question, Mr. Arrington referred to TJ Budge of IGWA. **Mr. Budge** responded that a district member can challenge the decision of a board where they felt the board was exceeding its authority. With respect to this legislation, there is some oversight by the Director of the IDWR. If a district elects to report a member to IDWR for enforcement, that report must contain information about the nonmembers or about the member's non-compliance. IDWR will review that report and the director must determine whether the allocation of mitigation obligations has been done in a reasonable way.

**Senator Stennett** asked Gary Spackman, Director of the IDWR, about the director's ability to curtail water when they have a outlier that is not under the safe harbor or settlement plan, would the director still be able to curtail a user that has a senior right rather than curtailing somebody with junior right who is part of the settlement plan. **Mr. Spackman** responded he would curtail if there was not a mitigation plan in place, and that he would curtail everyone back to 1957 water rights. With the mitigation plan in place, those participants in the existing mitigation plan would have a safe harbor. The director does not have the authority to curtail his 1952 water rights if he is only curtailing back to 1957.

**Senator Stennett** asked what would happen to Mr. Bingham if this law is passed. **Mr. Spackman** responded that Mr. Bingham is not participating in the mitigation plan. As a result of his non-participation, he would be subject to curtailment for that non-participation either in the assessments or in reducing the amount of water this diverted.

**Senator Guthrie** stated he was uncomfortable in general with water shutoffs during wet years. He felt there is a lot of latitude given to the Director of IDWR already, and feels that the IDWR is not even using powers they already have.

**Senator Patrick** stated the Committee should do everything it can to keep these enforcements in place. He spoke about the long process of recharging the aquifer and if this agreement falls apart, the State will be spending millions of dollars every year on attorney fees and the State's economy will suffer.

**MOTION:** **Vice Chairman Brackett** moved to send **S 1056** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Guthrie** moved to send **S 1056** to the 14th Order of Business for possible amendment. **Senator Johnson** seconded the motion.

**SUBSTITUTE MOTION ROLL CALL VOTE:** **Chairman Heider** called for a roll call vote on the substitute motion. **Senators Guthrie, Johnson, Jordan, and Stennett** voted aye. **Chairman Heider, Vice Chairman Brackett, and Senators Patrick and Bair** voted nay. A majority having failed to vote in the affirmative, the motion failed.

**ORIGINAL MOTION ROLL CALL VOTE:** **Chairman Heider** called for a roll call vote on the original motion. **Chairman Heider, Vice Chairman Brackett, and Senators Patrick and Bair** voted aye. **Senators Guthrie, Johnson, Jordan, and Stennett** voted nay. A majority having failed to vote in the affirmative, the motion failed.

**H 80**                    **Senator Kelly Anthon**, District 27, presented **H 80** regarding damages to irrigation systems and particularly farmer's prepared seedbeds. In addition, farmers cannot double dip in this legislation, meaning they cannot get compensated by both the State and their insurance company for damages.

**DISCUSSION:**        **Senator Stennett** asked what other kind of industry equipment falls under this compensation. **Senator Anthon** responded this statute only refers to crop damage, not irrigation damage and the preparation needed to irrigate.

**Senator Guthrie** asked who, in a potential event who has the primary and secondary insurance claims. **Senator Anthon** responded that personal farm insurance would be the primary carrier in these events.

**Senator Johnson** asked how one determines the condition of equipment when it comes to damage compensation. **Senator Anthon** stated the process that Idaho Department of Fish and Game uses is a lot like an adjuster, and the process is all determined by that adjustment process.

**TESTIMONY:**        **Sharon Kiefer**, Deputy Director of the Idaho Department of Fish and Game and **DeLon Lee**, Idaho Farm Bureau, spoke in favor of **H 80**.

**MOTION:**            **Senator Bair** moved to send **H 80** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**        There being no further business at this time, **Chairman Heider** adjourned the meeting at 2:56 p.m.

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Senator Heider  
Chair

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Tyler Brock  
Secretary