

MINUTES  
**HOUSE RESOURCES & CONSERVATION COMMITTEE**

**DATE:** Wednesday, March 09, 2022

**TIME:** 1:30pm or Upon Adjournment

**PLACE:** Room EW40

**MEMBERS:** Chairman Gibbs, Vice Chairman Lickley, Representatives Moyle, Wood, Boyle, Vander Woude, Gestrin, Mendive, Kauffman, Blanksma, Addis, Moon, Manwaring, Okuniewicz, Yamamoto (Yamamoto), Rubel, Mathias, Burns

**ABSENT/  
EXCUSED:** Representative(s) Vander Woude

**GUESTS:** The sign-in sheet will be retained in the committee secretary's office; following the end of the session the sign-in sheet will be filed with the minutes in the Legislative Library.

**Chairman Gibbs** called the meeting to order at 1:30pm.

**MOTION:** **Rep. Manwaring** made a motion to approve the minutes of the February 17, 2022 meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Lickley** made a motion to approve the minutes of the February 23, 2022 meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Burns** made a motion to approve the minutes of the March 1, 2022 meeting. **Motion carried by voice vote.**

**H 749:** **Jeff Raybould**, Chairman, Idaho Water Resource Board, stated **H 749** is an important component to the Lemhi Basin Settlement Agreement (Agreement), because it authorizes the Director of the Idaho Department of Water Resources to process and issue water rights, for those who sign on to the Agreement, for their historic high flow water use. He explained, in 2020, the Legislature adopted **SCR 137**, which directed the Idaho Water Resource Board, with technical support from the Idaho Department of Water Resources, to work with local water users to develop a comprehensive settlement that resolves tensions and conflict as a result of competing water supply demands in the Lemhi River Basin. Then, in 2021, the Legislature adopted **HCR 21**, directing the Board to continue its efforts in the Agreement. On March 4, 2022, the Agreement was signed into place. He remarked, participation in the Agreement would be voluntary, all existing water rights would be protected and not impacted by the Agreement, and implementation of the Agreement would be in compliance with Idaho law.

**Mr. Raybould** indicated, the original goal of the Agreement was to preserve and enhance the farming and ranching lifestyle, promote economic development, and look at ways to improve the conservation interests to provide sufficient habitat to sustain viable populations of fish. He explained, farmers and ranchers in the Lemhi Basin have historically diverted high water flows in the spring to hold/mound water, which not only provided water for their use, but also provided a reservoir where water flowed back into the Lemhi River in late season. When their water rights were adjudicated, because they were not able to keep that amount of water per acre, a high flow provision was added to allow the high flow practice to continue, providing there are no other senior water rights and the water is put to beneficial use. But the risk is without a water right, there is no priority date, or protection, so the use would be junior to all existing and future water rights.

**Mr. Raybould** explained, a key element of the Agreement provides that water users who sign on to the Agreement will have the opportunity to convert their historic high flow practice to a protectable water right, known as the Lemhi Stream Flow Maintenance Water Right; something they have not been able to do in the past. Applications for these water rights are limited to the amount of actual historic beneficial use not to exceed the existing ditch capacity on August 25, 2014. Existing water rights will not be affected because they have priority dates earlier than all rights that will be recognized under this Agreement. Landowners who are not party to the Agreement will still be able to continue their historic practice of diverting high water flow, but will not gain the benefit of a permanent water right for their high flow practice.

**Mr. Raybould** also explained other sections of the Agreement including McFarland Campground minimum stream flow and maintenance; stream flow maintenance water rights on the Big Timber, Little Timber, Big Eightmile, and Mill Creeks; the Big Timber, Bohannan, Canyon, and Hayden Creeks' minimum stream flows and existing water rights; and the Idaho Water Transaction Program and how it works to improve flows in streams and tributaries in the Lemhi Basin for salmon and steelhead and other fish species listed under the Endangered Species Act.

In response to committee concerns regarding the use of "may" versus "shall" on page 3, line 19 in **H 749**, **Mat Weaver**, Deputy Director, Idaho Department of Water Resources, explained the typical process for a water rights application is the application is filed and a permit is issued. Following that, there is a period of time to perfect the water right, but the Department is not allowed to look back at past uses to perfect that water right. The intent of this particular language gives the Department more flexibility to look back and establish those historic high flow practices, in addition to the application for beneficial use, which is important because ditches change over time and capacity could have been greater in the past than it is now.

**Carl Ellsworth**, Rancher, Upper Lemhi Basin and **Lowell Cerise**, Rancher, Lower Lemhi Basin, both spoke **in support** of **H 749**, stating this Agreement and legislation recognizes the value of putting excess water on the land as the only real way to store water in the Lemhi Valley.

**MOTION:** **Rep. Lickley** made a motion to send **H 749** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION:** **Rep. Moon** made a substitute motion to **HOLD H 749** for time certain, March 15, 2022, and spoke to her motion. She stated the Agreement was just signed on Friday, March 4, 2022, and now **H 749** is before the committee and would like a little more time to read through the Agreement and legislation.

**AMENDED SUBSTITUTE MOTION:** **Rep. Moyle** made an amended substitute motion to **HOLD H 749** for time certain, March 11, 2022, and spoke to his motion. He stated due to time constraints, reconvening on March 11 is better than waiting until the following week, March 15. **Motion carried by voice vote.**

**H 748:** **Paul Arrington**, Executive Director, Idaho Water Users Association, stated **H 748** creates **Idaho Code, Section 55-616**, to outline what happens with water rights and entitlements when property changes hands. This legislation codifies existing common law and practice relating to the conveyance of water rights and entitlements, including that all appurtenant water rights are conveyed unless expressly retained by the seller. Additionally, all entitlements to receive water from an irrigation district, city irrigation system, or canal company are conveyed as are the obligations associated with membership in a ground water district.

**MOTION:** **Rep. Blanksma** made a motion to send **H 748** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Burns** will sponsor the bill on the floor.

**S 1275:** **Paul Arrington**, Executive Director, Idaho Water Users Association, stated **S 1275** amends **Idaho Code, Section 43-201**, to include residency requirements as part of the Nominee's Oath for irrigation district board elections. He stated, Idaho Code already includes criteria for interested individuals to qualify to serve on an irrigation district board including ownership of land within the district, residency requirements, and age requirements (must be at least 18 years old), but the criteria for the Nominee's Oath, found in **Idaho Code, Section 43-201(5)**, that must be signed by each interested individual to certify that the individual meets each of the criteria, does not currently require residency. This has caused confusion and frustration. **S 1275** will add the residency requirements to the statutory language for the Nominee's Oath.

**Rep. Blanksma** declared Rule 80 stating a possible conflict of interest.

**MOTION:** **Rep. Blanksma** made a motion to send **S 1275** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Yamamoto** will sponsor the bill on the floor.

**S 1276aa:** **Paul Arrington**, Executive Director, Idaho Water Users Association, stated **S 1276aa** amends **Idaho Code, Section 42-2401**, to provide consistency in the notice requirements for canal companies to organize and elect boards of directors, hold meetings, and appoint executive committees. Currently, statute requires any notice of changes to a canal company's articles of incorporation or bylaws be published in a newspaper once a week for four weeks prior to the meeting, while a different part of that statute requires a notice of the meeting be published in a newspaper for two weeks prior to the meeting. Historically, canal companies have issued notice of any changes to their articles of incorporation or bylaws with the meeting notices following the two week notice prior to the meeting. **S 1276aa** would align the notice required for changes to articles of incorporation and bylaws to align with the two week notice requirement for meetings.

**MOTION:** **Rep. Kauffman** made a motion to send **S 1276aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Kauffman** will sponsor the bill on the floor.

**S 1277:** **Paul Arrington**, Executive Director, Idaho Water Users Association, stated **S 1277** amends **Idaho Code, Section 43-111**, to clarify only those who own lands that are subject to assessment and entitled to receive water are eligible to vote in an irrigation district election.

**Rep. Blanksma** declared Rule 80 stating a possible conflict of interest.

**MOTION:** **Rep. Blanksma** made a motion to send **S 1277** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Lickley** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:38pm.

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Representative Gibbs  
Chair

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Tracey McDonnell  
Secretary