

MINUTES
Approved by the Committee
Natural Resources Interim Committee
Wednesday, June 06, 2018
1:30 P.M.
Room WW 02
Boise, Idaho

Co-chair Representative Gibbs called the meeting to order at 1:32 p.m.; a silent roll call was taken.

Natural Resources Interim Committee members present: Senators Heider, Brackett, Stennett, Patrick [ad hoc], and M. Jordan [ad hoc]; Representatives Bedke (Speaker of the House), Moyle, and Gestrin. Absent and excused: Senators Bair (Co-chair), Siddoway, and Keough [ad hoc]; Representatives Rubel and Shepherd [ad hoc].

Senate Resources and Environment Committee members present: Senators Vick (via phone), Bayer, and Johnson.

House Resources and Conservation Committee members present: Representatives Raybould (via phone), Wood, Boyle, Miller, Burtenshaw, Mendive (via phone), Kauffman, Blanksma, Erpelding, Gannon(5) (via phone).

Legislative Services Office staff present: Katharine Gerrity, Rob Sepich, Ana Lara, and Jennifer Kish.

Other attendees signed-in: Richard Durrant - Boise Project; Mark Zirschky - Pioneer Irrigation District; Rex Barrie - Water District #63; Roger Batt - Treasure Valley Water Users Assoc.; Will Patterson, Donald Barksdale, Clinton Pline - Nampa Meridian Irrigation District; Gary Birch - Wilder Irrigation; Brad Carlson - Capital Press; Roger Chase - Idaho Water Res. Board; Richard Trelles - Independent News; Paul Arrington - Idaho Water Users Assoc.; Kenneth W. Cole - Boise Kuna Irrigation District; Ben Witty - Big Bend Irrigation District; Douglas R. Jones - Idaho Water Engineering; Gary Spackman - Idaho Dept. of Water Resources; Teresa Molitor Harper - Great Feeder Canal Co.; Russ Hendricks - Idaho Farm Bureau; Neil Colwell - Avista Corp.; Senator Patti Anne Lodge, Senator Mark Harris, President Pro Tempore Brent Hill - Idaho Senate

NOTE: presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature website: <https://legislature.idaho.gov/sessioninfo/2018/interim/>; and copies of those items are on file at the Legislative Services Office located in the State Capitol.

Co-chair Gibbs noted that the committee's proceedings were being broadcast via the internet and were also being taped, with permission, by Mr. Richard Trelles for the purpose of a documentary. He explained that the interim committee had been deemed to have authority to hear the agenda items rather than a joint meeting of the standing committees, but that members of the standing committees (Senate Resources and Environment Committee and House Resources and Conservation Committee) had been invited to attend and participate in the proceedings. Co-chair Gibbs explained that the purpose of the meeting was to discuss the proposed legislation ([draft KAG217](#)), to review information relevant to the proposed legislation, and to determine whether a request should be made to the Governor to consider calling a special session to further proceedings on the proposed legislation.

Co-chair Gibbs called upon Scott Bedke, Idaho State Representative and Speaker of the House, for his presentation. Speaker Bedke commented on the following:

- The Snake River system has nine reservoirs that are used for the purpose of water collection, release for flood control and irrigation needs. Water is moved based on the rank of water rights

and the way it is approached in the Snake is that you have a "base water right," a "refill 1 right," and a "refill 2 right."

- The Boise River system has three reservoirs (Lucky Peak, Arrowrock, and Anderson Ranch) for the purpose of water collection, release for flood control and irrigation needs; it is a smaller system with increasing needs being placed upon it.
- The priority of whose water is released/refilled from Boise River system when control is necessary is the root of the issue.
- The three major uses that would influence available water in the future for refill 1 rights have been determined to be (1) taking water out of the Boise system and putting it in another basin; (2) increasing designated recharge projects, both of which can be addressed by provisions of the Idaho Code, and (3) creating new storage or increasing the volume of existing storage. Speaker Bedke noted that there is a consensus that there is not clear language in the Idaho Code to provide a carve-out for new storage in the face of the refill 1 water right.
- The draft legislation, [KAG217](#), provides that large new storage projects won't come ahead of the refilling of the existing reservoir system.
- The certainty of water users rights could be in limbo for another three years while litigation and appeals continue and there would be uncertainty of the outcome.
- Key players are currently focused and have agreed that the proposed legislation will ensure all interested parties concerns.

Speaker Bedke emphasized that all of the parties involved were at a point where a resolution has been agreed upon.

Co-chair Gibbs then called upon Albert "Al" Barker, attorney for the Boise Project Board of Control, for his testimony. Mr. Barker reported that the Boise Project Board of Control was a delivery entity for five irrigation districts within southwestern Idaho and eastern Oregon. Mr. Barker explained that the Board's responsibilities balanced the need for flood control while ensuring water was available to water-right users. The Board's responsibilities were to mitigate water release amounts in respect to that which the channels could handle and that which was to remain in the reservoirs. He reported that the Board has testified to the SRBA (Snake River Basin Adjudication) court on the issue many times and that it had appealed the district court ruling to the Idaho Supreme Court. Mr. Barker foresaw continued appeals no matter the outcome. He noted that for the first time in almost a decade all the players at the table were in agreement as to how to proceed on the issue. He noted that he was here to secure support from the legislative members in the manner of the proposed legislation for the final steps of resolution. Mr. Barker explained that the proposed legislation would not prevent construction of new storage, as many feared; in fact, construction of new storage was a necessity in dealing with future flooding issues. He noted that more retention systems would allow more storage for flood control and temper the need for refilling. Additionally, the proposed legislation would allow for rights of stream flow maintenance (winter-time or off-season), which was necessary for wildlife health and for water treatment/pollution control.

Co-chair Gibbs then called Dan Steenson, of Sawtooth Law Offices, who represents various irrigation districts and canal systems of the Treasure Valley, to the podium for his comments. Mr. Steenson reiterated the importance of the reservoir system, since its establishment, for the purpose of flood control and for maintaining water flow throughout the summer. He reported that his clients felt that the proposed legislation guaranteed items that were of the utmost importance: 1) not jeopardizing the current operation of the Boise River reservoirs for flood control and beneficial use storage and 2) assuring that the re-filling of the reservoirs occurred pursuant to secured water rights. He explained that the current parties were willing to drop litigation if the proposed legislation could be adopted, in the hope that it would guarantee the above items. Mr. Steenson noted that a court date of June

20th with the Idaho Supreme Court was fast approaching, and that having an agreement between the parties before the court met would be in everyone's best interest.

Co-chair Gibbs invited Paul Arrington, Executive Director of the Idaho Water Users Association (IWUA), for his comments. Mr. Arrington explained that the IWUA was a nonprofit association comprised of irrigation districts, canal companies, groundwater districts, municipalities, and water professionals of Idaho. Mr. Arrington thanked members of the legislature for their efforts in the negotiations on the issue, noting that it was no easy feat for a problem that has been festering for over a decade. He reported that his membership reviewed and contributed ideas to the proposed legislation and were in favor of the legislation as a means of resolution.

Questions from members to presenters:

- Senator Stennett asked Speaker Bedke whether the proposed legislation, which appeared Boise-centric, would ensure junior water rights users the ability to access their rights in the re-fill process. Speaker Bedke explained that the proposed legislation guaranteed the refill 1 right; it also recognized the junior user's right and did not preclude the junior user's rights. He emphasized that the legislation also guaranteed first in time/first in right, precluding any new storage or newly designated uses from trumping those previous rights.
- Senator Stennett requested Mr. Barker to explain the urgency to pass the proposed legislation. Mr. Barker explained that the urgency existed because the parties currently involved were all in agreement to the resolution, because of the court date, set for June 20th, possibly resulting in a decision that could unravel the parties' agreement, and because they want to keep all the players at the table.
- Senator Stennett inquired how the legislation would impact the non-irrigation season flow. Mr. Barker explained that there was no minimal flow designated for the Boise; therefore, any non-irrigation season flow was simply the excess that had been stored and released from the reservoir. He noted that the legislation would actually ensure a greater amount of water to be available for such use by guaranteeing the hierarchy of water rights users.
- Representative Erpelding asked Speaker Bedke to clarify that stream flow maintenance is not subordinated by any of the refills. Speaker Bedke responded that was correct. Mr. Erpelding then asked whether stream flow maintenance actually was a water right. Speaker Bedke stated that it was.
- Senator Jordan asked whether public testimony on the issue would be part of any potential special session. Speaker Bedke shared that the process would operate like the regular session where the standing committees would discuss the proposed legislation and would hear public testimony; additionally, both chambers would hear the legislation and would take action upon it.
- Senator Jordan asked Mr. Barker whether the City of Boise and other possible entities were part of the settlement discussions. Mr. Barker explained that the City of Boise was involved in the original case, but did not participate in the appeal. He said that the City of Boise had reviewed the proposed legislation, unofficially, and had no objection to it. He noted that no other Treasure Valley cities participated in either the contested case or the SRBA proceedings.
- Senator Johnson asked Speaker Bedke to clarify the meaning of the language "new or proposed projects." Speaker Bedke responded that the language meant any project--improvement to existing storage or new storage--that provided storage for more than one thousand acre feet of surface water. He emphasized that the larger point of the language was that the director of the department of water resources would be given the power to rank permits and licenses for new projects in relation to the project's importance for flood control. Speaker Bedke reminded the members that this would not necessarily happen every year, because an excess of water--like last winter/spring--was not the norm. He stressed that the language also guaranteed that all

users water rights would be protected/guaranteed when such incidents of excessive flood control was necessary.

Co-chair Gibbs reminded the members that the purpose of the meeting was to review and discuss the proposed legislation and to determine whether support existed for action to be taken on it. He asked members for their comments and opinions:

- Representative Moyle reiterated that the issue was not important to just the Treasure Valley. He said that, in fact, it affected more than half of the state's population in one way or another. As to the fact that a special session would cause undue financial expense to the state and it's citizens, Representative Moyle contended that the continuing legal battle and a possible undesirable decision by the court may cause an even larger expense and eventually damage some well-hewn relationships. He also noted that having this meeting provided a forum for the issue to be known to the public; properly vetting the legislation through a special session would further provide an opportunity for the public, other legislative members, and other involved parties to make comments and to testify.

Representative Moyle made a motion that the committee express it's support for the proposed legislation, that the Co-chairs pen a letter to the Governor requesting a special session be called for the purpose of introducing the proposed legislation, and that the committee encourage the Legislature to approve the proposed legislation; Senator Heider seconded the motion. President Pro Tempore of the Senate, Brent Hill, inquired as to whether the standing committees for both chambers were to be included in the vote on the motion; Co-chair Gibbs responded that the standing committee members were invited to vote on the motion. After some discussion, **Representative Moyle amended the motion to state that the committee supports the concepts set forth in the draft legislation (KAG 217) and supports the Co-chairs submitting a letter to the Governor requesting a special session be called for the purpose of introducing the concepts set forth in the proposed legislation (KAG 217) to the Legislature, but clarified that the vote today would in no way tie members to vote in any particular way during a special session; Senator Heider seconded the amended motion. Co-chair Gibbs asked for unanimous consent to adopt the amended motion and, with no objection, the amended motion passed.**

Co-chair Gibbs thanked presenters for speaking on the issue, the Legislative Services Offices for staffing and organizing the hearing, and the committee members for attending.

The meeting was adjourned at 2:56 p.m.