

MINUTES  
**HOUSE RESOURCES & CONSERVATION COMMITTEE**

**DATE:** Wednesday, February 15, 2012

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

**PLACE:** Room EW40

**MEMBERS:** Chairman Stevenson, Vice Chairman Shepherd, Representative(s) Wood(35), Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Wood(27), Boyle, Hagedorn, Harwood, Vander Woude, Gibbs, Pence, Higgins, Lacey

**ABSENT/  
EXCUSED:** None.

**GUESTS:** Sarah Wiltz, Self; Scott Campbell, Self; Russ Johnson, ITLA; Chris Doyle, Self; Dan Steenson, NMID; Amanda Wheelwright, Self; Daren Coon, Greg Curtis, Nampa & Meridian Irrigation District; Sally Kurdy, Self; Norm Semanko, IWUA; Shelley Davis, BPBOC; Neil Colwell, Avista Corp; Kent Lauer, Idaho Farm Bureau; Tony Wheelwright, Self; Jack Carpenter, Self; Jane Hochberg, Self; Teresa Molitor, Hecla Mining; Lynn Tominaga, IGWA; Dave Goins, Idaho News Service; Brenda Tominaga, IWPA; Tom Barry, Dave Miller, City of Meridian; Pam Lemley, Self; Roger Seiber, Capitol West; Benjamin Kelly, Idaho Food Producers

**Chairman Stevenson** called the meeting to order at 1:30 p.m.

**MOTION:** **Rep. Lacey** made a motion to approve the minutes of Thursday, February 9, 2012.  
**Motion carried by voice vote.**

**H 396:** **Brian Patton**, Idaho Dept. of Water Resources, said the purpose of this bill is to approve the Rathdrum Comprehensive Aquifer Management Plan (Rathdrum CAMP). The Plan establishes long term strategies to ensure Idaho's ability to manage its water resource needs within the aquifer system.

**Helen Harrington**, Idaho Dept. of Water Resources, said in 2008 the Idaho Legislature established the aquifer planning and management plan. She said the Rathdrum Prairie Aquifer lies in Kootenai and Bonner Counties. She said it also lies under Washington beyond Spokane but the plan only covers the area in Idaho. Ms. Harrington said the aquifer provides drinking water to over 500,000 people in the area. She explained the aquifer and Spokane River are interconnected although in Idaho the aquifer lies well below the river. She said the relationship between the river and the aquifer creates a potential for conflict in the management and development of the water resource. Ms. Harrington said the plan before the Committee is the result of an advisory committee and the Water Resource Board's efforts. She said the plan is also on time, under budget and has support of local, regional and state interest groups. She said the plan addresses objectives of future demand for water, it prevents and resolves potential water conflicts and protects the aquifer. The plan is directed at water quality to ensure there is no negative impact to water quality. She said no funds are being requested from the Legislature to implement this management plan, but the Board may use money from their own resources for implementation activities on a case-by-case basis.

In response to Committee questions, **Ms. Harrington** said the purpose of the plan is to be proactive and develop a framework for discussion with Washington. She said with the connection between the aquifer and river there is a strong likelihood of conflict over the water with Washington and the Coeur d'Alene Tribe. She said the plan is a two prong plan, first to manage our water needs, second it provides a foundation of knowledge and the tools to have discussions with those entities over water.

**Bob Graham**, Water Resource Board, said one thing that differs with Rathdrum Prairie CAMP is the plan says there is enough water for the whole area for the next 50 years. He said the 20 member advisory committee members were able to participated in all the meetings. He said it was a good group and a highly selective group.

**Mr. Graham** answered Committee questions saying when the Water Resources Board approves a plan it is required they submit it to the Legislature for approval.

**Ms. Harrington** answered questions from the Committee, explaining who will manage the plan once it is approved. She reviewed other plans that hired moderators for plan management. She said this plan will be managed by internal staff support. She also explained other management plan funding.

**MOTION:** **Rep. Raybould** made a motion to send **H 396** to the floor with a **DO PASS** recommendation.

**Rep. Moyle** spoke in opposition to the motion, saying he was concerned with codifying the plan.

**VOTE ON MOTION:** **Motion carried by voice vote** with **Reps. Moyle, Boyle, Harwood, Barrett and Wood(35)** being recorded as voting **NAY**. **Rep. Stevenson** will sponsor the bill on the floor.

**H 397:** **Norm Semanko**, Idaho Water Users Assoc., said this bill is simple legislation. He said under current statute when one person runs unopposed for director of an irrigation district it is necessary to have a special meeting within five days to declare that person the winner. He said they are asking to delete the five day requirement and declare the winner of the election at the next regular meeting.

**MOTION:** **Rep. Raybould** made a motion to send **H 397** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote**. **Rep. Raybould** will sponsor the bill on the floor.

**H 398:** **Norm Semanko** said this bill clarifies current law. He said it does not provide immunity to irrigation districts, it reaffirms the responsibilities of applications and makes clear that the wasting of water and damage not done by an act of the irrigation district but by a third party or act of God is not the liability of the irrigation district. This will make things more clear for water delivery, courts and judges. He said it is the duty of the irrigation district to maintain facilities and keep them in good repair in order to prevent the wasting of water. He said the Code does not change, if it is the result in an act of God it is not the responsibility of the canal company. He said there is still a reasonable duty of care to the public. Mr. Semanko explained the other changes to the bill.

In response to Committee questions, **Mr. Semanko** gave examples of the reasonable care standards, saying reasonable duty of care still apply and will be done.

**MOTION:** **Rep. Wood(35)** made a motion to send **H 398** to the floor with a **DO PASS** recommendation.

**Sarah Wiltz**, Self, spoke in opposition to the bill and relayed a story that relates to this legislation. She explained how a canal overflowed its banks and came into their yard and flooded their basement. She also reviewed the costs to be able to get the house livable and said their only action now is litigation. She said this legislation will make this more difficult and is unfair.

**Russ Johnson**, Idaho Trial Lawyers Assoc., spoke in opposition to the bill. He explained several reasons for their opposition saying it is hard to define a true act of God. He said these are man-made systems and it isn't fair to blame God if something goes wrong with the system by the irrigation district. He said it is fair to take responsibility and there should be some responsibility. He said he was confused with the third party liability case and is not sure why it needs to be in the bill. He urge the Committee to vote no on the legislation.

**Amanda Wheelright**, Self, spoke in opposition to the bill and reviewed her story of discovering their crawl space being flooded with water. She said many of her neighbors were also affected. She said the Boise Canal Company denied it could be the canal but the water levels were reduced and stopped when the canal was lowered and shut off. She said they are headed into litigation because their home has been damaged greatly. She said she didn't see it as an act of God she saw it as a lack of maintenance.

**Daren Coon**, Secretary, Nampa Meridian Irrigation Dist., clarified some points of testimony. He said the facilities are man-made but are designed to carry only a specific amount of water. He said there are many claims filed against the canal company, but claims are rarely filed against the third party. He requested support of **H 398**.

**Mr. Coon** answered questions from the Committee saying hypothetically, the canal company could file a claim against the third party but it is a costly process. It would be more fair for the claimant to file against the third party that caused problem. He also said the number of claims vary from year to year depending on the circumstances and there are many false tort claims.

**Sally Kurdy**, Self, spoke in opposition to the bill saying when adding the third party it may be difficult to know who to file a claim against. She said she opposed the bill because it will make it more difficult to find out who is responsible.

**Jane Hochburg**, Self, said she is opposed to the changes in **H 398**. She said many canals have not been maintained in years and are very old systems. She reviewed her specific concerns about the proposal and said the law has been in place for over 100 years with out need of clarification. She said the reasonable care standard is a concern. She said this legislation is viewed from the canal company's perspective, not from the homeowners perspective. She said this doesn't just clarify the law it changes the law. She said there is concern that the canal company will not have to maintain a canal that has been breached by an act of God. She thought the changes were way over broad and detriment to property owners. She said the proposal makes it more difficult for there to be damages claimed from the canal company.

**Greg Curtis**, Nampa Meridian Irrigation Dist., said the ditches can't handle the influxes of water and they take care of maintenance as best as they can. He gave an example of flooding on a lateral and said he hoped the Committee would consider this from the irrigation standpoint. He said the last thing they want is flooding and they are doing their best to not have that happen.

**Scott Campbell**, Self, said the current statute was adopted in 1881 and this doesn't apply to what is going on in 2012. He said they are dealing with major structures and changes being forced upon the irrigation districts. He gave an example, saying they are facing these situations day in and day out. He said the legislation is trying to address this.

**Benjamin Kelly**, Food Producers of Idaho, said Food Producers support the legislation.

**Tom Barry**, Director of Public Works, City of Meridian, said he had several concerns with the legislation. He said there is a potential shift of liability to the public and there is a good amount of drainage located on private and public property and contain easements. He said he is concerned with making private property owners liable. He is concerned with acts of God being liability exempt. He said there is a concern about the motivation of irrigation entities if they are immune. He said he believes the bill lessens the maintenance standard and has concerns the bill may limit municipalities to discharge to conduits. He said he has concern with rights being taken away for due process and where liability actually lies.

**Dan Steenson**, Nampa Meridian Irrigation Dist., said testimony has given a good explanation of the bill and good questions. He explained the definition of act of God in Idaho Code. He said it is defined by Idaho courts and this bill would not alter that definition. He said with respect to the standard of care, the addition of this phrase does not modify the standard it only clarifies it. He explained the third party scope of authority by the irrigation district saying it requires permission by the owner. Mr. Steenson reviewed other changes to the bill.

**Norm Semanko** said there is no shift of liability and an act of God is defined as being natural. He said the third party issue has been discussed and this legislation doesn't change or lower the standard of care. He said this doesn't change municipal discharge. He said this is only clarifying the Code and he asked for support of the legislation.

**VOTE ON MOTION:**

**Motion carried by voice vote. Rep. Wood(35)** will sponsor the bill on the floor.

**H 399:**

**Norm Semanko** said this bill relates to the appropriation of water when seeking to transfer water and utilizing the irrigation district to do that. The irrigation district needs to get permission from the Department of Water Resources. This allows for the same type of consent be given with a transfer as it does with a new water right.

**MOTION:**

**Rep. Raybould** made a motion to send **H 399** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Raybould** will sponsor the bill on the floor.

**H 400:**

**Norm Semanko** said this bill establishes a statute of limitation for a stream alteration violation. He said it will apply to stream alteration violations the same as other violations.

**MOTION:**

**Rep. Higgins** made a motion to send **H 400** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Higgins** will sponsor the bill on the floor.

**H 401:**

**Norm Semanko** said this legislation will allow neighboring irrigation districts to swap lands if all parties agree. He said one district would exclude the land and the other district would annex the land. He said this legislation provides the process and the ability to do this in a uniform manner.

**MOTION:**

**Rep. Pence** made a motion to send **H 401** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Pence** will sponsor the bill on the floor.

**Chairman Stevenson** thanked the Page, **Susie McHan**, for the work she has done the first half of the Session.

**ADJOURN:** There being no further business to come before the Committee the meeting adjourned at 4:05 p.m.

---

Representative Stevenson  
Chairman

---

Susan Werlinger  
Secretary