

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 01, 2017

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Siddoway, Brackett, Heider, Bayer, Johnson, 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 Bair** called the Senate Resources and Environment Committee (Committee) meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Siddoway** moved to approve the Minutes of February 15, 2017. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

S 1111 **Senator Harris** presented **S 1111**. This legislation seeks to codify the findings of the Idaho Supreme Court in the case of *Joyce Livestock Company v. United States of America*. In this case, the court held that agencies of the federal government cannot hold stockwater rights unless they put the water to beneficial use by watering livestock owned by the agency.

TESTIMONY: **Paul Nettleton**, managing partner for Joyce Livestock Company, said they graze their livestock on federal land in the Murphy and Silver City areas. **Mr. Nettleton** said he is a fourth generation rancher and his great grandfather homesteaded the ranch in 1865. In 1878, his great grandfather was a founding member of what is now known as the Owyhee Cattle Association. **Mr. Nettleton** stated that the brand they use is the oldest recorded brand that is still in use today.

Mr. Nettleton stated that they filed for water rights in 1992 and it was suggested to them to file for stockwater rights. Many of the other ranchers also filed for stockwater rights on federal land. **Mr. Nettleton** said the Bureau of Land Management (BLM) filed and objected to the ranchers filing and it ended up in the Supreme Court. Many of the ranchers dropped out of the case, while others settled on a junior water right, and it was going to take a lot of money and time. **Mr. Nettleton** said he was going to fight for his rights. The Court agreed that the BLM could not own the water right without owning stock and the water had to be used for beneficial use. It was agreed that the Joyce Livestock Company's water rights predated the formation of the original grazing service and the forerunner to the BLM. **Mr. Nettleton** said they won the case and urged the Committee to pass **S 1111** and **S 1101**.

Senator Siddoway inquired if one needs to file on each drainage or just for the water within the allotment. **Mr. Nettleton** said it was the water of Jordan Creek that went to the Supreme Court. Some of the other water filings that he made, he did file on a number of tributaries. He was forced to file on every segment of the streams and had about 100 different filings that the allotment covers.

TESTIMONY: **Tim Lowry**, L U Ranching Company, said he supports **S 1111**. **Mr. Lowry** said that the Court in the Joyce decision stated that the argument of the United States reflected a misunderstanding of the water law. **Mr. Lowry** feels that the government attempted to overturn Idaho and western water law.

Mr. Lowry said former Secretary of the Interior Bruce Babbitt indicated that the water was pertinent to the federal land and therefore belonged to the federal government. Later, Mr. Babbitt gave a speech to law students at Lewis and Clark State College and in that speech he said it was fortunate that the U.S. had retained most of the land in the West, but quite unfortunate that they had let the water get away. Mr. Babbitt told the students they could have a long and lucrative career in an effort to get the water back.

Mr. Lowry said the reason for telling all this is to drive home a point that it wasn't a misunderstanding. It was just a well thought-out plan to implement a policy to recover western water. **Mr. Lowry** said that **S 1111** will help in future attempts as he feels that it is not the end of the government trying to get the water.

TESTIMONY: **Jerry Hoagland**, Owyhee County Commissioner, said he is speaking on behalf of the Owyhee County Commissioners, and they are in support of **S 1111**.

TESTIMONY: **Russ Hendricks** said he is representing the Idaho Farm Bureau and they support **S 1111**.

TESTIMONY: **Wyatt Prescott**, lobbyist for the Idaho Cattle Association (ICA), stated that the ICA is in support of **S 1111**.

TESTIMONY: **Brandy Kay**, Idaho Wool Growers Association, stated that they support **S 1111**.

MOTION: **Senator Bayer** moved that **S 1111** be sent to the floor with a **do pass** recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. Senator Harris will be the floor sponsor.

S 1101 **Senator Brackett** presented **S 1101** and stated that he wanted it noted that he had a conflict of interest pursuant to Senate Rule 39(H). **Senator Brackett** said this legislation is a companion bill to **S 1111**.

Senator Brackett said this legislation amends Idaho Code § 42-1414, to limit the fees imposed for stock watering claims. In the Joyce Livestock Company decision, the Court held that the federal government could not appropriate a water right for watering stock on federal lands by beneficially using the water unless the federal government owns the stock drinking the water. **Senator Brackett** said the Joyce decision recognizes that the owner of the stock grazing and watering on federal lands is entitled to the stockwater right established by beneficial use.

Senator Brackett stated that in the Snake River Basin Adjudication (SRBA), small stockwater and domestic water right holders were not required to file claims in the adjudication, but could defer the filing until a later time. Claims filed in the SRBA for these uses are referred to as "deferrable claims." Many of the stockwater uses that the Joyce decision addressed qualify as deferrable claims.

Senator Brackett said that **S 1101** amends Idaho Code § 42-1414, which reads on page 1, lines 19 through 22: "Provided however, and notwithstanding any other provision of law, fees for stock watering right claims, regardless of the number of claims filed, shall only be imposed on the first four (4) claims per claimant, and there shall be no other fees or costs imposed for such claims."

Senator Brackett said a claimant would pay \$25 for a claim and a maximum of \$100 for four or more claims. It exempts stockmen of any costs of publication, investigation, assistance, and recommendation. **Senator Brackett** said the legislation also contemplates that the Idaho Department of Water Resources will assume the costs of investigation, assistance, and recommendation. There shall be no other fees or costs imposed for such claims.

Senator Stennett asked what were the previous assessed charges. **Senator Brackett** said that in addition to the \$25 fee, there were fees for publication, investigation, and for clerical time.

Gary Spackman, Director, Idaho Department of Water Resources (IDWR), was asked to respond to some questions. **Senator Stennett** inquired if there would be other fees beyond the \$100 fee that IDWR would incur. **Director Spackman** said that historically, the stockwater rights or claims were filed by the permit holder and the fee was \$25 per claim. That was the cost at the time the SRBA was acted. Many of the claims were called "deferrable claims", so in the SRBA there were a number of water rights that were in a special category of being deferrable. These were small domestic stock water uses. **Director Spackman** said the SRBA Court set up a process after the culmination of the SRBA for these claims to be filed and for notice to be published so that the interested water users would have a way of knowing that additional claims were being filed. The Court not only required the \$25 filing fee, but required that the person filing the deferrable claim, pay the cost of publishing notice in a newspaper. Also, IDWR was to estimate the cost for a particular claim that was filed and the claimant was required to prepay those costs prior to IDWR investigating and recommendation of the claim.

Senator Stennett asked if IDWR was prepared to absorb the costs as stated in **S 1101** which include two additional employees. **Director Spackman** said his interpretation of the legislation is correct that the fees and costs paid by the claimant would be limited to \$25 per claim, with a maximum of \$100 for four claims or more. There is a cost associated with it unless the Court changes its procedures in some way, and that would be up to Judge Wildman. **Director Spackman** said IDWR would then need to publish notice. **Director Spackman** also said that he has not read the fiscal impact statement for this legislation and assumes the numbers taken are from a budget proposal submitted by IDWR in September 2016, anticipating that some form of this legislation would come before the Legislature.

Senator Siddoway inquired if stockwater rights have to be filed on every tributary that enters into a mountain basin inside every allotment, or is there a method to file for the water within the boundaries of the allotment. **Director Spackman** said he thinks that most of those determinations would be on a case-by-case basis. With respect to filings for instream stockwater, **Director Spackman** said his guess would be that those claims would be filed based on the source and based on a continuous reach of the particular stream or water source. **Director Spackman** said he is doubtful that the permit holder, or the grazer, would be able to file one claim throughout an entire allotment for the diversions from a water source. The approach IDWR would take in receiving those claims would be that each independent system would need to have a claim filed for it.

Senator Stennett asked if it was for all water rights and not just instream. **Director Spackman** said IDWR has interpreted the Joyce Livestock decision more broadly than just its application to the instream stock set of facts raised in Joyce. IDWR has interpreted the Joyce decision to apply at least the reasoning for other water right processes. For instance, when the federal government files for a water right permit, IDWR asks for proof of beneficial use and ownership of stock, as part of the proof of beneficial use. **Director Spackman** said IDWR is also asking for that evidence when the federal government files claims in the ongoing Northern Idaho adjudication.

Vice Chairman Vick asked if the claims diminish over time and is the expense a short-term expenditure. **Director Spackman** replied that in anticipation of this legislation, it has been discussed with various legislators, the Farm Bureau, and others for the past three years. **Director Spackman** said he built a decision unit into his proposed budget and also did not know what the legislative language would be and how much IDWR would have to contribute. **Director Spackman** said the way in which he arrived at the numbers in the budget proposal may be different than what is presently proposed for this particular legislation. **Director Spackman** stated that he was not involved with the development of numbers with this specific language and that particular decision unit relating to stock water was not recommended by the Governor in his proposed budget.

TESTIMONY:

Tim Lowry, from Pleasant Valley, Owyhee County, testified in support of **S 1101**. **Mr. Lowry** said this is a good step in correcting an injustice that was done to the legitimate owners of stockwater rights in the Snake River Basin. **Mr. Lowry** stated that it was the State of New Mexico that took up the challenge and objected to the United States claiming under state law that they could hold the stockwater rights. **Mr. Lowry** said the State of Idaho objected only to the priority date and that date is secondary to the primary issue of can the U.S. hold the stockwater right.

Mr. Lowry said the U.S., with no opposition from the State of Idaho, vigorously attacked the private claimants. **Mr. Lowry** related a personal experience of trying to protect his stockwater rights and was told he would be facing three trials. With huge debts, **Mr. Lowry** said he withdrew his claims, as did other ranchers with the same problem. In closing, **Mr. Lowry** reiterated that this legislation is a good step in correcting an injustice and urged passage of **S 1101**.

Senator Brackett said he appreciated the testimonies and urged the Committee to pass **S 1101**.

MOTION:

Senator Siddoway moved that **S 1101** be sent to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Brackett will be the floor sponsor.

H 96

Senator Harris presented **H 96** and said this legislation is in regards to the Bear Lake Commission and provides for alternates to sit on the Commission when commissioners cannot attend meetings. **Senator Harris** said Idaho Code § 42-3303, provides the authority for the alternate commissioner to act in the absence of the appointed commissioner and there is no fiscal impact to the General Fund.

Senator Siddoway inquired, as to the absence of the commissioners. **Senator Harris** replied that the majority of the commissioners are farmers and due to their farming responsibilities, that is why they cannot always attend the meetings. **Senator Siddoway** then asked who they are appointed by and **Senator Harris** responded that they are appointed by the Governor but do not need Senate confirmation.

MOTION:

Vice Chairman Vick moved that **H 96** be sent to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Harris will be the floor sponsor.

H 52

Eric Wilson, Resource Protection and Assistance Bureau Chief, Idaho Department of Lands (IDL), presented **H 52**. This bill is in regards to membership in the Interstate Oil and Gas Compact Commission (IOGCC). IDL is the administrative agency for the Idaho Oil and Gas Conservation Commission (Commission). The duties of the Commission are to prevent waste during the exploration and development of oil and gas resources, protect the correlative rights of mineral owners, and protect fresh waters during oil and gas development on all federal, state, and private lands in Idaho.

Mr. Wilson stated the IOGCC was established in 1935 by the states of Texas, Oklahoma, California, Kansas, and New Mexico. Their purpose is to conserve oil and gas by preventing waste and maximizing production while protecting human health, safety, and the environment. The Chairman of the IOGCC is always a governor from a member state. Asa Hutchinson, Governor of Arkansas, is currently the Chairman.

Mr. Wilson said oil and gas regulation is handled largely by the states, and no federal standards exist. The only exceptions are federal agencies managing federally-owned surface and mineral resources, and the U.S. Environmental Protection Agency administering the Clean Water Act for water quality purposes and the Safe Drinking Water Act to protect groundwater quality from underground injections. Since 2011, Idaho has been updating its own oil and gas regulatory program.

Thirty states are now members of IOGCC. Idaho is currently an associate member as full membership is limited to oil and gas producing states. In 2016, Idaho became the newest oil and gas producing state in the union, and is now eligible to apply for full membership. Full membership will allow Idaho to have a voice in national oil and gas policy, will provide access to nationwide resources and assistance for enhancing programs, and will inform the State early on about emerging state and national trends. Full membership in the IOGCC will not have any impact on the State general fund, but an additional \$6,000 from existing dedicated fund appropriation is required to cover full membership dues.

Mr. Wilson said the Commission approved the draft bill at their September meeting and this bill uses model legislation supplied by the IOGCC.

Senator Stennett inquired as to what benefit the State would get out of belonging to the IOGCC. **Mr. Wilson** said as a full member, Idaho would have a vote in the decisions and direction that IOGCC would take. As an associate member, Idaho does not have a voting voice.

Vice Chairman Vick said on page three of the legislation, it talks about the coordination of police powers and asked for clarification. **Mr. Wilson** said those police powers are the regulations for oil and gas. Any regulatory function that the State has can be characterized as a police power. **Vice Chairman Vick** then asked what the coordination involves. **Mr. Wilson** said the coordination is so that all the states have an agreement that they will conserve oil and gas and do certain things.

TESTIMONY:

Julia Page testified in opposition of **H 52**. **Ms. Page** said she is a board member of the Idaho Organization of Resource Councils (IORC). IORC works to improve the economic vitality of communities and by promoting responsible stewardship of air, land, and water. **Ms. Page** stated that IOGCC is not open and accountable to the public. Also, the bill takes away money the State could be using to improve or enforce the oil and gas standards that are already in place.

Ms. Page said if IOGCC is really about the conservation of oil and gas, there would be reason to support it, but she doesn't believe that is the case. **Ms. Page** stated the record suggests IOGCC is really an unaccountable lobbying group that the Idaho taxpayer will subsidize and for those reasons, the IORC opposes **H 52**.

MOTION:

Senator Siddoway moved that **H 52** be sent to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

Senator Jordan said she appreciated the efforts and the benefits the IOGCC, but objected to how the police powers could affect the State.

The motion carried by **voice vote**. **Senators Stennett and Jordan** asked to be recorded as voting nay. Senator Heider will be the floor sponsor.

H 53 and H 64 **H 53 and H 64** were held due to lack of time and will be heard on the following meeting.

ADJOURNED: There being no further business at this time, **Chairman Bair** adjourned the meeting at 3:00 p.m.

Senator Bair
Chair

Juanita Budell
Secretary