

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Monday, March 13, 2017

TIME: 1:30pm or Upon Adjournment

PLACE: Room EW40

MEMBERS: Chairman Gibbs, Vice Chairman Gestrin, Representatives Moyle, Raybould, Shepherd, Wood, Boyle, Vander Woude, Miller, Burtenshaw, Mendive, Youngblood, Kauffman, Giddings, Blanksma, Erpelding, Rubel, Jordan

**ABSENT/
EXCUSED:** None

GUESTS: Paul Nettleton, Joyce Livestock Co.; Tim Lowry, LV Ranching Co.; Russ Hendricks, Idaho Farm Bureau; Lynn Tominaga, IGWA; Brandy Kay, IWGA; Mitch Coats, Idaho Food Producers; Tyler Murgoitio, IWUA; Brian Patton and Gary Spackman, IDWR; Wyatt Prescott, ICA

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

MOTION: **Rep. Kauffman** made a motion to approve the minutes from the March 3, 2017 meeting. **Motion carried by voice vote.**

S 1111: **Senator Harris**, District 32, stated this bill will put into statute the findings of the Idaho Supreme Court in the case of *Joyce Livestock Company v. United States of America*, **144 Idaho 1, 156 P.3d 502 (2007)**. 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.

Paul Nettleton, representing Joyce Livestock Company, stated this is the oldest family-owned ranch in Idaho, grazing livestock on federal lands for over 150 years. Mr. Nettleton stated they began filing irrigation and stockwater claims on federal lands over 25 years ago, as recommended by the Bureau of Land Management (BLM). Although BLM recommended to Joyce Livestock Company to file those water claims, BLM ended up filing on those same claims. The State Water Resource Board recommended in favor of the federal government on the claims even though this decision was in direct conflict with western water rights, which clearly states water must be put to beneficial use by watering livestock. Because of that decision, Joyce Livestock Company took the state and federal government to court. After many years and many dollars, they won their case. The Idaho Supreme Court held by a unanimous decision that water rights go to the party with a beneficial use, not to the party who controls the land; and because the federal government doesn't own livestock, all BLM claims that were filed were denied. This decision, known as the Joyce Decision, is widely known and widely used across the West. Mr. Nettleton is **in support** of this bill and stated it's time for the Legislature to codify this court decision.

Tim Lowery, representing LV Ranch Company, stated they are **in support** of this bill. He stated it is important to codify this decision into statute to avoid any further attempt from the federal government to take away their water rights. Stockwater rights belong to the stockmen who put the water to beneficial use.

In addition to **Mr. Nettleton** and **Mr. Lowery**, those speaking **in support** of **S 1111** were **Russ Hendricks**, representing Idaho Farm Bureau; **Brandy Kay**, representing Idaho Wool Growers Association; and **Wyatt Prescott**, representing Idaho Cattle Association.

Speaker Scott Bedke, District 27, stated he is **in support** of this bill as well as **S 1101**. Speaker Bedke expressed his appreciation to the Nettleton and Lowry families for seeing this issue through to the end. Although he personally didn't follow through with his stockwater claims as these families did at that time, he did end up with senior water rights on his allotments, and looked forward to the day when the state would correct the wrong that was done. Speaker Bedke recognized, due to a technicality, that the two families carried the cost of this court case without the ability for reimbursement through the Equal Access for Justice Act. He stated it was this stockwater rights issue that motivated him to leave the comfort of his ranch and get active politically and believes this issue needs to be settled for good.

MOTION: **Rep. Blanksma** made a motion to send **S 1111** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Boyle** will sponsor the bill on the floor.

S 1101: **Senator Brackett**, District 23, stated this legislation is a companion to **S 1111** that codifies the Idaho Supreme Court decision, known as the Joyce Decision. 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. Because these deferrable claims are now considered late claims, the claimant must pay a filing fee of \$25.00 per claim; publish notice of the claim; and pay the estimated cost of investigation, assistance with, and recommendation of the claim by the Idaho Department of Water Resources. This legislation will cap the deferrable claims fees to no more than \$100.00 (the filing fee for four claims), and to exempt the stockmen from any costs of publication, investigation fees, assistance, and recommendation. There shall be no other fees or costs imposed for such claims.

In response to a question about the Fiscal Note regarding the two positions identified to be hired, **Senator Brackett** stated these positions will end once the entire 13,000+ deferrable claims backlog has been processed.

Speaking **in support** of **S 1101**, were **Tim Lowry**, representing LV Ranching Company; **Russ Hendricks**, representing Idaho Farm Bureau; and **Brandy Kay**, representing Idaho Wool Growers Association.

MOTION: **Rep. Blanksma** made a motion to send **S 1101** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Boyle** will sponsor the bill on the floor.

Brian Patton, Idaho Water Resources Board, introduced himself and provided an update on the Eastern Snake Plain Aquifer Recharge Program. The Eastern Snake Plain Aquifer is approximately 10,000 square miles and is a world class aquifer. The water from this aquifer fueled much of Idaho's economic growth in the second half of the 20th century and currently, almost one-third of the economic output is from this region of Idaho. For approximately 100 years, water has been stored, primarily by building and operating irrigation systems in this region. These irrigation canals all have some level of leakage and because of that unintentional leakage, created this supercharged aquifer. Beginning in 1952, the water level started going down from the decline of spring flows, with an average annual loss of 215,000 acre feet. As a result of the ongoing decline several actions occurred. The Swan Falls Agreement was developed in the mid-1980's, which made the state responsible for maintaining minimum flows of 3,900 cfs during the irrigation season and 5,600 cfs during the non-irrigation season, measured below Swan Falls Dam. From 2013 through 2016 minimum flow requirements were barely met, and in 2015 flows dropped below the minimum for the first time ever. In 2016, the Surface Water Coalition Settlement came before the Legislature, which established a ground water use reduction of

240,000 acre feet annually and a state-sponsored managed recharge program of 250,000 acre feet annually. These efforts and more were put into place to stop the drop and rebuild the aquifer. Mr. Patton stated they need to get better at capturing water and are working on building that capacity with conveyance facilities, i.e. canals. Finally, in 2017, plans are in place to fill empty space in reservoirs with the surplus water anticipated from this winter's snowpack melt.

In response to a question regarding the chance of harming the aquifer from nitrogen and phosphorus as a result of rapid runoff, **Mr. Patton** stated that some natural filtration occurs through the unlined canal system. Additionally, they've established water quality monitoring systems around the recharge sites, they monitor the inflow water, and take water quality samples. These monitoring practices are conducted frequently during the recharge season.

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 3:16pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary