

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 18, 2019

TIME: 1:30 P.M.

PLACE: Room WW55

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

PAGE INTRODUCTION: **Chairman Heider** introduced Paige Evans as the new Committee page. **Ms. Evans** is from Eagle, Idaho and stated that she loves to ski, run, and read. **Senator Mortimer** wanted to know more about her and her family, her future plans, and the types of classes she is currently taking. **Ms. Evans** responded that she is the youngest in her family, has two older brothers, has taken 21 concurrent credits throughout high school, and she wants to go to college to become an interior designer.

VOTE ON GUBERNATORIAL APPOINTMENT: **Chairman Heider** stated that the next item of business was the consideration of Ford Elsaesser, appointed to serve the Lake Pend Orielle Basin Commission to serve a term commencing July 24, 2018 and expiring July 24th, 2021.

MOTION: **Senator Patrick** moved to send the Gubernatorial appointment of Ford Elsaesser to the Lake Pend Orielle Basin Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL APPOINTMENT: The next item under consideration was Louis Fatkin, appointed to the Parks and Recreation Board to serve a term commencing March 1, 2018 and expiring June 30th, 2023.

MOTION: **Senator Mortimer** moved to send the Gubernatorial appointment of Louis Fatkin to the Parks and Recreation Board to the floor with recommendation that he be confirmed by the Senate. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

S 1083 **Paul Arrington**, of the Idaho Water Users Association, stated **S 1083** clarifies that operators of irrigation facilities share the same rights and obligations as owners.

DISCUSSION: **Senator Stennett** inquired how canal companies deal with private land owners to ensure that the canals and ditches remain clear of debris, and if there was a buffer that canal companies own off of ditches. **Mr. Arrington** responded the answer is not the same for every region, but the owners of the canal companies either have regular communication on how the canals and ditches should be maintained, or they have open agreements where the canal company can come by and clear the ditches when it's needed. **Mr. Arrington** responded to the latter question by referring to **S 1083** itself; the bill gives the canal companies the room they need to work with.

Senator Jordan asked how the bill avoids conflicts between the owners and operators of the canal companies. **Mr. Arrington** stated there is an extra need for open communication between the two parties and that there are agreements in most, but not all cases.

Senators Johnson and Stennett asked about the significance of "and" instead of "or" in the bill in reference to conflicts with the other provisions and potential obligations with insurance costs. **Mr. Arrington** responded that he doesn't have the perfect answer, but the language is there to reiterate that the obligation between the two parties exists. He further stated that the particular provision with "and" doesn't speak to any of the permissions that might be required to access or to interfere with an easement, or to bury a pipeline.

Senator Mortimer asked if the owners or the operators would be sued if a canal flooded and caused property damage to the surrounding neighbors. **Mr. Arrington** replied that the delivery entities have insurance that covers those instances.

MOTION: **Senator Johnson** moved to send **S 1083** to the floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

S 1084 **Morgan Howard**, legislative intern with the Idaho Water Users Association, presented on behalf of Mr. Arrington and stated **S 1084** repeals a number of statutes that were vetted by the Idaho Department of Water Resources (IDWR).

DISCUSSION: **Senator Stennett** requested some examples of statutes that are being repealed in this legislation. **Ms. Howard** responded with a statute that required canal companies to report any tolls, water chargers, or new assessments to the IDWR, who would hold a hearing on those changes. However, the statute was never implemented and is being repealed to avoid double reporting.

Vice Chairman Brackett asked for brief explanations of sections 2, 5, 8, and 26 of **S 1084**. **Ms. Howard** stated that section 2 refers to a mandatory filing of a statement for any planned liens on canals. Section 2 also mandates that the county reporter keeps a record of all the statements required in the statute. Section 5 allows judicial review of the director's decision. Section 8 keeps IDWR up to date on the place and use of all the relevant water rights in **S 1084**. Finally, Section 26 refers to the reports that are made to the county recorder and to the IDWR, and the information is kept with irrigation districts, canal companies, and the IDWR.

MOTION: **Senator Stennett** moved to send **S 1084** to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

S 1085 **Paul Arrington** of the Idaho Water Users Association explained **S 1085** amends Idaho Code § 43-303 to align meeting notice requirements with Idaho's open meeting law. The bill clarifies that Idaho Water Resources Board decisions require a majority of board members to be present and it also codifies prior case law holding that the sole method to review irrigation districts is stated in Idaho Code § 43-325.

DISCUSSION: **Senator Patrick** requested clarification on the definitions of irrigation districts and canal companies. **Mr. Arrington** responded that irrigation districts are a quasi governmental entity formed under Title 43 of Idaho Code, whereas a canal company is a non-profit private corporation. The term "water users" is used for irrigation districts, and canal companies refer to people as "shareholders."

MOTION: **Senator Guthrie** moved to send **S 1085** to the floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion. The motion was carried by **voice vote**.

S 1086 **Mr. Arrington** reported **S 1086** amends code to specify the right to remove vegetation from irrigation facilities and place that vegetation on the canal/ditch banks.

TESTIMONY: **Bryce Ferris**, an attorney with Sawtooth Law, representing the Nampa Meridian Irrigation District, spoke in favor of **S 1086**. **Mr. Ferris** stated the biggest question that arises concerns situations where a maintenance crew works with chain-saws and the landowner begins to question their authority to remove vegetation.

DISCUSSION: **Senator Stennett** asked whose responsibility it is to remove gardens, trees, or debris that are in the way of the canal. **Mr. Ferris** responded by stating that the legislation is only about new vegetation that encroaches the easement, which shall be removed at the expense of the person or landowner causing the encroachment.

TESTIMONY: **Greg Curtis**, Water Superintendant of Nampa Meridian Irrigation District, spoke in favor of this bill. The irrigation district operates and maintains hundreds of miles of irrigation canals and drained ditches. The issue that **S 1086** addresses is a recurring problem in Idaho; this bill will simply provide the clarity irrigation districts need to protect their easements, which are vital to the continued delivery of water.

Roger Batt, of the Treasure Valley Water Users Association also spoke in favor of the bill and indicated his support was for the same reasons given by Mr. Curtis.

MOTION: **Senator Patrick** moved to send **S 1086** to the floor with a **do pass** recommendation. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

S 1056 **Lynn Tominaga** and **TJ Budge** of the Idaho Ground Water Association presented **S 1056**, which discusses the process for a non-compliant patron within groundwater districts. **Mr. Budge** discussed the bill's importance in sustaining the Snake River Aquifer settlement. **Mr. Budge** also stated that **S 1056** gives the same enforcement authority for the diversion reduction as presently exists for assessments. It allows a groundwater district to report to the Director of the IDWR when a member is not complying with their diversion reduction. The Director may then curtail that member's well for noncompliance with an approved mitigation plan.

DISCUSSION: **Senator Patrick** wanted clarification on the number of people complying to the agreement, whether it was primarily farmers or water users that were out of compliance. **Mr. Tominaga** responded it depends on the district, but most cases are dealing with people with a small number of acres.

Senator Johnson asked why the secondary planning and implementation fund gets utilized for these enforcement actions instead of the General Fund. **Mr. Tominaga** referred to Gary Spackman, Director of Water Resources, to answer this question. **Mr. Spackman** stated that the secondary aquifer fund was for dedicated projects, and the Idaho Water Resources Board was given a fiduciary duty to spend the money solely for projects.

- TESTIMONY:** **Mr. Spackman** spoke in favor of this legislation because of the litigation prior to the Snake River Aquifer settlement agreement. **Mr. Spackman** stated the Director of IDWR's authority includes making a list of people who were not paying their assessments, and would not receive the benefits of any approved mitigation plan. Finally, **Mr. Spackman** indicated that **S 1056** would have a fiscal impact, but did not know what the impact would be.
- DISCUSSION:** **Senator Stennett** asked Mr. Spackman questions relating to the fiscal note. **Mr. Spackman** responded that the earmarked \$126,000 amount is for the IDWR to deal with legal complications from the non-abiding water users. **Senators Guthrie, Mortimer, and Patrick** had a lengthy discussion about how **S 1056** relates to another piece of legislation, **S 1041**, as well as the financial mechanisms for paying for the legislation, and the fiscal note of **S 1056**.
- TESTIMONY:** **TJ Budge** and **Lynn Tominaga** of the Idaho Ground Water Association testified in favor of **S 1056** and summarized their presentation of the bill once again. According to **Mr. Tominaga**, he was told by the IDWR if they are dealing 20 or 30 individuals or patrons who are out of compliance and would like to challenge this, then the \$126,000 amount comes in for litigation.
- MOTION:** **Senator Johnson** moved to hold **S 1056** until next the business day. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.
- ADJOURNED:** There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:10 p.m.

Senator Heider
Chair

Tyler Brock
Secretary