

MINUTES  
**HOUSE RESOURCES & CONSERVATION COMMITTEE**

- DATE:** Tuesday, March 19, 2019
- TIME:** 1:30pm or Upon Adjournment
- PLACE:** Room EW40
- MEMBERS:** Chairman Gibbs, Vice Chairman Gestrin, Representatives Moyle, Shepherd, Wood, Boyle, Vander Woude, Mendive, Kauffman, Blanksma, Addis, Lickley, Moon, Raybould, Erpelding, Rubel, Toone, Mason
- ABSENT/  
EXCUSED:** Representative(s) Vander Woude
- GUESTS:** Sharon Kiefer, Idaho Department of Fish and Game; Morgan Howard and Paul Arrington, Idaho Water Users Association; Jay Neider, self; Nathan Helm, self; Brian Patton, Idaho Department of Water Resources; Albert Barker, Barker Rosholt & Simpson; Jonathan Oppenheimer, Idaho Conservation League; Benn Brocksome, Idaho Sportsmen's Alliance; Braden Jensen, Idaho Farm Bureau
- Chairman Gibbs** called the meeting to order at 1:31pm.
- MOTION:** **Rep. Toone** made a motion to approve the minutes of the March 5, 2019 meeting. **Motion carried by voice vote.**
- SJM 105:** **Senator Harris**, District 32, stated this Memorial encourages continued cooperation between all stakeholders and to enforce and protect existing Bear Lake water and beneficial use. He explained Bear Lake is unique in many ways including: it sits between two states; Idaho and Utah, it is used by thousands of people for recreation, it is home to seven state parks, it has many endemic fish, and is home to the Bonneville Cutthroat Trout, the state fish for both Idaho and Utah. More importantly, Bear Lake is used as a reservoir for irrigation water and power generation for approximately 150,000 acres of farm ground. In conclusion, Senator Harris explained the reason for this Memorial is due to recent activities by certain groups to fill Salt Lake using waters from Bear Lake and as a result, **SJM 105** encourages the protection of Bear Lake's intended uses of irrigation, power generation, and recreation.
- MOTION:** **Rep. Raybould** made a motion to send **SJM 105** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gibbs** will sponsor the bill on the floor.
- S 1151:** **Senator Brackett**, District 23, stated the purpose of this bill is to place a cap on the amount paid on any single wildlife caused crop damage claim to not exceed 10% of the annual Expendable Big Game Depredation Trust Account appropriation for that fiscal year. He explained in 2017, **H 230** passed, which added significant financial resources to prevent wildlife crop depredations and pay claims for wildlife damages/losses. In 2018, the Idaho Department of Fish and Game received a claim from a single agricultural producer for specialty organic crops that exceeded the total amount of the other 49 claims received from all agricultural producers combined, including record claims from corn producers. Claims such as this one will inevitably result in pro-rating claims for all producers who file a claim in any given year. He explained, in addition, this bill provides that the total amount paid to any person for approved claims in the aggregate in a fiscal year, including any payment to any pass-through entity from which the claimant or any household member receives income, shall not exceed 10% of the original Expendable Big Game Depredation Trust Account appropriation for the fiscal year.

**MOTION:** **Rep. Wood** made a motion to send **S 1151** to the floor with a **DO PASS** recommendation.

**Sharon Kiefer**, Deputy Director, Idaho Department of Fish and Game, stated as a result of **H 230** the Department has the Expendable Big Game Depredation Trust Account to pay compensation to producers for crop damage from deer, elk, and pronghorn. She explained this account accrues an annual interest of about \$40,000 from the Non-Expendable Trust Account, an annual \$200,000 from license fees, and an additional \$500,000 from the access/depredation fees. Per statute, one half of each eligible claim is paid up front, and the unpaid balance of eligible claims is paid at the end of the fiscal year, all within the resources of cash and appropriation for the account. Ms. Kiefer stated despite more resources and efforts, crop depredation claims have been rising due to increased abundance and distribution of big game animals, primarily elk, along with changes in agriculture crop practices, choice of crops, and increased value of certain agricultural commodities. She explained, in Fiscal Year 2019, the Department received an eligible claim of just over \$1 million from a single agriculture producer of organic crops that exceeded the total amount of the other 49 claims received to date from all agricultural producers combined. This is the first time in the history of the depredation claim program this has occurred. Under current statutory direction, processing "outlier" claims such as this one will inevitably result in pro-rating claims for all producers who file in the same year, and two such "outlier" claims would render the depredation compensation program meaningless to the majority of agricultural producers submitting annual claims.

**Ms. Kiefer** explained **S 1151** creates a solution to this concern by providing a legislative safeguard to avoid exceptionally large claims straining the depredation compensation account resulting in significant pro-rating of claims. She stated the Fish and Game Commission believes **S 1151** is effective and efficient fiscal policy for the use of license fees and is **in support** of this bill.

**Ben Brocksome**, Idaho Sportsmen's Alliance, stated they are **in support** of **S 1151**. He stated they are appreciative that sportsmen can contribute through license fees to assist landowners with depredation claims.

**VOTE ON MOTION:** **Chairman Gibbs** called for a vote on the motion to send **S 1151** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Boyle** requested to be recorded as voting **NAY.** **Rep. Wood** will sponsor the bill on the floor.

**SJM 106:** **Senator Brackett**, District 23, stated **SJM 106** is a rewrite of **SJM 101**. The only change from **SJM 101** is the removal of a paragraph on page 2, on lines 20-23.

**MOTION:** **Rep. Wood** made a motion to send **SJM 106** to the floor with a **DO PASS** recommendation.

**Jay Neider**, ranch owner from Stanley, Idaho, stated he has managed his ranch since 1957 and the Forest Service has given him a hard time for years. They have threatened to bulldoze his ditches and have sent him numerous letters informing him he had to pay for special use permits. He stated he told the Forest Service his rights-of-way were protected under the 1866 Mining Act which says no federal agency can control his ditches, but they still bothered him. He said he's complied with their requests and has fish screens, head gates, and measuring devices on both of his ditches yet he's still concerned the Forest Service will try and take away his water and is seeking help from the Legislature to protect his rights.

**Nathan Helm**, ranch owner from Melba, stated he is interested in this Memorial because it adds another tool they can work with to protect their water rights. He stated he and his father-in-law (**Mr. Neider**) want to be united with the Legislature on this issue and they are hopeful to get some language they can use moving forward. He respects there are competing priorities with water and fish, but in his opinion, their water rights take priority.

**Jonathan Oppenheimer**, Idaho Conservation League, stated they are in support of the sentiment of **SJM 106** relative to encouraging the federal land management agencies to issue the many overdue easements and special use permits related to water use on or across federal lands. They do, however, have issues with **SJM 106** on page 2, lines 45-49 which extends the 1996 Ditch Bill application deadline, and page 3, lines 1-7 which directs the Secretary of Agriculture to not interfere with the use of any decreed water rights by exempting water users from requirements of federal law. Mr. Oppenheimer believes this Memorial is an attempt to force federal agencies to issue easements without following their required process. For those reasons, he requested **SJM 106** be held in committee.

**Al Barker**, Attorney, stated he represents a number of ranchers in the Sawtooth Valley who's rights are the subject of the Idaho Conservation League vs U.S. Forest Service lawsuit. He explained this is not simply about issuing easements, but rather to address the demands that ESA consultation be done for the use of ditches that have been in place before the lands went into public domain. He stated this Memorial requests Congress and the Administration to recognize the existing rights-of-way the ranchers are entitled to based on the 1866 Mining Law and the Colorado Ditch Bill. He concluded by stating he is not asking the Forest Service to ignore federal laws, but rather asking them to apply federal laws, specifically the 1866 Mining Act and the Colorado Ditch Bill. Nothing in those laws allows the federal government to apply discretion or require consultation, nor can the federal government override state water rights.

In response to a question regarding the Idaho Water Resource Board's position on this issue, **Mr. Barker** stated the Board has no position on **SJM 106** and nothing in this Memorial impacts the work of the Board in the Salmon Basin (See Attachment).

**Braden Jensen**, Idaho Farm Bureau, stated they are **in support** of **SJM 106** because they don't want anything to stand in the way of Idaho citizens' water rights.

**Paul Arrington**, Idaho Water Users Association, simply stated they are **in support** of **SJM 106**.

**VOTE ON MOTION:**

**Chairman Gibbs** called for a vote on the motion to send **SJM 106** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Erpelding, Rubel, Toone, and Mason** requested to be recorded as voting **NAY. Rep. Gestrin** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 2:29pm.

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Representative Gibbs  
Chair

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Tracey McDonnell  
Secretary