

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 17, 2020

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 Resources and Environment Committee (Committee) to order at 1:32 p.m.

PAGE INTRODUCTION: **Chairman Heider** introduced the Committee's second term Page, Lexi Rich, and asked her to share her background and why she chose to be a page with the Committee. **Ms. Rich** announced that she is from Meridian, Idaho, a senior at Rocky Mountain High School, and the Associated Student Body president. She plans to go to Dixie State University for one year, then serve an LDS mission, and upon returning attend Utah State.

MINUTES APPROVAL: **Senator Patrick** moved to approve the Minutes of February 3, 2020. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: The Gubernatorial Appointment of Zachary Mason to the Idaho Outfitters and Guides Licensing Board.

Mr. Mason explained his background to the Committee. He lives in Meridian, and is an emergency medical responder instructor at Renaissance High School. He is a firefighter paramedic for the city of Meridian, and also the owner/outfitter/guide at H20 Idaho in Riggins. He explained he is passionate about being an interpreter for the outdoors to his guests whom he takes rafting, and is looking forward to being on the board.

S 1289 Relating to irrigation districts; to revise provisions for assessment purposes.

Paul Arrington, Executive Director and General Counsel, Idaho Water Users Association (IWUA), explained that irrigation canals were developed to deliver water to large tracks of irrigators, therefore delivering to smaller tracks of land is getting more expensive. Idaho Code § 43-732 authorizes an irrigation district to assess a service charge to small tracts of land when the cost is substantially greater than the cost of water delivery to the other lands of the district. This section applies to the following groupings: less than two acres, or two to ten acres; therefore, the current dividing point is two acres. He asserted that the more appropriate dividing point is one acre which would allow districts to appropriately and fairly assess their users. This bill amends the groupings to less than one acre, and one to ten acres. He detailed changes in the bill and where the redlined changes were located.

DISCUSSION: In response to several questions from the Committee, **Mr. Arrington** detailed how districts measure delivered water, that not all irrigators adopt the canal system, the cost burden upon canal companies and fiscal impact upon the state, specific dollar amounts, and fees charged.

Andy Waldera, Attorney, Sawtooth Law Offices, spoke to answer Committee questions regarding costs borne by others. He clarified that the dividing line for classes already exists in the statute and this bill edits that line. He stated that Glenns Fairy, King Hill, and Hammett are having difficulty with expenses for small tracts and receive several service calls on one acre or less lots, and want to make the cost fair for all. He detailed the ownership of irrigation districts and how they operate pressurized irrigation systems.

Senator Stennett and **Mr. Waldera** discussed if he and/or IWUA had dialog with other districts to make sure this bill does not penalize them by changes made in the King Hill and Hammett area. It was reviewed that this issue crosses over a number of districts and will not have any unintended consequences on other districts.

MOTION: **Senator Mortimer** moved to send **S 1289** to the floor with a **do pass** recommendation. **Senator Bair** seconded the motion. The motion carried by **voice vote**. Vice Chairman Brackett will carry the bill on the floor.

S 1290 Relating to irrigation districts; to combine precincts, to provide location of polling place, and judges of election.

Mr. Arrington introduced Lauren Markuson, IWUA legislative intern and third year law student. **Ms. Markuson** described that Idaho Code § 43-206 requires polling places in each precinct for irrigation district elections, unless two precincts are consolidated by resolution of the board of directors. She highlighted that smaller and rural districts have difficulty with this requirement. She explained this bill will allow small irrigation districts (specifically 15,000 acres or less) to combine all polling places into one location if the board of directors adopts a resolution combining all polling places, and the combined polling place must be the irrigation district office. This would provide a solution to the challenges that small irrigation districts face regarding polling places and election of judges.

In response to Committee questions, **Ms. Markuson** explained that there are options for absentee ballots, and the smaller precincts have constraints in regards to staffing, polling facilities, and complying with the Americans with Disabilities Act.

MOTION: **Senator Guthrie** moved to send **S 1290** to the floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion. The motion passed by **voice vote**. Vice Chairman Brackett will carry the bill on the floor.

S 1316 Relating to water; regarding the permitting and licensing of water rights.

Travis Thompson, Attorney with Barker Rosholt & Simpson LLP, in Twin Falls, introduced himself and stated he was presenting on behalf of the city of Twin Falls. He voiced that the genesis of this legislation stems from the city's experience in processing a water right application before the Idaho Department Water Resources (IDWR), which is required for cities and other providers of municipal water, for a reasonably anticipated future needs water right (RAFN), which is a different water right from a regular claim. RAFN water rights are for future needs and dependent upon a planning horizon which can extend for a significant number of years (20 to 30 years, or even longer), allowing that city to obtain a water right to grow into over time. At the outset the applicant has to submit sufficient information for the planning horizon up front that has to be

approved by IDWR. Questions arise regarding proof of beneficial use, since currently IDWR is restrained and can only give a five year time period, with an optional extension of an additional five years. This bill cleans up the unintended glitch when the municipal water rights act was first passed back in 1996, giving IDWR the ability to use the full planning horizon on the permit to prove up the water right and license the water right for the water that was actually used at the end of that period.

Norm Semanko, Parsons Behle & Latimer, representing the city of Eagle, stated that the interests of irrigators and cities converge regarding this bill. He reiterated the one glitch in the municipal water rights act was regarding the RAFN water rights, and detailed its relevance using his city's specifics as an example. He expounded this bill will make it clear that for future and existing permits, the proof of beneficial use will be done at the end of the planning horizon so IDWR does not have to guess and the cities do not have to have uncertainty about the amount of water that is actually developed and licensed.

Shelley Keen, Water Allocation Bureau Chief, IDWR, spoke to add perspective on this bill from IDWR's point of view. He briefed that the working group drafting the bill consulted them regarding language and IDWR is very comfortable with the way this bill has come forward. He informed the bill directly addresses accommodation of existing permits and applications for RAFN, which will have the same planning horizon as authorized at the outset, and it allows IDWR to extend the proof deadline to the end of the planning horizon to conform with the revised process. He explained new permits resulting from existing applications will be based on the statutes in place at the time of permit issuance regardless of when the application was filed.

Mr. Arrington reiterated there was a work group who put this bill together with many stakeholders and referenced letters in support that were in front of the Committee (see attachment 1).

MOTION:

Senator Mortimer moved to send **S 1316** to the floor with a **do pass** recommendation. **Senator Bair** seconded the motion. The motion carried by **voice vote**. Senator Bair will carry the bill on the floor.

H 382

Relating to water; to provide for the Bear River water rights adjudication, accomplished transfers, and revise provisions regarding enlargements.

Senator Mark Harris, Legislative District 32, stated this bill initiates the general water adjudication for the Bear River Basin (BRB), and authorizes the adjudication of all rights in those portions of Bannock, Bear Lake, Caribou, Cassia, Franklin, Oneida, and Power counties within the BRB. Since the river crosses state lines, interstate agreements were necessary to apportion the water from the Bear River among Utah, Idaho, and Wyoming. This bill gives Idaho's three commissioners more information needed to represent Idaho's interest in water allocation matters and any water dispute. The last time the water in the BRB was adjudicated was in 1920 and the law has changed since then. Beneficial use water rights that exist, but are not recorded, have caused disputes regarding water rights, property transactions, and difficulty in administration. He stated an adjudication will safeguard Idaho's water in dealing with Utah and Wyoming. He referenced a letter of support from Mark Mathews of the Bear River Water User's Association (see attachment 2). He illuminated that the projected cost for this adjudication is \$8 to \$10 million over the next 10 year period.

DISCUSSION: **Senator Stennett** asked how adjudication happens when the river flows into different states. **Senator Harris** clarified the adjudication will just affect Idaho, and that currently Utah is in the process of adjudicating their part. The main issue Idaho has is due to Utah being settled before Idaho, making a lot of their water priority dates earlier.

TESTIMONY: **Mr. Arrington** stated IWUA supports this bill and voted unanimously to support it. Their decision was not made lightly as they have discussed it for many years, and unanimous support took a lot to get all the water users on board. He reiterated that this adjudication is about cataloging what water rights Idaho has, and it will establish what the priority dates and usage are so when scenarios come up there is a judicial decree of Idaho's rights.

Roger Chase, Chairman of the Idaho State Water Resource Board, wanted to inform the Committee that the board feels this legislation is important. He gave the background that Pacific Corp was looking at changing the way they were going to use the water in the Bear River by making it an additional power source, which had many concerned. The adjudication process has been successful as used in Idaho and the hope is that this process will establish Idaho's water rights.

MOTION: **Senator Bair** moved to send **H 382** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. Senator Harris will carry the bill on the floor.

H 367 Relating to phosphogypsum; to provide: legislative findings and purpose, the power of the board, construction requirements for certain stacks, and design and construction plans.

Benjamin Davenport, Executive Vice President, Idaho Mining Association (IMA), explained this bill was regarding minimum design standards for phosphogypsum stacks. He described the importance of the critical mineral phosphate and explained what phosphogypsum stacks are. Currently, Idaho rules exclude phosphogypsum stacks from regulation and this bill would create a standard similar to other solid waste facilities already in place in Idaho and regulated by the Idaho Department of Environmental Quality (IDEQ). The Environmental Protection Agency (EPA) is negotiating with companies on requirements, design, operation, closure, and financial assurance requirements for phosphogypsum stacks. IMA would like to provide a transparent and uniform requirement in Idaho that is functionally equivalent to the EPA requirements. The phosphate fertilizer industry in Idaho believes that the IDEQ should have the responsibility for overseeing and implementing the requirements for phosphogypsum stacks rather than the EPA. The minimum design standards included reflect current industry practices and EPA requirements. IMA is unaware of any opposition to the bill and both the Idaho Association of Commerce and Industry and the Food Producers of Idaho support the bill.

DISCUSSION: **Senator Stennett** and **Mr. Davenport** discussed the current industry processes and how IDEQ, rather than the EPA, should have oversight. Currently the phosphogypsum stacks owners have to protect water from coming through the stacks and contaminating the ground, and they consider seismic science in designing the stack.

Senator Johnson referred to specific language in the bill and inquired about the notice of rejection which may be appealed by the operator to the Idaho Board of Environmental Quality (Board), and what the Board is supposed to decide. **Mr. Davenport** discussed that the Board will decide whether or not the operator's permit will go forward, with the option to have a hearing in front of the IDEQ board to see if they were correct in permitting.

TESTIMONY: **Kevin Beaton**, Partner with Stoel Rives, stated that currently the Board of Environmental Quality gets to decide final agency actions of IDEQ and people can appeal the IDEQ decision to the board if they are not happy with it and think it's incorrect. He explained the board can review the IDEQ decision on a contested case and will defer to the agency, especially on technical matters; this bill affirms the current process. He pointed out anyone has the right to go to court to challenge a decision by the board.

MOTION: **Senator Guthrie** moved to send **H 367** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. Senator Harris will carry the bill on the floor.

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 2:39 p.m.

Senator Heider
Chair

Erin Miller
Secretary