

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 08, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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 Vick** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Bair** moved to approve the Minutes of January 25, 2021. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Johnson moved to approve the Minutes of January 27, 2021. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 28405 **Supports changes in the winter flood control rule of the Ririe Reservoir Project to more properly balance the Ririe Reservoir water supply.** **Senator Bair** said **RS 28405** is a concurrent resolution that deals with flood control releases with the Ririe Dam. It is a multipurpose reservoir that is northwest of Idaho Falls and is primarily used for flood control. The RS addresses questions and issues dealing with what are called "flood control rule curves." Every dam has a curve that helps the dam operator determine how water is released based on snow pack, rainfall, temperature, and climate in order to prevent floods.

MOTION: **Senator Burtenshaw** moved to send **RS 28405** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 28254 **Allows irrigation districts to fill irrigation district board vacancies with members living within their irrigation district.** **Senator Anthon** presented **RS 28254**. He said it allows districts to fill irrigation district board vacancies with members living in their district. **Senator Heider** said he thought this vacancy filling was being done without legislation. **Senator Anthon** indicated there was a glitch in the Idaho Code that needed to be fixed, so this RS will make sure the vacancies are filled correctly.

MOTION: **Senator Guthrie** moved to send **RS 28254** to print. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

RS 28255 **Clarifies protection of water delivery facilities from claims of adverse possession extend to properties owned by water delivery entities.** **Senator Anthon** presented **RS 28255**. He stated this RS has to do with adverse possession of infrastructure with irrigation systems. In Idaho Code, there is currently protection against those bits of infrastructure that are in easements. Something that is not protected is the possible adverse connection claims against canals, other infrastructure, and irrigation systems that are on private property. **Senator Anthon** said a related problem exists in his district and this RS makes it clear that ownership cannot be claimed by adverse possession.

- MOTION:** **Vice Chairman Johnson** moved to send **RS 28255** to print. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.
- RS 28390** **Amendments delete Section 42-1101 which do not apply in Idaho. These amendments also change other statutes in response to court decisions. Paul Arrington**, Executive Director, Idaho Water Users Association (IWUA), presented **RS 28390**. He said it seeks to address some concerns that have plagued ditch owners and operators for a number of years. There has been an increase in litigation involving the rights and responsibilities associated with ditch and canal easements. Last year, there were two pieces of litigation that was cause for concern. One was litigation as to the ability to access canals and the other required 10 days written notice to do work on canals. Both are infeasible for the work that has to be done on canals, he said.
- DISCUSSION:** **Senator Patrick** inquired if this will apply to irrigation companies as well as districts. **Mr. Arrington** said it applies to all ditches and canals, regardless of who owns or operates them. **Senator Patrick** stated that pipelines go through some of his property and housing developments have been built on top of them and asked that he is kept informed. **Mr. Arrington** said they were mindful of the reality that these ditches are on other people's properties as they work through the process.
- MOTION:** **Senator Guthrie** moved to send **RS 28390** to print. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.
- S 1020** **Landowners, recreation. Senator Harris** said the Idaho Water Users Association (IWUA) helped prompt **S 1020**. It amends Idaho Code and mainly deals with definitions that includes water facilities, camps, park grounds, and property held by an owner. It clarifies recreational activity including traveling across land owned by others for the purpose of recreating.
- Senator Harris** stated the bill accomplishes four objectives: 1.) It amends the definition of land to include items that are used for recreation; 2.) It amends the definition of owners and interests associated with land; 3.) It defines the term "recreational purpose"; and 4.) It adds additional activities such as shooting, trapping, and use of off-highway vehicles.
- TESTIMONY:** **Paul Kline**, Deputy Director, Idaho Department of Fish and Game, testified in support of **S 1020**. He said the proposed amendments to Idaho Code § 36-1604 will help support continued or increased recreational access. **Mr. Kline** said the bill would clarify and expand limitations on liability for landowners allowing recreational opportunity without charge to the public.
- Mr. Arrington** thanked Senator Harris for sponsoring **S 1020** for IWUA. The recreational trespass statute is providing an incentive to open up property to the public for recreational opportunities. Water users are regularly asked to open up facilities for recreational purposes, whether it be trails along canals, and that sparks liability concerns. **Mr. Arrington** said the statute speaks to water but doesn't speak to the canals, laterals, and ponds that are used regularly. For clarity purposes, the term "premises" was replaced with the word "land", **Mr. Arrington** added.
- DISCUSSION:** **Senator Stennett** asked what kinds of activities would be allowed along canals besides duck hunting. **Mr. Arrington** said generally the requests IWUA receive are to use recreational trails or walking paths. Hunting requests are usually made for ponds. **Senator Stennett** asked if, by granting an exception from liability, there would not be indirect permission to trespass or access the property. **Mr. Arrington** responded by saying the exception only applies to a specific part of the land, in this case, canal roads.

Senator Bair asked for clarification regarding implied permission. **Mr. Arrington** said nothing requires or is implied that the land is open. The landowner or operator must make that decision.

TESTIMONY: **Benn Brocksome**, Founder, Idaho Sportsmen, said that as more people move to Idaho and enjoy recreating, **S 1020** facilitates such activities by allowing private landowners the protections they need to feel comfortable opening up their property. **Mr. Brocksome** said they are grateful for the sponsor and the other organizations that worked in drafting this legislation.

Senator Stennett asked Mr. Brocksome if a person would be responsible for the care of their injuries if they sustained them on a landowner's property after receiving permission to use it. **Mr. Brocksome** replied that was correct.

Senator Harris closed the discussion by saying **S 1020** is a good bill that reflects a lot of work done by IWUA and others. He respectfully asked that it be sent to the floor with a **do pass** recommendation.

MOTION: **Senator Bair** moved to send **S 1020** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**. Senator Harris will be the floor sponsor.

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:00 p.m.

Senator Vick
Chair

Juanita Budell
Secretary