

MINUTES  
**HOUSE RESOURCES & CONSERVATION COMMITTEE**

**DATE:** Monday, March 01, 2021

**TIME:** 1:30 P.M.

**PLACE:** Room EW40

**MEMBERS:** Chairman Gibbs, Vice Chairman Lickley, Representative(s) Moyle, Wood, Boyle, Vander Woude, Gestrin, Mendive, Kauffman, Blanksma, Addis, Moon, Manwaring, Okuniewicz, Yamamoto, Rubel, Davis, Mathias

**ABSENT/  
EXCUSED:** Representative(s) Moyle, Okuniewicz

**GUESTS:** Paul Kline, Idaho Department of Fish and Game; Paul Arrington, Idaho Water Users Association; Alan Hansten, North Side Canal; Jake Cluff, Benn Brocksome & Associates; Brian Patton, Idaho Department of Water Resources; Benjamin Davenport, Idaho Mining Association; David Claiborne, Idaho Recreation Council; Jonathan Oppenheimer, Idaho Conservation League

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

**Chairman Gibbs** announced the Resources and Conservation committee has been granted privileged status by **Speaker Bedke** for the purpose of introducing RSs today.

**RS 28692:** **Paul Arrington**, Executive Director, Idaho Water Users Association, stated **RS 28692** will add language that was inadvertently left out of **H 183**, which was before the committee on February 25, 2021. **RS 28692** adds language to include existing permit holders.

**MOTION:** **Rep. Blanksma** made a motion to introduce **RS 28692** and recommend it be sent directly to the Second Reading Calendar. **Motion carried by voice vote.** **Rep. Blanksma** will sponsor the bill on the floor.

**Chairman Gibbs** turned the gavel over to **Vice Chair Lickley**.

**H 236:** **Rep. Gibbs**, District 32, stated this legislation further directs the Idaho Water Resource Board's management and oversight of the Water Management Account with the following amendments to **Idaho Code, Section 42-1760**: 1) replacing the list of potential projects with authority for projects which "conserve or increase water supply, improve drought resiliency, address water sustainability or support flood management;" 2) aquifer recharge above Milner Dam on the list of specific projects for consideration; 3) confirming all water rights, including hydropower water rights, must be protected, and identified water uses must be considered in the approval of projects; and 4) providing additional information as part of the Board's Annual Report.

**Rep. Gibbs** explained it was originally thought the language in **H 236** was broad enough to authorize the Board to conduct studies regarding water supplies with funding from the Water Management Account, but it did not, so the next item on the agenda, **RS 28706**, will address that issue and replace **H 236**.

**RS 28706:** **Rep. Gibbs**, District 32, stated this proposed legislation adds specific language authorizing the Board to conduct studies, that concern or increase water supplies, utilizing funds from the Water Management Account. He then requested the committee **HOLD H 236** and make a motion to introduce **RS 28706** and recommend it be sent directly to the Second Reading Calendar.

**MOTION ON H 236:** **Rep. Yamamoto** made a motion to **HOLD H 236** in committee. **Motion carried by voice vote.**

**MOTION ON RS 28706:** **Rep. Blanksma** made a motion to introduce **RS 28706** and recommend it be sent directly to the Second Reading Calendar. **Motion carried by voice vote.** **Rep. Gibbs** will sponsor the bill on the floor.

**RS 28717:** **Rep. Gibbs**, District 32, stated cloud seeding has been done in various areas of Idaho for several years. This proposed legislation states findings relating to cloud seeding, defines cloud seeding, and provides that the Idaho Water Resource Board is responsible to authorize cloud seeding and may participate in cloud seeding programs. He indicated this proposed legislation recognizes water generated through cloud seeding will be administered in accordance with the prior appropriation doctrine, it limits liability for participation in certain cloud seeding projects, and will not require state or local permits.

**MOTION:** **Rep. Blanksma** made a motion to introduce **RS 28717**. **Motion carried by voice vote.**

**Chairman Lickley** turned the gavel over to **Chairman Gibbs**.

**H 239:** **Benjamin Davenport**, Executive Director, Idaho Mining Association, stated this legislation addresses minimum design standards for phosphogypsum stacks (gyp stacks). He remarked, Idaho is one of the major sources of phosphate in the United States and phosphate is a critical mineral/key component in a number of products and fertilizers that support the agricultural community throughout the west. He explained phosphogypsum is a solid waste product left behind in the production of phosphoric acid and this waste is disposed of and placed in impoundments, or gyp stacks near the phosphoric acid plants. He further explained, until the passage of **H 367** during the 2020 Session, there were no regulations in place for design and construction of gyp stacks. Although it was thought **H 367** was broad enough to incorporate many of the standards being negotiated with Environmental Protection Agency (EPA), since that time there has been a settlement involving an Idaho company at a facility in Wyoming. **H 239** reflects the standards put forth in that settlement regarding design and construction of gyp stacks. Some of the key points include but are not limited to additional definitions, stormwater control requirements, detailed requirements for the synthetic and non-synthetic components of a composite liner, requirements for perimeter dike design and construction, and fees.

**MOTION:** **Rep. Moon** made a motion to send **H 239** to the floor with a **DO PASS** recommendation.

In response to committee questions regarding concern for removing the opportunity for negotiated rulemaking, found on page 1, Section 1, lines 35-37, **Mr. Davenport** explained there is no longer a need for negotiated rulemaking because statutory changes in this legislation reflect the standards within the EPA settlement, and Department of Environmental Quality (DEQ) will be able to apply the specific standards as they implement minimum design and construction standards in Idaho. He remarked, if changes are needed at some point in the future, DEQ can always modify this statute with new legislation.

**Alan Prouty**, Vice President, Environmental and Regulatory Affairs, J.R. Simplot Company, responded to a committee question regarding the synthetic and non-synthetic component liners. He explained the synthetic part of the liner is a composite layer made of a very thick rubber and the non-synthetic portion of the liner is typically gypsum, but can also be soils, and is intended to be a filler which provides an additional layer of protection to keep phosphogypsum water from going through the liner.

**Jonathan Oppenheimer**, External Relations Director, Idaho Conservation League, spoke **in opposition to H 239**. He stated these rules are too specific and as technology evolves this statute will not keep up. He also stated, by removing the negotiated rulemaking process, it precludes the opportunity for public input. He suggested before any new construction were to begin, ground water monitoring plants should be installed to obtain a water quality baseline reading.

**Chairman Gibbs** requested the record reflect no one else signed up for remote testimony and no one from the audience came forward to testify.

**VOTE ON MOTION:**

**Chairman Gibbs** called for a vote on the motion to send **H 239** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Rubel, Davis, and Mathias** requested to be recorded as voting **NAY. Rep. Gibbs** will sponsor the bill on the floor.

**S 1005:**

**Rep. Lickley**, District 25, declared Rule 80. She stated this legislation amends **Idaho Code, Section 42-612(4)** to provide when a water right is administered in priority, and is diverted and assessed in one water district, and then conveyed and re-diverted within a second water district, the second water district may levy a fee instead of an assessment for that re-diverted water. This will eliminate water users from being charged double assessments.

**Paul Arrington**, Executive Director, Idaho Water Users Association, explained since the re-diverted water is not part of the base water supply of the second water district, priority administration is not required; water supply enhancement efforts do not benefit the re-diverted water and many of the expenses associated with water management and delivery are not applicable to the second water district. He stated these amendments authorize the second water district to charge a fee, rather than an assessment, and the second water district's users must adopt a resolution authorizing the fee. He explained, that fee must cover the costs associated with the conveyance of water in the second district, and unlike an assessment, there would be no voting rights that attach to the fee.

**Alan Hansten**, General Manager, North Side Canal Company, stood **in support of S 1005**.

**Chairman Gibbs** requested the record reflect no one signed up for remote testimony and no one else from the audience came forward to testify.

**MOTION:**

**Rep. Addis** made a motion to send **S 1005** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Lickley** will sponsor the bill on the floor.

**S 1020:**

**Paul Arrington**, Executive Director, Idaho Water Users Association, stated this legislation will amend **Idaho Code, Section 36-1604**, a recreational trespass statute, which was enacted to encourage landowners to open their land for recreation by providing no cost immunity from liability. First, this legislation amends the definition of "land" to include additional features commonly used for recreation. He explained, this is very important for water users because canals, laterals, drains, ponds, and other water infrastructures crisscross the landscape in southern Idaho and have not been included in the definition of "land." Second, this legislation amends the definition of "owner" to include additional interests commonly associated with land such as ditches, canals, drains, and other infrastructures, which are located on rights of way or easements where the land is owned by other entities. Finally, this legislation amends the definition of "recreational purposes" to address concerns by the recreational community following a recent court decision which found that a landowner was not immune from liability if people are injured while traveling across their property to recreate elsewhere. This amendment will clarify traveling to recreate includes when travel requires crossing an "owners"

"land" - these terms are now defined in the statute as part of the "recreational purposes" for which liability protection applies.

**Paul Kline**, Deputy Director, Idaho Department of Fish and Game, stated the Fish and Game Commission is **in support** of **S 1020**.

**David Claiborne**, Idaho Recreational Council, stood **in support** of **S 1020**.

**Benn Brocksome**, Idaho Sportsmen, stood **in support** of **S 1020**.

**Chairman Gibbs** requested the record reflect no one signed up for remote testimony and no one else from the audience came forward to testify.

**MOTION:**

**Rep. Gestrin** made a motion to send **S 1020** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gestrin** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 2:19pm.

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Representative Gibbs  
Chair

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Tracey McDonnell  
Secretary