

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Tuesday, March 09, 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, Gestrin, Davis

GUESTS: Paul Kline, Idaho Department of Fish and Game; Paul Poorman, self; Lynn Tominaga, Idaho Ground Water Appropriators

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

MOTION: **Rep. Mathias** made a motion to approve the minutes of the February 25, 2021 and March 1, 2021 meetings. **Motion carried by voice vote.**

H 286: **Rep. Troy**, District 5, stated this legislation amends **Idaho Code, Section 19-4705**, to revise the provisions of the distribution of the fines and forfeiture funds, currently designated for the Department of Fish and Game, to the Public Shooting Range Fund.

Paul Kline, Deputy Director, Idaho Department of Fish and Game, stated the Fish and Game Commission's review of this legislation is still pending but wanted to speak about the merits of **H 286**. He remarked the amendments and technical corrections provide the needed clean-up and clarification of **H 396**, which established the Public Shooting Range Fund, passed in the 2020 Legislative Session. **H 286** clarifies that 65% of the fines and forfeiture proceeds remitted for violations of fish and game laws will be directed to the Public Shooting Range Fund rather than the Department's General Fund.

In response to a committee question regarding how much money is collected from fines and forfeitures annually, **Paul Kline** indicated approximately \$90K is collected annually, which would mean approximately \$58K (or 65%) would be transferred to the Public Shooting Range Fund annually.

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. Wood** made a motion to send **H 286** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Troy** will sponsor the bill on the floor.

H 307: **Paul Arrington**, Executive Director, Idaho Water Users Association, stated this legislation replaces **S 1074**. It repeals **Idaho Code, Section 42-1101**, which recognizes the Riparian Rights Doctrine in Idaho, a doctrine that Idaho courts have long recognized does not apply in Idaho. This legislation also amends **Idaho Code, Sections 42-1102 and 42-1204**, changing existing statutes in response to an increase in legal disputes regarding the nature and scope of rights-of-way and easements for irrigation ditches, canals, and conduits. In **Section 42-1102**, the amendments include confirming the right to access the right-of-way and to occupy space on the banks of the ditch, canal, conduit, or embankments; confirming the right to remove spoils from a ditch and to leave them on the banks, to remove them, or to use them for maintenance needs; and confirms the right to access the

rights-of-way year-round. He explained, the term "embankment" has been added to both **Sections 42-1102 and 42-1204** to clarify the rights and duties extend to all portions of the ditches, canals, or conduits - including the embankments.

Mr. Arrington remarked there is over a century of case law identifying the standards regarding ditch management and the exercise of a ditch easement. He explained, for example, an irrigation easement and a right-of-way are not exclusive, meaning as long as they are not interfering with the operation of the ditch, the landowner cannot be excluded from the ditch that runs across their property. **H 307** does not expand the rights of ditch owners, but rather the rights of the ditch owner are limited by the rule of reasonableness, a legal term, meaning a ditch owner cannot do things on the property that are unreasonable or would expand their rights. They can, however, maintain, repair, or protect their ditches at any time of year but only when necessary in a reasonable manner to not increase the burden on the landowner. In closing, Mr. Arrington indicated this is a one-size-fits-all statute that covers the "mom and pop" ditch owners up to the large canal companies, and although some of the language may be overly broad for the smaller operations, it was necessary to be written this way. He also stated nothing in this legislation negates the ability for ditch owners and landowners to enter into local written agreements to identify windows of time for ditch owners to maintain their ditches.

In response to a committee question regarding local agreements and legal documents, **Mr. Arrington** explained local written agreements between ditch owners and landowners are acceptable, but if ownership of the land or ditch changes, an unrecorded agreement would most likely not be binding.

Paul Poorman, self, stated he had concerns with this legislation when it was **S 1074**, but with the rewrites in **H 307** and the reasonableness language, he is **in support** of **H 307**. He thanked **Mr. Arrington** for listening to his concerns and for his work to modify the language.

Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators, spoke **in support** of **H 307** and stated it was long overdo for the fixes to the concerns regarding the issue of reasonableness.

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

MOTION: **Rep. Lickley** made a motion to send **H 307** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kauffman** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:00pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary