

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 09, 2022

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Heider, and Senators VanOrden (Bair), Blair (Johnson), Patrick, Guthrie, Burtenshaw, Stennett, and Semmelroth

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 Semmelroth** moved to approve the Minutes of February 21, 2022. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator VanOrden** moved to approve the Minutes of February 23, 2022. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Guthrie** moved to send the Gubernatorial reappointment of Jeffery Allen to the Northwest Power and Conservation Council to the floor with recommendation that he be confirmed by the Senate. **Senator Blair** seconded the motion. The motion carried by **voice vote**. Senator Lodge will carry the appointment on the floor.

H 584 **ANDERSON RANCH DAM - Provides legislative intent regarding the Anderson Ranch Dam raise project.** **Paul Arrington**, Executive Director and General Counsel, Idaho Water User's Association, explained the Idaho Water Resource Board (Board) filed water right application 63-34753 with the Idaho Department of Water Resources (IDWR) for the Anderson Ranch Dam raise project. The IDWR Director evaluates each water right application under certain criteria outlined in Idaho Code § 42-203A. This legislation declared that the Board's water right application 63-34753 satisfied this criteria. In particular, that the application was made in good faith and not for delay or speculative purposes, it was in the local public interest, it was consistent with the conservation of water resources, and it would not adversely affect the local economy of the watershed. This legislation was proposed to streamline the application process for the storage project and allow the board and the IDWR Director to focus on other criteria and issues related to the project.

DISCUSSION: **Senator Semmelroth** asked questions related to the effect of raising the dam on dispersed camping around the Anderson Ranch Reservoir. **Mr. Arrington** responded that there would be an impact to some dispersed camping, a corner of the airport airstrip, and the bridge in Pine. Some camping would need to be moved back and a corner of the airstrip adjusted. Water will not back up all the way to Pine, but their bridge may need some adjustments. The cost to mitigate issues such as moving camping and adjusting the airstrip and bridge was included in the total cost of the dam raise.

Chairman Vick asked why this legislation was not done as a resolution. **Mr. Arrington** responded that they never discussed if a resolution was appropriate,

but this was likely because this legislation will not become Idaho Code, but it needs the effect of law.

MOTION: **Senator Burtenshaw** moved to send **H 584** to the floor with a **do pass** recommendation. **Vice Chairman Heider** seconded the motion. The motion carried by **voice vote**. Senator Burtenshaw will carry on the floor.

H 608 **STOCKWATER - Amends existing law to revise provisions regarding forfeiture of stockwater rights.** **Senator Harris** explained **H 608** clarified the procedure to be used by the State of Idaho prior to an order declaring certain stockwater rights be forfeited under Idaho Code § 42-222 for failure to put the rights to beneficial use for a term of five years or more.

TESTIMONY: **Bill Meyers**, Holland and Hart, stated this legislation added an additional layer of due process. Idaho Code § 42-222, which has been on the books since the early 1800s, states that any water right holder that does not put their water right to beneficial use for which it was granted for a period of five years shall have that right forfeited. This legislation clarified and reinforced that the courts will have a role in declaring any stock water right forfeited and that forfeiture cannot just be an administrative action by the IDWR Director. Various time lines were also added to the code for clarity.

DISCUSSION: In response to concerns from **Senator Stennett** about taking power away from, or overturning the authority of the IDWR Director, **Mr. Meyers** explained the IDWR Director made the first decision administratively. If he concluded that there should not be an order of forfeiture that was the end of the process. If he said it should be forfeited, then there was the opportunity for a court proceeding afterwards, and the Director would go into the court as a witness on behalf of the State. The State would seek the forfeiture.

Chairman Vick asked what the problem was that this legislation was trying to solve. **Mr. Meyers** answered the problem was that it was not clear among various types of stock water right holders what the end process was, and this legislation aligned with other stock water right holders, such as those on federal allotment, who would have an extra layer of process available via a court process.

In response to a request for clarification from **Senator Guthrie**, **Mr. Meyers** stated the ability to advance a decision by the Department of Water Resources to a higher level like the court system was currently available, but not required. In response to another question from **Senator Guthrie**, **Senator Harris** stated he believed this additional level of due process would be used by both individuals and the State of Idaho.

MOTION: **Senator Burtenshaw** moved to send **H 608** to the floor with a **do pass** recommendation. **Senator Blair** seconded the motion. The motion carried by **voice vote**. Senator Harris will carry on the floor.

H 672 **FISH AND GAME - Amends existing law to revise provisions regarding violations and to provide for certain reporting.** **Senator Harris** explained **H 672** this legislation amended Idaho Code § 36-1401 to revise certain Fish and Game provisions regarding violations to make them infractions rather than misdemeanors.

TESTIMONY: **Jim Fredericks**, Deputy Director, Idaho Department of Fish and Game (IDFG) testified in favor of **H 672**. **Mr. Fredericks** explained that prior to the 2022 legislative session and on the request of Representatives Boyle and Moyle, IDFG staff conducted a review of violations of fish and game rules to consider violations that may be more appropriately classified as infractions rather than misdemeanors. This review included enforcement officers, legal counsel, and relevant fisheries and wildlife staff. Staff based consideration of infractions versus misdemeanors on enforcement experience in the field, as well as the nature of the violation and similarity of those violations to those identified in Idaho Code § 36-1401 as infractions. **Mr. Fredericks** deferred some questions to **Greg Wooten**, Enforcement Bureau Chief, Idaho Fish and Game.

TESTIMONY: **Benn Brocksome**, Executive Director, Idaho Sportsmen, testified in favor of **H 672**. He felt moving some penalties to infractions would be easier to cite and more likely to change behaviors.

DISCUSSION: In response to questions from **Senator Stennett**, **Senator Harris** stated infractions were easier to prosecute, and **Mr. Fredericks** provided some examples of prior misdemeanors that would be considered infractions with the changes outlined in **H 672**. **Mr. Fredericks** also clarified that IDFG had jurisdiction over wildlife management areas. **Mr. Wooten** explained IDFG had other remedies to address situations that caused significant damage, such as damage from a fire caused by fireworks.

MOTION: **Senator Blair** moved to send **H 672** to the floor with a **do pass** recommendation. **Senator Semmelroth** seconded the motion. The motion carried by **voice vote**. **Senator Harris** will carry on the floor.

H 702 **FISH AND GAME - Amends existing law to revise provisions regarding the amount to be transferred annually to the Expendable Big Game Depredation Fund and to revise provisions regarding payments for approved claims.** **Ed Schriever**, Director, Idaho Fish and Game explained the purpose of **H 702** was to amend Idaho Code § 36-111 to more equally balance the distribution of money derived from each licence endorsement pursuant to the provisions of Idaho Code § 36-414 between big game depredation and sportsmen's access, and to amend Idaho Code § 36-115 to revise the annual limit for any individual big game depredation claim from a percent of the annual appropriation to a fixed amount equal to \$125,000.

Mr. Schriever explained there is a growing gap between crop depredation claims and the funding available to pay those claims in full. In the past two years, depredation claims exceeded the department's budget of \$1.1 million and have come in the range of \$1.5 to \$1.7 million. Under these circumstances, established Idaho Code required that the department pro-rate those claims based on the availability of funds. So, if there were \$1.7 million of claims and \$1.1 million dollars in the budget, claimants received about 65 to 67 cents on the dollar.

Mr. Schriever added the license endorsement exceeded expectations for earnings and instead of earning \$2 million, it was earning closer to \$2.5 million. So, this legislation rebalanced the revenue from the license endorsement, and redirected \$250,000 additional dollars to the depredation claim program, closing the gap between revenue and budget. This legislation also changed the single claim limit from 10 percent of the budget to a fixed cost, which was a slight increase from the previous limit and would pay conceivably 99 percent of the claims against the program.

DISCUSSION: **Senator Stennett** asked how many claims were made this year that were at the maximum to the cap. **Mr. Schriever** responded when legislation established the cap, an analysis showed that over the history of the program, the \$110,000 or ten percent of the budget appropriation would have paid over 99 percent of all the claims that came in against the program. He added they have not paid all the claims for this fiscal year, but he was confident that the number of claims that exceed the cap remained a very small minority of the claims. **Senator Stennett** asked if they were also doing everything they could for sportsmen. **Mr. Schriever** responded revenue into this dedicated fund exceeded expectations, and they were growing a balance that they could not access because of appropriation limits. This legislation benefited sportsmen by increasing the budget line item for sportsmen's access from one million to 1.5 million, and bringing the reserve that accrued over the last three years into the spending realm to benefit sportsman's access across the state.

In response to questions from **Senator Guthrie**, **Mr. Schriever** stated that claims were paid by crop regardless of how the operation was set up from a business standpoint, and it was conceivable that a claim could span two different fiscal years, but they have not experienced that type of claim.

Senator Blair asked if the depredation claim budget considered current crop or commodity prices. **Mr. Schriever** stated no, they did not speculate on commodity prices from one year to the next. He added an important aspect of the program was that agricultural operators, landowners, and the department have dual responsibility for the prevention of claims and they work hard to prevent the claim from occurring in the first place. In response to another question by **Senator Blair**, **Mr. Schriever** stated there could be different claims on different fields from the same producer and claims were made on a crop basis.

In response to another question from **Senator Guthrie**, **Mr. Schriever** explained there were two basic kinds of crop depredation, stored crops and live crops. They have made tremendous gains on stored crop prevention, but live crops were more difficult. They attempt to manage populations in units with high crop depredation levels in ways such as with specialized hunts or kill permits issued to landowners.

TESTIMONY: **Benn Brocksome** testified in favor of **H 702**. He stated sportsmen were pleased with the progress and the outcomes of this program, and were eager to be able to utilize those additional funds for access going forward.

MOTION: **Senator Burtenshaw** moved to send **H 702** to the floor with a **do pass** recommendation. **Vice Chairman Heider** seconded the motion. The motion carried by **voice vote**. Senator Burtenshaw will carry on the floor.

ADJOURNED: There being no further business as this time, **Chairman Vick** adjourned the meeting at 2:32 p.m.

Senator Vick
Chair

Shelly Johnson
Secretary