

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, February 14, 2024

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Burtenshaw, Vice Chairman Adams, Senators Guthrie, Den Hartog, Harris, Okuniewicz, Schroeder, Semmelroth, and Taylor

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

**PRESENTATION:** **Acknowledgement of Page - Zack Holt.** **Mr. Holt** shared with the Committee how much he enjoyed his experience as a Senate Page. He thanked the Committee for helping him, especially Chairman Burtenshaw with his senior project and Senator Adams with planning his future. He said his conversations with Committee members led him to change his plans for after high school. He thought he might go to college while also learning different trades.

**DISCUSSION:** **Chairman Burtenshaw** admitted to encouraging Mr. Holt to go to college. **Senator Adams** thanked him for his good sense of humor. **Senator Okuniewicz** asked if he had changed his mind about being a welder. **Mr. Holt** responded no, that he still intended to earn certifications for welding. **Senator Harris** asked what his biggest surprise was about working as a Senate Page. **Mr. Holt** responded that his biggest surprise was how much the Senators' job was like school, because they had to get to the Senate at a certain time every morning, they had to be at different meetings at certain times, which were like their classes, the meetings took attendance, they had lunch time, and they had homework.

**MINUTES APPROVAL:** **Senator Semmelroth** moved to approve the Minutes of January 29, 2024. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Taylor** moved to approve the Minutes of January 31, 2024. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

**H 402** **INJECTION WELLS - Amends existing law to remove and revise provisions regarding class II injection wells.** **Representative Nelsen** explained the U. S. Environmental Protection Agency (EPA) had primacy and control of these wells, and this legislation aligned Idaho Code § 39-42 with the EPA's regulations. He shared that Idaho formally applied for primacy in permitting and regulating class II injection wells, but the EPA denied the request. **Tim Luke**, Water Compliance Bureau Chief, Idaho Department of Water Resources (IDWR) provided some additional history behind this legislation and on injection wells in Idaho. He explained that IDWR updated their administrative rules and governing statutes to support a primacy revision package to the EPA. As the EPA denied the primacy package, the updated language was no longer relevant. This legislation removed references to class II injection wells, removed some obsolete references to dates, and added some clarifying language.

**DISCUSSION:** **Chairman Burtenshaw** asked if there would be a time when Idaho could take primacy over class II injection wells. **Mr. Luke** responded that IDWR would have to repeat the application and rulemaking processes, but he did not see a need, given the low demand for these types of wells in Idaho.

**MOTION:** **Senator Taylor** moved to send **H 402** to the floor with a **do pass** recommendation. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

**H 404** **RECORDS - Amends existing law to provide an exemption from disclosure for certain records regarding wildlife.** **Rep. Petzke** explained the intent of this legislation was to prevent individuals from obtaining the precise location of wildlife through a public records request. This was to address issues such as fair chase and hunter harassment. He highlighted that this legislation included camera location data, as the Idaho Department of Fish and Game (IDFG) operated a large collection of trail cameras across Idaho. He noted that access to the exact locations of these cameras would allow hunters to scout via IDFG cameras. He also noted that the legislation used the term "terrestrial wildlife", to provide a broad scope of wildlife covered by this legislation. This bill was supported by all major sportsmen's groups, by IDFG, and by agriculture groups.

**TESTIMONY:** **Bill London**, past president of the Idaho Wild Sheep Foundation, **Benn Brocksome**, on behalf of Idaho Sportsmen, and **Ellary TuckerWilliams**, Legislative and Community Engagement Coordinator, IDFG, testified in favor of **H 404**. **Mr. London** expanded on how this bill maintained ethical hunting, while also respecting those who needed to gather and distribute information for wildlife research and management. **Mr. Brocksome**, shared that the Idaho Sportsmen Board voted unanimously to support this legislation. **Ms. TuckerWilliams** provided some history leading to this legislation and additional details. She explained **H 404** added a section to Idaho Code § 74-108 that gave IDFG and other public agencies the ability to deny public records requests that identified telemetry frequencies, remote camera locations, or the precise and specific location of any individual terrestrial wildlife, including but not limited to, global positioning systems, telemetry, or remote camera data. This legislation did not apply to records identifying generalized locations, such as migration data. She shared that many Western states, including Wyoming, Colorado, New Mexico, and Utah, had similar language. She believed this legislation would help IDFG effectively manage wildlife populations while also demonstrating Idaho's commitment to fair chase.

**MOTION:** **Senator Harris** moved to send **H 404** to the floor with a **do pass** recommendation. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Chairman Burtenshaw passed the gavel to Vice Chairman Adams.

**S 1341** **WATER - Adds to existing law to establish provisions regarding common ground water supply for the Eastern Snake Plain Aquifer.** **Chairman Burtenshaw** explained this legislation provided clarification and expansion of the area of common ground water supply in the Eastern Snake River Plain.

He referred the Committee to two handouts. The first was a three dimensional view of the Eastern Snake River Aquifer (ESPA). (Attachment 1) He shared that the Snake River Aquifer was one of the largest, most productive aquifers in the United States. It covered 10,800 million square miles and stretched from Ashton, Idaho in the southeast, to King Hill, Idaho in the southwest. It contained an estimated 1 billion acre feet of water. His second handout showed an outline of the ESPA in green, which was the current ESPA model boundary, and a revised, expanded boundary in black that included other tributaries that contributed to the ESPA. (Attachment 2) He shared that the ESPA had declined over the years and in dry years, especially when back to back, the aquifer became stressed. This

legislation attempted to facilitate the ability of the aquifer to produce in perpetuity.

**Chairman Burtenshaw** explained **S 1341** allowed for the conjunctive management of surface and groundwater resources to determine their impact on the ESPA. It allowed the Director of the Idaho Department of Water Resources (IDWR) to expand the area of common groundwater supply to the ESPA to include tributary basins, as illustrated in Attachment 2. He clarified that this legislation excluded areas designated as a critical groundwater area or a groundwater management area with approved groundwater management plans, unless the IDWR Director determined that the existing plan was insufficient to manage the effects of groundwater withdrawals on the ESPA. He reviewed the written notification and hearing requirements, and opportunities for written and oral comments, included in this legislation. **Chairman Burtenshaw** expected that it would be a long process to measure and understand all contributions and withdrawals to the ESPA.

**DISCUSSION:**

**Senator Okuniewicz** asked what kind of checks there would be to keep water users who were outside the traditional area from being drawn into the new management area by other users. **Chairman Burtenshaw** responded that everyone within the new boundary had a mitigation responsibility. He added that some of those outside the traditional boundary already had mitigation plans, and if those plans were sufficient to replace the amounts withdrawn from the aquifer, then they would not change. **Senator Okuniewicz** asked if he had a farm inside the traditional boundary, would this legislation allow him to farm additional acres, using water captured from outside the traditional boundary. **Chairman Burtenshaw** responded that it would not, and that water rights could not be expanded.

**Senator Taylor** asked if a groundwater area already existed, such as the Big Wood River Groundwater Users Association, would they continue their water management practices unless it was proven that their practices were causing harm downstream. **Chairman Burtenshaw** responded that if, after the entire study of withdrawals and contributions to the ESPA was completed, their mitigation plans were enough, then they would be left alone, but if they mitigated too much, they could reduce mitigation, and if they were not mitigating enough, then mitigation could increase. **Senator Taylor** stated he believed the Big Wood River Groundwater Users Association stood as a model for users throughout the state. **Chairman Burtenshaw** agreed.

**Senator Guthrie** posed an extreme and asked if this legislation was enacted, the state grew, and the drought conditions continued, could groundwater users be curtailed completely. **Chairman Burtenshaw** responded that everyone's water right would be protected, but when the Director of IDWR called for water curtailment, this was determined by the date a water right was recorded, with the most recently recorded rights being the first to be curtailed.

**TESTIMONY:**

**August Christensen**, Mayor, City of Driggs, testified against **S 1341**. She shared that she had only heard about this legislation a few days ago, and neither she, the Teton Basin Water User Association, nor any of the farmers or canal companies in her area had been asked to participate in any conversations regarding changes to the Comprehensive Aquifer Management Plan. She did not agree that water management should be solely at the discretion of the Director of IDWR. She requested careful thought and planning on this matter.

**Paul Arrington**, Director, Idaho Water Users Association, testified in favor of **S 1341**. **Mr. Arrington** provided some background on what led to this legislation. He recognized that although there was a firm understanding of the ESPA, there was limited understanding of the connection and impact of tributaries to the ESPA. He stated this legislation changed the area of common ground water supply to include tributary basins, as previously noted. The rest of the legislation provided a deliberative process for including tributaries at some point in time. He noted that this legislation provided opportunities for notification and public engagement. He compared the deliberative process outlined in this legislation to the alternative of a compulsory and immediate expansion to include tributaries.

**DISCUSSION:**

**Senator Harris** asked if Idaho cites and counties were involved in the discussions regarding **S 1341**. **Mr. Arrington** responded that they engaged the Association of Idaho Cities, who shared concerns about a compulsory expansion that brought in every tributary, and he had conversations with the Idaho Association of Counties, but did not receive any comments from them. **Senator Semmelroth** asked if the language in subpart 2, regarding groundwater management areas, applied to areas with tributaries. **Mr. Arrington** responded that they did.

**Senator Guthrie** requested clarification that this legislation expanded the area of inclusion in the management model, with consequences up to and including total curtailment. **Mr. Arrington** clarified that it did, and he spoke to the importance of users working together to find solutions. **Senator Den Hartog** asked who was involved in the working group that helped to create this legislation and the length of time it had been in development. **Mr. Arrington** responded that this issue originally came before this Committee in 2016. He added that last year, talks about this legislation among water user organizations started to coalesce around the idea of compulsory and immediate expansion to include tributaries. Due to feedback from stakeholders, they revised compulsory and immediate expansion to a gradual process that included further study. Into this year and over the last three to four weeks, they worked on the language that resulted in the language in **S 1341**.

**Senator Okuniewicz** asked if there was a potential risk that users would lose their water claim. **Mr. Arrington** responded that Idaho's Constitution, statutes, and case law determined the order of priority in the line of users for water appropriation. He added that with increased knowledge and understanding of how water supplies interact with each other, according to the law of prior appropriation, he could argue that the Constitution, statutes, and case law required consideration of all parties, because the law states you have to take action when a senior right was impacted by a junior right. **Senator Okuniewicz** asked if they did not pass this legislation, if there was a potential for people inside the model area to have a claim to groundwater that was outside the model area. **Mr. Arrington** responded there was a chance of this and there were statutes that spoke to the ability of groundwater calls.

**Senator Adams** asked if three to four weeks was enough time to develop this legislation, and how much time population centers would have to review and understand the impact changes in this legislation had on them. **Mr. Arrington** responded that while the language was coalesced into this legislation about three or four weeks ago, the issue was not new and especially not new to anyone in the Eastern Idaho Water Rights Coalition. He reiterated that if this legislation passed, nothing was going to change immediately for any tributary basin. This legislation initiated a process, which was step one of many steps.

**TESTIMONY:**

**Representative Nelson** testified in favor of **S 1341**. His view was that the aquifer was over-appropriated. He shared multiple concerns about what might happen with the current agreement left in place, and expanded on the benefits of affected parties working together to find solutions.

**Matt Weaver**, Director, IDWR, testified in favor of **S 1341**. **Mr. Weaver** presented to provide the view of the IDWR Director. He acknowledged that this was a difficult issue. He recognized the political leaders that were on the forefront of this challenge. He stated that despite their best efforts, this resource continued to decline. He believed the issue was a matter of fairness. He believed this legislation addressed the issue of fairness, which would help resolutions move forward. He believed groundwater and surface water users administering water in the southeast corner of the state all recognized the need to sustainably manage water resources. He believed that a group of groundwater users were being held responsible for the declines in the ESPA, but some of those declines were due to water users outside of the current boundary. He thought there were a million acres of groundwater irrigating the Eastern Snake River Plain by participants, but about 500,000 acres of groundwater impacting the Snake River outside of the boundary that were not participating. He thought this was more measured legislation than what he had seen in the past, because it would update the area of common groundwater to reflect the best available science and understanding of the resource.

**DISCUSSION:** **Senator Guthrie** spoke to the issue of fairness and asked if he was going to be administered with part of the ESPA as a surface water user in Portneuf River Basin, if he could legitimately make a call for the groundwater in the East Snake Plain that was already subject to administration. **Mr. Weaver** responded that as a senior surface water user, he could make a delivery call against junior groundwater users or junior surface water users that were affecting his water source, and through that delivery call, IDWR would determine what the group of water rights were that would be subject to that delivery call mitigation requirement.

**Chairman Burtenshaw** expanded on the rule of 50, fairness, and the purpose of this legislation. **Senator Den Hartog** asked if this change was made, would it lead to less over-appropriation. **Chairman Burtenshaw** responded that it absolutely would. He added that water rights connected to the ESPA were connected in many ways and each had an impact, but this legislation reflected a desire to not mitigate or punish anyone, but to understand the resource and manage it into perpetuity.

**MOTION:** **Senator Semmelroth** moved to send **S 1341** to the floor with a **do pass** recommendation. **Senator Taylor** seconded the motion.

**DISCUSSION:** **Senator Harris** and **Senator Okuniewicz** supported the motion, but reserved their right to ask more questions and change their mind.

**VOICE VOTE:** The motion to send **S 1341** to the floor with a **do pass** recommendation carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Adams passed the gavel to Chairman Burtenshaw.

**ADJOURNED:** There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 2:55 p.m.

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Senator Burtenshaw  
Chair

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Shelly Johnson  
Secretary