

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** Thursday, March 07, 2019
- TIME:** 1:30pm or Upon Adjournment
- PLACE:** Room EW40
- MEMBERS:** Chairman Gibbs, Vice Chairman Gestrin, Representatives Moyle, Shepherd, Wood, Boyle, Vander Woude, Mendive, Kauffman, Blanksma, Addis, Lickley, Moon, Raybould, Erpelding, Rubel, Toone, Mason
- ABSENT/
EXCUSED:** None
- GUESTS:** Roger Chase, Idaho Water Resource Board; Brian Patton, Idaho Department of Water Resources; Marie Kellner, Idaho Conservation League; Braden Jensen, Idaho Farm Bureau; Norm Semanko, Parson Behle and Latimer; Nathan Helm, self; Paul Arrington, Idaho Water Users Association; Albert Barker, Barker Rosholt & Simpson
- Chairman Gibbs** called the meeting to order at 1:30pm.
- MOTION:** **Rep. Kauffman** made a motion to approve the minutes of the February 19, 2019 meeting. **Motion carried by voice vote.**
- S 1083:** **Paul Arrington**, Executive Director, Idaho Water Users Association, stated **S 1083** seeks to make a simple change to Idaho Code to align what happens on the ground with what is stated in Code. He explained Idaho Code provides for rights and obligations to irrigation facility owners, yet the owner often does not operate or manage the facilities, for example, the Bureau of Reclamation facilities are generally operated by local irrigation entities. This change would clarify operators of irrigation facilities have the same rights and obligations as the owners.
- MOTION:** **Rep. Mason** made a motion to send **S 1083** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Mason** will sponsor the bill on the floor.
- S 1085:** **Paul Arrington**, Executive Director, Idaho Water Users Association, stated **S 1085** amends **Idaho Code, Section 43-303** in two ways to make it consistent with current law. The first is to align timeframes with Idaho's open meetings law and to clarify decisions at board meetings are based on a majority of the board members present (when a quorum exists). The second amends language to codify prior case law as the exclusive method for reviewing irrigation district records.
- Rep. Blanksma** declared Rule 38.
- MOTION:** **Rep. Addis** made a motion to send **S 1085** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Blanksma** will sponsor the bill on the floor.
- Chairman Gibbs** announced due to the absence of the sponsor for **SJM 101**, the committee will proceed to the next agenda item and will return to **SJM 101** after the presentation.

Roger Chase, Chairman, Idaho Water Resource Board, began his presentation by discussing the Eastern Snake Plain Aquifer recharge program. He stated the goal of the program is 250,000 acre feet/year of managed recharge by 2024, through partnerships with canal and irrigation districts to use and improve their current infrastructure to deliver and recharge water. He stated the four year average (2014-2018) is 249,000 acre feet, so the program is doing very well and has been nationally recognized. More recently, the aquifer is showing a positive response in part due to two very good wet years, reduced consumptive use, and the managed recharge program. He explained they probably cannot completely bring back the aquifer, but will try and stop the drop. Mr. Chase concluded the presentation by stating due to Idaho's growth rate, the water demands are increasing and the needs are becoming more diverse, so they must be diligent to assure water laws work for everyone.

Gary Spackman, Director, Idaho Department of Water Resources, commended the Board for all the work they've accomplished. He stated as of March 4, 2019, Idaho's mountain snow water equivalent is at 100% or greater in all areas of the state with the exception of the northern panhandle. Mr. Spackman explained last year was the deadline for the installation of measuring devices on approximately 5,000 wells across the Eastern Snake Plain. This was a three year effort where the Department contacted people and assisted with installation and verified installation. He explained there were approximately 200 individuals who did not comply; as a result the Department prepared notices of violation with possible curtailment and began working with all of those individuals to bring them into compliance. All of the water users across Southern Idaho agreed it was important for individuals with water rights to measure and be accountable for the amount of water they are diverting and to ensure they are complying. Another effort of the Department is construction of monitoring wells across the Eastern Snake Plain. Mr. Spackman concluded by stating his staff finished the last of the 8,000 recommendations for the Coeur d'Alene Basin, the largest recommendation to the court for adjudication. Next, the Department will begin sending out adjudication notices for the Palouse Basin. He stated after the Palouse Basin adjudication is complete there will only be three basins left; Pend Oreille, Kootenai, and Bear Lake, and then the entire state will be adjudicated.

SJM 101:

Al Barker, Attorney, representing a number of ranchers in the Sawtooth Valley, presented for **Senator Brackett**. He stated this Memorial arises out of a dispute that has occurred over time in several places around the state, but currently in the Sawtooth Valley. The dispute focuses around the 1866 Mining Act, which has a provision allowing individuals to obtain a right-of-way for their water to pass over federal lands without having to obtain permission from the federal government. In 2014, the final decree was issued out of the SRBA Court which confirmed the federal government must recognize the state's water rights. Mr. Barker explained what has happened in the Sawtooth Valley, as well as in other places, is an effort to restrict the ability of the water users to use their water. He said ranchers have been trying to get recognition they have the right for their water to cross federal lands but the Department of Agriculture and Forest Service attorneys are telling them they do not have the authority to recognize those rights. So the first purpose of this Memorial is to ask the Legislature to complain to Congress, on behalf of the ranchers in Idaho, that their rights are being restricted by the federal government and they do have the right to run their water through their ditches and canals on federal lands.

Mr. Barker explained ranchers are being forced to file lawsuits against the federal government even though their rights are already protected by law. He explained any ditches in place before the passage of FLPMA (Federal Land Policy and Management Act) in 1976 have the right to be there. Then, in 1986, the Ditch Bill was passed, which allowed individuals to file requests to have the federal government recognize the rights-of-way to use their water rights across federal lands. The deadline for filing those requests was in 1996, but the federal government never acted on those requests, leaving some doubt for the ranchers to use those rights-of-way across federal lands. As a result of the amount of time that passed since ranchers filed their original requests, another purpose of this Memorial is to ask for additional time for individuals to file new requests/applications to better document and prove their claims. Finally, this Memorial asks Congress to acknowledge the state's decreed water rights and refrain from using their purported authority to regulate ditches that would interfere with ranchers' abilities to use their water rights.

Marie Kellner, Idaho Conservation League, stated they agree and support efforts for the federal government to grant rights-of-way; this is long overdue, and also agree the Ditch Bill application deadline should be extended, but they do not support lines 4-10 on page 3 of the Memorial because when rights-of-way or easements are granted, the ESA (Endangered Species Act) consultation process is triggered. This consultation process is when scientists look at the use of the public resource and many times suggest conditions on the use of the permit. They believe this paragraph encourages the federal government not to do the ESA analysis which would ignore any potential conditions that should be attached to the permit. For that reason, Ms. Kellner requested the Memorial be held in committee.

In response to concerns regarding statements about the ESA consultation process made by **Ms. Kellner, Rep. Boyle** stated based on the Matejko Decision in the 9th Circuit Court, rights-of-way on federal lands held by private parties to access and use water are perpetual vested rights under the 1866 Mining Act, the BLM and Forest Service cannot terminate them, and ditches and canals constructed on public lands under the authority of the 1866 Mining Act should be recognized as an authorized use of public land. Rep. Boyle stated the Matejko Decision determined federal regulations do not apply to reservoirs, canals, and ditches constructed under the 1866 Mining Act, so the requirement to consult under ESA would not apply in this situation. Ms. Kellner stated because she doesn't have the Matejko Decision in front of her, she could not provide a response to Rep. Boyle's statements.

Braden Jensen, Idaho Farm Bureau, stated they are **in support of SJM 101** and would like to see the Forest Service take action and recognize these permanent easements. Additionally, the Idaho Farm Bureau has policy supporting the state's sovereignty and control over its water resources.

Nathan Helm, ranch owner from Melba, stated he is **in support of SJM 101**. He explained his family kept many records regarding their ranch, including documentation of their water rights and rights-of-way per the 1866 Mining Act. He stated most of the improvements to their property were done before the Forest Service came into the area, yet they have had to fight and defend their water rights from the government that created the laws establishing their rights. He explained the most current issue they are dealing with is the lawsuit between the Idaho Conservation League (ICL) and the Forest Service because the ICL believes there must be consultation under the ESA for private diversions on Forest Service lands. Mr. Helm along with 23 other irrigators with diversions on Forest Service lands in the Sawtooth Valley are included in the lawsuit and are working to show the attempted circumvention of the Matejko Decision.

Paul Arrington, Idaho Water Users Association, stated they are **in support of SJM 101**.

MOTION: **Rep. Lickley** made a motion to send **SJM 101** to the floor with a **DO PASS** recommendation.

Rep. Boyle stated she was concerned with some of the wording in **SJM 101** and explained the Secretary of Agriculture has been very easy to talk to and because he hasn't been contacted to discuss this issue believes **SJM 101** as written is "poking a stick in his eye."

SUBSTITUTE MOTION: **Rep. Boyle** made a substitute motion to **HOLD SJM 101** time certain, March 11, 2019.

Speaking to her motion, **Rep. Boyle** stated she wanted time to consider making some amendments.

Chairman Gibbs put the committee at ease at 2:53pm.

Chairman Gibbs resumed the meeting at 2:56pm and explained with Resolutions and Memorials only the originating body can make amendments.

Rep. Boyle clarified her substitute motion is to give **Senator Brackett**, who is the sponsor of the bill but couldn't be here today, time to consider making any amendments in the Senate.

VOTE ON THE SUBSTITUTE MOTION: **Chairman Gibbs** called for a vote on the substitute motion to **HOLD SJM 101** time certain, March 11, 2019. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:01pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary