

MINUTES  
**HOUSE RESOURCES & CONSERVATION COMMITTEE**

- DATE:** Thursday, March 21, 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:** Representative(s) Boyle
- GUESTS:** Morgan Howard, Idaho Water Users Association; Julie VanOrden, Garth VanOrden Farms; Jeff Raybould, Henrys Fork Ground Water District; Lynn Tominaga and T.J. Budge, Idaho Ground Water Appropriators; T.J. Bingham, Bingham Farms; Andy Prescott, North Snake Ground Water District; Jeremy Pisca, Potlatch Deltic; Craig Evans, Bingham Ground Water District; Dean Stevenson, Magic Valley Ground Water District
- Chairman Gibbs** called the meeting to order at 1:30pm.
- MOTION:** **Rep. Kauffman** made a motion to approve the minutes of the February 27, March 7, March 11, and March 13, 2019 meetings. **Motion carried by voice vote.**
- S 1178aa:** **Senator Stennett**, District 26, stated the purpose of this bill is to prohibit exploding targets on any state lands during the designated fire season of May 10 through October 20, annually. Exploding targets refers to any device used as a target consisting of a substance or substances capable of exploding, the most popular kind, which can be purchased at most department stores, are binary exploding targets. Senator Stennett explained the use of these devices has caused catastrophic wildfires that have endangered lives, burned hundreds of thousands of acres, and cost millions of dollars. She stated, according to **General Brad Richy**, Director of the Idaho Office of Emergency Management, Idaho ranks as the fifth most fire prone state in the country and fire is listed as Idaho's top risk in the State Hazard Mitigation Plan. In the 2013 Mitigation Plan, approximately 46% of fires were human caused, and that number has increased to close to 70% in the last couple of years.
- Senator Stennett** stated **S 1178aa** classifies the crime as a misdemeanor and reiterates a judge's discretion for sentencing terms and cost recovery for damages, including community service to help repair damages in the affected areas. She explained this only addresses an accidental incident as a misdemeanor since arson is already covered under Idaho Code and is classified as a felony. Additionally, this bill does not apply to private property or any public or private shooting ranges, and does not apply to the rest of the year outside of the designated fire season.
- MOTION:** **Rep. Mason** made a motion to send **S 1178aa** to the floor with a **DO PASS** recommendation.
- In response to a question regarding exploding targets being singled out to ban, **Senator Stennett** explained this bill was brought to her by the Office of Emergency Management and the Idaho Department of Lands because of the increase in use of exploding targets. She stated there are local ordinances that cover many things, such as fireworks bans, but they believed exploding targets were actually more dangerous due to the type of ignition, how hot they are, and the dangers involved with the residue left behind after ignition.

**Jeremy Pisca**, representing Potlatch Deltic, a private forest landowner with over 600,000 acres of private timberland in Idaho. He stated most of the lands are adjacent to public lands and when fires start on public lands, fire knows no boundaries. The timber is Potlatch Deltic's crops, taking up to 50 years to grow, so a fire would be devastating. For that reason, they are **in support of S 1178aa**.

**David Groeschl**, Deputy Director, Idaho Department of Lands, stated they believe this bill will help deter high risk activities starting fires on state lands. Additionally, this bill provides a mechanism for community service in lieu of payment which none of the other statutes allow for when seeking restitution for fire damages.

In closing, **Senator Stennett** stated the reason for this bill was because unlike private and federal lands, both of which have enforcement authority for actions such as shooting exploding targets, there was no statute for law enforcement, Idaho Department of Lands, or Emergency Management to enforce on state lands, so this closes a loophole.

**VOTE ON MOTION:**

**Chairman Gibbs** called for a vote on the motion to send **S 1178aa** to the floor with a **DO PASS** recommendation.

**ROLL CALL VOTE:**

**Rep. Blanksma** requested a roll call vote on **S 1178aa**. **Motion carried by voice vote of 10 AYE, 7 NAY, 1 Absent/Excused. Voting in favor of the motion: Chairman Gibbs, Reps. Wood, Kauffman, Addis, Lickley, Raybould, Erpelding, Rubel, Mason, Toone. Voting in opposition to the motion: Reps. Gestrin, Moyle, Shepherd, Vander Woude, Mendive, Blanksma, and Moon. Rep. Boyle was Absent/Excused. Rep. Gibbs** will sponsor the bill on the floor.

**S 1056aa:**

**Lynn Tominaga**, Executive Director, Idaho Water User Appropriators, provided a background to the causes for the decline in the aquifer which led to the Settlement Agreement. He stated factors included an increase in ground water diversions, changing climate with increased drought cycles and declining precipitation, and an increase in surface water irrigation efficiencies. The final Settlement Agreement objectives included mitigation for material injury to senior water users in the Surface Water Coalition delivery call, providing safe harbor to participating ground water users in participating Ground Water Districts, increased reliability and enforcement of use, measurement, and reporting across the Eastern Snake Plain, and developing an adaptive management plan to stabilize and enhance the Eastern Snake Plain Aquifer (ESPA) ground water levels. He explained, to accomplish this, long term practices included the Ground Water Districts agreeing to reduce their use by 240,000 acre feet annually (12%), an annual storage water delivery of 50,000 acre feet, a reduced irrigation season, installation of mandatory measurement devices, and support for a state sponsored aquifer recharge program of 250,000 acre feet annually. The goal is to stabilize and ultimately reverse the trend of declining ground water levels and return ground water levels equal to the average ground water levels from 1991-2001, and will be monitored/measured using 19 mutually agreed to "sentinel" observation wells. He concluded by stating they need participation from everyone to ensure they are living up to their end of the Agreement.

**T.J. Budge**, Attorney, Idaho Ground Water Appropriators, stated the Settlement Agreement was an historic event in the history of water administration in Southern Idaho. It effected, in an important way, how the Idaho Department of Water Resources administers the ESPA. He explained the reason for **S 1056aa** is because there are still about 2% of the ground water users who have not complied with water reduction. The other 98% have complied by taking off end guns, drying up pivot corners, and sometimes drying up entire pivots or fields. They have sacrificed to conserve water yet are seeing some of their neighbors not doing anything. Mr. Budge stated in order to make the Settlement Agreement a success, all ground water users must comply with their share of the 12% reduction.

**Mr. Budge** explained the solution to this issue is to modify **Idaho Code, 42-5244**. This will ensure all ground water users comply with their share of the 12% water reduction because currently there is no mechanism to enforce the diversion reductions that are required under the Settlement Agreement. He stated currently in code, a ground water user who is delinquent in the payment of any assessment against their water use, or has failed to pay other mitigation costs owed to their District, can be turned over to the Department of Water Resources for enforcement. By splitting this code into Part A and Part B, Part A will continue to address the delinquent assessments, while the new Part B will add in the ability to enforce for excess water use. He explained enforcement of Part B by the Department will occur when Ground Water Districts report the non-compliant users. The consequences of non-compliance is curtailment, regardless if it is a wet year.

**MOTION:**

**Rep. Raybould** made a motion to send **S 1056aa** to the floor with a **DO PASS** recommendation.

**Rep. Bedke**, District 27, stated this bill is completely necessary because Idaho has worked very hard and invested a lot of money into making the Settlement Agreement succeed. He stated there's always a portion that doesn't comply, and if there was 100% compliance, we wouldn't need this bill. He said it is proper to protect this managed recharge program of the Agreement and everyone should comply.

**Chairman Gibbs** announced due to scheduling conflicts, **Mr. Paul Arrington**, Executive Director, Idaho Water Users Association, was unable to attend this hearing, so in his absence submitted a letter **in support** of **S 1056aa** (See Attachment) and **Mr. Gary Spackman**, Director, Idaho Department of Water Resources, was also unable to attend this hearing and wanted to clarify his absence in no way indicated his lack of support for this bill.

**T.J. Bingham**, Bingham Farms, Blackfoot, Idaho, stated he is **in opposition** to **S 1056aa**. He explained there are several reasons for his opposition. The most important is he does not need any protection the Bingham Ground Water District offers because his farm has protection based on their senior priority date. If this bill becomes law, his senior priority date will no longer be able to provide the protections they have enjoyed for 20+ years, which is when his local Ground Water District formed. Instead, it will now be up to whether they are in compliance based on what the District says is their obligation. He stated other concerns he has with this bill is how his senior water rights will be valued by his District and how the District allocates their water, resulting in having to pay the same amount as a junior right water holder in his District. This takes away any benefit he currently has based on his senior priority date. He also stated currently the Director can only curtail his priority date when there is a Water Call made against it. If **S 1056aa** passes, this will no longer be the criteria to enforce curtailments, but rather it will be up to the Districts, therefore, he wants the current enforcement to stay in place.

In response to a question regarding whether Bingham Farms is current in their assessments, **Mr. Bingham** replied they are not and haven't been since 1996 when the Bingham Ground Water District formed. He stated they have never participated in the Ground Water District.

**Julie VanOrden**, Garth VanOrden Farms, District 31, stated they are both ground water and surface water users and have paid their assessments since the inception of the water districts. She stated they came into the program "kicking and screaming" but do see the benefits and are fully participating. She stated they are **in support** of this bill because it provides more tools for enforcement of the Agreement.

**Andy Prescott**, North Snake Ground Water District, stated they are **in support** of this bill because there needs to be a way to preserve the ESPA, and the Agreement is the way to do it. Without a policing mechanism, there will never be a way to make everyone pay.

**Craig Evans**, Chairman, Bingham Ground Water District, gave a brief background on Ground Water Districts and the reasons for their formation. He stated when there are Water Calls in dry years, through agreements, Ground Water Districts provide stability and assurance that everyone will have water from one year to the next rather than taking the chance without Districts there will be enough water to farm.

**Dean Stevenson**, Chairman, Magic Valley Ground Water District, stated his District covers acreage in five different counties. He said without the Agreement in place his District struggled to maintain enough water and without any obligations people just pumped as they wished, and as a result, the aquifer continued to drop. He stated the Agreement preserves the ESPA for all to use. He believes this bill is needed in order to provide the tools to force those that are non-compliant to participate.

In closing, **Lynn Tominaga** stated **Mr. Bingham** and a few others have never complied over the years and **S 1056aa** will protect everyone's water rights, junior and senior.

**Rep. Toone** and **Rep. Raybould** declared Rule 38.

**VOTE ON  
MOTION:**

**Chairman Gibbs** called for a vote on the motion to send **S 1056aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Raybould** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 2:51pm.

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Representative Gibbs  
Chair

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Tracey McDonnell  
Secretary