

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, March 10, 2021

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

**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 Patrick** moved to approve the Minutes of February 22, 2021. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**Senator Stennett** moved to approve the Minutes of February 24, 2021. **Vice Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

**Senator Rabe** moved to approve the Minutes of March 1, 2021. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**H 186** **Relating to Water.** **Senator Mark Harris** said this legislation clarifies the ability of ranchers to file for stock water rights on federal grazing allotments. The priority date for stock water rights is the date of the original federal grazing authorization. The bill also allows and clarifies the current base property back to the base property associated with the original federal grazing authorization. This legislation clarifies that stock water on federal grazing allotments cannot be moved or used for another purpose.

**TESTIMONY:** **Paul Arrington**, Idaho Water Users Association (IWUA), said he appreciated Senator Harris bringing **H 186** before the Committee and that IWUA is in support of this bill.

**Braden Jensen**, representing the Idaho Farm Bureau Federation, said the Federation stands in support of **H 186**. Previously, it was difficult for some livestock owners to provide or obtain the needed documentation to accurately establish their water right priority date. This bill will aid these producers and correctly establish their claim to the beneficial use of the water.

**Gary Spackman**, Director, Idaho Department of Water Resources (IDWR), stated that **H 186** will simplify the work that a holder of a federal grazing permit has to go through with IDWR to establish a date of priority for their own water rights. There were two difficult tests for a stock water permit holder: obtaining a chain of title for the grazing permit and a chain of title for the base property. This bill will simplify the process by establishing a rebuttable presumption that those two chains of title exist. **Mr. Spackman** indicated that IDWR participated in the drafting and finalization of **H 186** and supports the passing of the bill.

**MOTION:** **Senator Burtenshaw** moved to send **H 186** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**H 184**

**Relating to Water Rights. Mr. Arrington** said **H 184** proposes amendments to Idaho Code: 1.) A notice of change of ownership to be provided to IDWR whenever a water right is conveyed to a new owner; 2.) A notice to landowners where water rights used on the land are owned by a third party; and 3.) A notice of change of ownership process is not a determination of ownership of that water right and is not an administrative action subject to challenge. **Mr. Arrington** said a water right is a property right, as defined in Idaho law, and when it changes hands, similar to any other piece of property, a legal document is needed to show ownership of the water. Ownership of a water right is determined through a deed, court decree, or other legal documents. If there are disputes over who owns the water, those disputes have been and will continue to be done through a quiet title action.

**DISCUSSION:**

**Vice Chairman Johnson** asked for a definition of "quiet title." **Mr. Arrington** replied it is a legal term that basically means a court adjudication to determine ownership to title. In other words, the court is quieting the disputes in the title of that water.

**Senator Guthrie** said it seemed to him that when a title search is done on an exchange of property that it would affect the water rights. **Mr. Arrington** said water rights are not tied to the land directly, so it is not a simple matter of just doing a title search for a deed or legal document for water rights. **Mr. Arrington** said meetings with title companies and realtors have been held to find a solution to the problem of how to better work the transfer of ownership of water rights.

**Senator Patrick** asked if liens can be filed on water rights. **Mr. Arrington** said he was not aware of a lien on a water right in the same sense of filing a lien on property.

**MOTION:**

**Senator Guthrie** moved to send **H 184** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**H 267**

**Relating to Water. Mr. Arrington** said **H 267** establishes the Idaho Water Resource Board's water management account. It is intended to provide more flexibility to the Board in managing the account and identifying projects. Moneys that are appropriated to that account are used for water projects throughout Idaho such as: flood management grants; the raising of Anderson Ranch dam; approval of studies which conserve or increase water supply; improving drought resiliency; and addressing water sustainability. **Mr. Arrington** said there are certain projects that are not subject to the \$50,000 annual grant limitation. These include large infrastructure projects and flood management grants.

**Mr. Arrington** said also, the legislation confirms that any projects must consider and protect existing water rights and uses, and requires additional information regarding the considered projects' actual expenditures.

**MOTION:**

**Senator Bair** moved to send **H 267** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

**H 268**

**Relating to Water. Mr. Arrington** said **H 268** establishes the general rule that new water rights must be developed within five years. However, there are two exceptions. If there is litigation about the ownership of that water right, the time can be extended. The other exception is the large permit exemption. The development of large water rights is regularly completed in phases and may include multiple permits. This includes municipal, industrial, and agricultural projects. **Mr. Arrington** said it is particularly true of small community systems providing water for domestic irrigation and/or heating purposes that are regularly developed in phases in many circumstances. A 10-year extension of development for a water permit may be granted for multiple permits relating to a common diversion or distribution system.

**MOTION:**

**Senator Heider** moved to send **H 268** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

**H 182**

**Relating to Water.** **Mr. Arrington** stated **H 182** will provide a streamlined process to adjust canal company boundaries where there is no increased use and no injury to other water rights. Circumstances have arisen across the state where the place of use identified on a canal company's water right does not match what is actually happening on the ground. This discrepancy can be the result of an oversight during a water rights adjudication or even an adjustment of water usage within the canal company, he said. Presently, the canal company can only correct those issues by filing an application for transfer, which can be very expensive and can result in unnecessary litigation.

**Mr. Arrington** said three conditions must be met: 1.) No increase in diversion rate or the number of acres irrigated; 2.) There is no enlargement; and 3.) There will be no injury to other water rights. If these conditions are met, the canal company can submit a letter and a map to show what the new digital boundary should be. IDWR may then adjust the canal company's boundaries without a full application for transfer process.

**DISCUSSION:**

**Senator Stennett** asked if this process would streamline the workload of IDWR. The question was deferred to Mr. Spackman, and his response was these particular circumstances are infrequent and there might only be one or two instances a year.

**Chairman Vick** said Mr. Arrington mentioned unnecessary litigation and asked what type of issues were litigated. **Mr. Arrington** said what he was referring to was that sometimes there are disputes or disagreements within an irrigation district or a canal company that are unrelated to the boundaries.

**MOTION:**

**Senator Burtenshaw** moved to send **H 182** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**H 185**

**Relating to Flood Control Districts.** **Mr. Arrington** said **H 185** enables a flood control district to approve annexation petitions filed by landowners whose lands are not contiguous to the district's existing boundaries.

**MOTION:**

**Vice Chairman Johnson** moved to send **H 185** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:15 p.m.

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Senator Vick  
Chair

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Juanita Budell  
Secretary