

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

February 1, 1985

TIME: 1:16 PM

PLACE: Room 417 - STATEHOUSE

PRESENT: All members present

GUESTS: Mr. Kenneth Dunn, Director, Department of Water Resources; Dr. Dick Gardner, Department of Financial Management; Mr. Howard Funke, Attorney; Mr. Sheri Chapman, Idaho Water Users Association; and Mr. Kenneth McClure, attorney.

Chairman Chatburn called the meeting to order.

MOTION: Representative Sutton moved and Representative Edwards seconded that the Minutes of January 29, 1985 be approved.

MOTION CARRIED.

H 70: ADJUDICATION OF SNAKE RIVER BASIN

Representative Wood asked for a point of clarification directed to Mr. Dunn. She stated that in the testimony given at the Public Hearing by Mr. Stewart, there was question as to what would happen with the water rights of the people who had not filed up to the date that has been set for the deadline this year. She said it was her understanding they would lose their water rights.

Mr. Dunn answered that as it stands right now, that was correct. It is subject to forfeiture; however, there is legislation prepared that has not been submitted pending what happens with the adjudication bill. It will increase the filing fee for water rights and remove the July 1, 1985 date and merely says a late claim would have a fee. The present fee is \$200 and it has been proposed to raise it to \$400.

MOTION: Representative Little moved that H 70 be held in committee and seconded by Representative Winchester.

Representative Little commented that this would not be to kill the bill but that there is a need for more information. That HCR 16 clearly stated that is the case - if the rights can be negotiated - it will cost ten percent of what it would be if done in the courts. There is a question on what has to be done with the McCarran Amendment and how far adjudication will have to be on the Snake River Basin - whether the Boise, Clearwater, Weiser and Lemhi Rivers are included or just adjudicated down to Swan Falls or Murphy.

Representative Winchester also stated it was not his intention to try to stop H 70 from proceeding through this session; however, he has been in contact with his constituents in the five districts that the Boise project serves from here to Adrian which have gone through adjudication. If negotiations can be opened up as has been done with the Indian tribes, the same courtesy can be extended to the river systems who have gone through an adjudication process.

Representative Edwards asked if anyone could answer the question "if we can adjudicate as needed and not involve the other rivers that have already been adjudicated?"

Mr. Dunn answered that, no, it cannot be said that they will be exempted because the requirements are not known from the federal government and the Indians. If the McCarran Amendment is applied, it has

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to be satisfactory to those parties. If the rivers in question are not adjudicated, they may very well say it does not meet their needs.

Representative Edwards then made reference to "list in order of preference." She asked if adjudication could be started at the upper Snake and work down as is needed to reach the quantity required to satisfy the rights.

Mr. Dunn answered, "Yes, but that also is accomplished through negotiation." He said they would not include any more than they had to include.

SUBSTITUTE: Representative Bateman moved Representative Johnson seconded that
MOTION H 70 be sent to the floor with a "DO PASS" recommendation.

Mr. Funke said it was up to a federal judge to determine whether the Boise, Lemhi, Clearwater and other rivers in question are adjudicated and whether that is in the scope to satisfy the McCarran Amendment. They are proposing that to eliminate that open question, it is possible to sit down with the tribes and other federal interests and deal with those water rights. After that is accomplished, there is no need for general stream adjudication. The water rights are measured and are put in place without going to total stream adjudication. The disagreement is that the Indians want all of the rivers included; and if a settlement can be reached through negotiation, a confrontation at the federal level will be avoided. Mr. Funke felt H 70 should be passed as well as HCR 16.

Chairman Chatburn told the committee he has a new resolution. In order to eliminate confusion, it is the intention of the chair that if H 70 can be acted upon, they will take action on HCR 16. The committee will then discuss the new resolution to see if it is needed as well.

AMENDED: Representative Winchester moved and Representative Sutton seconded
MOTION that H 70 be held until Tuesday, February 5, 1985.

Chairman Chatburn relinquished the chair to Vice-Chairman Winchester after Representative Edward's request that he voice his opinion regarding H 70. Representative Chatburn then addressed the committee, remarking that they have been told the Payette and Lemhi having been adjudicated, largely at state expense, would not be charged. They could plug in when it comes to that point. The Statement of Purpose of H 70 states "...This adjudication would include all tributary regions above Murphy Gage and as much of the remainder of the basin as is necessary to obtain U. S. consent to include all federal claims in the adjudication under the terms of the McCarran Amendment." In his opinion, that clearly indicated that not anything more be done than is entirely necessary to qualify under the McCarran Amendment. They could, if they so desire as a committee, have the Statement of Purpose incorporated in the Journal of Proceedings, along with the bill. He said he hoped the committee could report the bill to the floor with a "DO PASS" recommendation. If something comes up that needs attention on the legislation, it could be held on the calendar.

AMENDED MOTION FAILED.

SUBSTITUTION MOTION PASSED. There was a Roll Call vote request - 14 AYE AND 6 NAY. (Chatburn, Stoichoff, Bateman, Stanger, EchoHawk, Dewey, Johnson, Linford, Hawkins, Duffin, , Jones, Hansen, Wood and Stucki voting "AYE." Winchester, Little, Edwards, Sutton, Haagenson and Brackett "NAY.")

MOTION: Representative Winchester moved and Representative EchoHawk seconded that HCR 16 go the floor with a "DO PASS" recommendation.

MOTION CARRIED.

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MOTION: Representative Wood moved and Representative Linford seconded that H 71 be sent to the floor with a "DO PASS" recommendation.

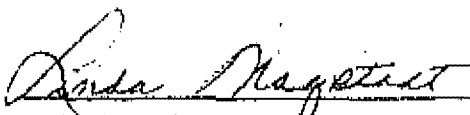
MOTION CARRIED.

Chairman Chatburn referred to Senate Bills 1006 and 1008 and asked Mr. Chapman to address the committee regarding them.

Mr. Chapman said that S 1006 relates to the authorization of the Department of Water Resources to put a moratorium on issuance of water right permits or applications as necessary to protect the existing vested right and allows the department to develop the rules and regulations that are necessary to implement the public interest criteria that is in S 1008. S 1008 really is the bottom line for the Swan Falls settlement and provides for the trust of the new minimum stream flow and the new public interest criteria which takes into account economic factors in the issuance of new water rights for the remaining waters held in trust by the state of Idaho after the settlement.

There being no further business to come before the committee, it adjourned at 2:35 PM.


J. VARD CHATBURN, CHAIRMAN


Linda Magstadt, Secretary

2-1-85

H 70

ROLL CALL VOTING

AYE NAY

Chatburn	✓	
Winchester		✓
Little		✓
Stoicheff	✓	
Bateman	✓	
Edwards		✓
Sutton		✓
Stanger	✓	
EchoHawk	✓	
Dewey	✓	
Johnson (27)	✓	
Haagenson		✓
Linford	✓	
Hawkins	✓	
Duffin	✓	
Jones	✓	
Hansen	✓	
Wood	✓	
Stucki	✓	
Brackett		✓

DATE _____

BILL NO. _____

AYES _____

NAYS _____

EXCUSED _____

14 6

Carried _____ Failed _____

ROLL CALL VOTING

AYE NAY

Chatburn		
Winchester		
Little		
Stoicheff		
Bateman		
Edwards		
Sutton		
Stanger		
EchoHawk		
Dewey		
Johnson		
Haagenson		
Linford		
Hawkins		
Duffin		
Jones		
Hansen		
Wood		
Stucki		
Brackett		

DATE _____

BILL NO. _____

AYES _____

NAYS _____

EXCUSED _____

Carried _____ Failed _____