

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, February 13, 2017

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Bair, Vice Chairman Vick, Senators Siddoway, Brackett, Heider, Bayer, Johnson, Stennett, Jordan

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

**MINUTES APPROVAL:** **Senator Siddoway** moved to approve the minutes of February 1, 2017. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Heider** moved to approve the minutes of February 6, 2017. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTEE CONSIDERATION:** **Senator Jordan** moved to send the Gubernatorial appointment of Michael Boren to the Parks and Recreation Board to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. **Senator Jordan** said that she has known Mr. Boren for some time and feels that he will serve the State well in this capacity. The motion carried by **voice vote**. Senator Jordan will be the floor sponsor.

**GUBERNATORIAL APPOINTEE CONSIDERATION:** **Senator Brackett** moved to send the Gubernatorial appointment of Gordon O. Hansen to the Parks and Recreation Board to the floor with recommendation that he be confirmed by the Senate. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. Senator Anthon will be the floor sponsor.

**MOTION:** **Senator Siddoway** moved to print **RS 25232** and **25227**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**RS 25269** **Senator Lee** said **RS 25269** adds to and updates the current statutes regarding oil and gas to align with industry standards and increase transparency in production and development. The bill amends Idaho Code Chapter 3, Title 47, by the addition of a new section to require that when payment is made to any owner of a royalty interest, certain information shall be included on the payor's check stub or on an attachment to the form of payment and to define royalty payments; revises confidentiality provisions; clarifies metering requirements and responsibilities; defines a statewide spacing size; prohibits co-mingling of production without prior metering; revises application for integration order provisions, to remove an exception to requirements regarding good faith efforts to inform uncommitted owners of an intent to develop mineral resources in a proposed spacing unit and to revise confidentiality provisions; adds definitions; and updates outdated language in the statute.

**Senator Siddoway** asked who certifies and reads the meters. **Senator Lee** stated that all persons engaged in meter proving or testing of oil and gas meters must be registered with the Commission.

**Chairman Bair** inquired about spacing. Referring to page 4, line 37, it indicates 640 acres. On page 11, line 45, it says 320 acres. **Chairman Bair** asked if there is inconsistency in spacing. **Senator Lee** referred to page 4, line 37, saying that it refers to the maximum size, unless otherwise noted.

**MOTION:**

**Senator Heider** moved to print **RS 25269**. **Senator Stennett** seconded the motion. During the discussion, **Senator Siddoway** asked who helped to write this legislation. **Senator Lee** indicated that she had talked to Director Schultz, Department of Lands, also had industry input, and some of the proposals are from last year. The motion carried by **voice vote**

**RS 25264**

**Senator Brackett** said **RS 25264** is a companion bill to **RS 25265**, which codifies the Idaho Supreme Court's holding in **Joyce Livestock Company v. United States of America (2007 WL 428947)**. In **Joyce**, the Court held that the federal government could not appropriate a water right for watering stock on federal lands by beneficially using the water unless the federal government owns the stock drinking the water. The **Joyce** decision recognizes that the owner of the stock grazing and watering on federal lands is entitled to the stockwater right established by beneficial use.

**RS 25264** states that in the Snake River Basin Adjudication (SRBA), small stockwater and domestic water right holders were not required to file claims in the adjudication, but could defer the filing until a later time. Claims filed in the SRBA for these uses are referred to as "deferrable claims." Many of the stockwater uses that the **Joyce** decision addressed qualify as deferrable claims.

Late, deferrable claims can be filed, but the claimant must: 1.) pay a filing fee of \$25 per claim; 2.) publish notice of the claim; and 3.) pay the estimated cost of investigation of, assistance with, and recommendation of the claim by the Idaho Department of Water Resources (IDWR). Filing fee payments are limited to no more than \$100. **Senator Brackett** said the estimated impact to the general fund is \$265,000 annually and a one-time expenditure of \$35,000 in the first year to initiate claims taking. **Senator Stennett** requested more information regarding the fees. **Senator Brackett** stated there is a one-time fee of \$25, but if there are multiple claims, the maximum amount to be paid would be no more than \$100, even if there are more than four claims. Previously, claimants were required to pay the cost of publication, investigation and assistance, but this legislation waives those fees.

**MOTION:**

**Vice Chairman Vick** moved to print **RS 25264** and **RS 25265**. **Senator Heider** seconded the motion.

**Senator Siddoway** stated he had a conflict of interest pursuant to Senate Rule 39 (H), but intended to vote and asked that it be noted in the record. **Senator Brackett** said that he might also have a conflict of interest and wanted it so noted in the record.

The motion carried by **voice vote**.

**PRESENTATION:**

**Teri Murrison**, Administrator, Idaho Soil and Water Conservation Commission (ISWCC), presented a PowerPoint program relating to the activities of the ISWCC. **Ms. Murrison** said ISWCC does agricultural stewardship, "Conservation the Idaho Way." Idahoans love the land, clean air, water, and well-managed landscapes. Good stewardship is voluntary and locally led action helps to address mandated federal water quality and other environmental goals.

**Ms. Murrison** stated that "Conservation the Idaho Way" is what ISWCC does and has done since 1939. ISWCC takes care of and improves natural resources for future generations while maximizing benefits to all Idahoans. ISWCC works with local people who know the land and natural resources. ISWCC has no regulatory authority. In fact, ISWCC helps Idaho avoid more regulations. All efforts lead to better water quality and water savings, less soil erosion and fuel for wildfires, improved habitat for wildlife, and more.

**Ms. Murrison** said that Governor Otter appoints the five member board and each commissioner serves five-year terms. Total FTPs are capped at 17.75, with 13 field staff located around the State. Two staff members are with the loan program and 2.75 are administrative FTPs.

**Ms. Murrison** said ISWCC focuses on four fundamental core functions. They are:

1. Work with locally elected boards of conservation districts, providing financial and technical assistance to Idaho's 50 local conservation districts.
2. Provide and promote non-regulatory incentive and science-based programs that enhance the environmental quality and economic productivity of the State.
3. Insure continuity of operations and establish protocols to support the Commissioners and staff.
4. Provide outreach and educate to engage local, state, federal partners, non-governmental organizations, and resource and agricultural production groups; and support youth education via the Idaho Envirothon.

**Ms. Murrison's** next topic was regarding ISWCC revenues and expenditures. The level of support has increased in the last five years. Sister State agencies compensate ISWCC for some of the services that are provided and the Natural Resources Conservation Service (NRCS), in fiscal years 2018 and 2019, will fund one-fourth of an existing position to strengthen district capacity and help attract new, non-traditional partners.

**Ms. Murrison** said there are 50 conservation districts and the money to support them comes from the General Fund, with fiscal year 2016 paying \$1.25 million. Each district received \$8,500 base; \$2,000 operating costs; \$800 from capacity building, and additional state to local matching funds. **Ms. Murrison** said about 50 percent of ISWCC's staff time goes to districts. This past year, districts requested almost 11,000 hours of technical assistance and identified needs for specific project funding of \$3 million statewide.

According to the districts, their priority issues were:

- Water quality and quantity
- Cropland productivity
- District operations
- Information and education
- Rangeland health
- Fish and wildlife
- Urban-rural interface
- Forest health

**Ms. Murrison** stated that satisfaction from the districts has been increasing over the past four years, from 60 percent in 2013 to 91 percent in 2016. ISWCC helps the districts to install best management practices. The Conservation Reserve Enhancement Program (CREP), which is a statutorily mandated incentive, promotes water conservation on marginal farm ground in the Eastern Snake Plain Aquifer. Also, the Resource Development and Rangeland Conservation Program (RCRDP) provides low interest conservation loans to private landowners. **Ms. Murrison** said ISWCC also assists the Department of Environmental Quality (DEQ) in writing Total Maximum Daily Load (TMDL) implementation plans to address agriculturally-generated water pollution in federally listed waterways.

**Ms. Murrison** said the Legislature appropriated \$100,000 as a one-time pilot project to fund the North Central Wildfire Restoration Group - Nez Perce, Latah, Idaho, Clearwater, and Lewis Soil and Water Conservation Districts. The project helped local, state, and federal governments to identify and prioritize the restoration of private and municipal lands damaged by the 2015 wildfires. The project covered nine wildfires that burned over 226,790 acres across five counties. Land ownership included 26 percent private land; 63 percent federal land; 4 percent tribal land; and 3 percent state land.

**Ms. Murrison** said the ISWCC actively promotes voluntary conservation through a newsletter, "Conservation the Idaho Way", and in social media and videos. This year, ISWCC co-produced with Idaho Rangeland Resource Commission and Life on the Range, a video about the Idaho Envirothon. The Envirothon is one of several youth outreach efforts that is supported by ISWCC. **Ms. Murrison** ended her presentation by showing the 11 minute Envirothon video to the Committee.

**PRESENTATION:**

**Chairman Bair** thanked Ms. Murrison for her report, then welcomed Jeff Raybould, Vice Chairman of the Idaho Water Resource Board (IWRB), who will give a presentation on the State Water Plan.

**Chairman Bair** provided some background information regarding the State Water Plan. IWRB reviews the State Water Plan, as determined, then submits a report on January 1 to the Legislature. The Legislature then has 60 days to either confirm, not confirm, or do nothing. If nothing is done, the Plan then becomes the law of the land. Today's program consists of an amendment to the State Water Plan, dealing with sustainability.

**Mr. Raybould** introduced IDWR staff members Neeley Miller and Brian Patton; IWRB members Roger Chase, Chairman, and Bert Stevenson. **Mr. Raybould** gave a quick history lesson regarding Idaho's water. In 1963, the city of Los Angeles wanted to put a big straw in the Snake River near Twin Falls and take about 2.4 million acre feet of water each year to Southern California. Idaho's reaction to that was the State needed to have a plan in place to demonstrate to those outside the borders of Idaho that the State had plans for the water and had control of the water. The Legislature developed an amendment to the Constitution and it was ratified by the voters in 1964. Part of that amendment created the Water Resource Board, which Idaho has today. Within that amendment, it states that a State water plan will be formulated and any time that changes are made to the plan, the changes will be submitted to the Legislature. Unless the plan is amended or rejected by the Legislature, the plan then becomes law in 60 days.

**Mr. Raybould** said the first plan's objectives were submitted in 1974, with policies in 1976. Subsequent revisions were in 1982, 1986, 1992, 1996, and 2012. **Mr. Raybould** said the changes are first made by IWRB, then adopted by IWRB, then submitted to the legislature. This provides guidance and direction for water planning, management, conservation and development.

**Mr. Raybould** stated that the change that is being submitted today is at the request of the Governor. After reviewing IWRB's plan, the Governor wanted IWRB to have a specific sustainability component within the plan. The Governor's guidance characterized sustainability as providing water supply for current needs and water availability for future economic development and job creation. IWRB assigned the development of the draft sustainability policy to the IWRB's Water Resource Planning (WRP) Committee.

WRP received a series of presentations and panel discussions from experts on the topic of sustainability. They included: the City of Hailey; Idaho Power Company; City of Meridian; IPUC; J.R. Simplot Company; DEQ; Hewlett-Packard; Clear Springs Foods; Trout Unlimited; United Water Idaho; IACI; and Western States Water Capitol. IWRB solicited and received additional input on policy development from water users and members of the public.

**Mr. Raybould** said in May 2016, IWRB reviewed the final draft of the sustainability policy and accepted it for consideration and public comment as required by Idaho Code § 42-1734. The public comment period commenced May 20, 2016, and remained open through September 30, 2016. Seven meetings were held throughout the State for public comments. A total of 120 comments were received. The primary focus of comments were on fish and fisheries; water conservation; water storage; water quality; local solutions; concerns about fracking; climate and drought; and water bank enhancement.

**Mr. Raybould** said that after receiving all the testimony, WRP agreed to a few changes, then recommended that IWRB adopt the policy. Three changes were made: 1.) the Discussion section; 2.) the Implementation Strategies section; and 3.) the Milestones section. In November 2016, the IWRB adopted the sustainability policy by resolution and submitted it to the Idaho Legislature.

**Mr. Raybould** indicated that the sustainability policy will be in a new section, section 8, of the Water Plan. Under 8A, it says that sustainability is the active stewardship of Idaho's water resources to satisfy current uses and assure future uses of this renewable resource in accordance with State law and policy.

**Mr. Raybould** pointed out that the sustainability policy depends on the state's sovereignty over its water resources. Stewardship of Idaho's water resources begins with the realization that the water resources of the State are not inexhaustible. The goal must be overall stewardship of the State's water resources for the good of the people of the State of Idaho.

**Mr. Raybould** said that planning and management actions to promote water sustainability must be designed and implemented to ensure that existing water rights are protected and the economic vitality of Idaho is optimized. The goal of sustainable use of water resources of the State must recognize that the goals of sustainable economic growth and protection of existing rights must coexist with and are enhanced by measures that protect and maintain surface and ground water resources and the aquatic, riparian, fish and wildlife, recreational, and human resources that depend on these water resources. Recognizing these needs will promote economic and environmental security and enhance the quality of life for the people of the State of Idaho.

**Mr. Raybould** said he had pointed out that the policy is broken into three sections - one section discusses sustainability; the next section deals with the implementation strategies; and the third section talks about the milestones, or measurements.

The options for the State Water Plan are to approve, amend, reject, or take no action. **Mr. Raybould** said a lot of people have put time and effort into this document and he would answer any questions that the Committee might have. **Senator Siddoway** inquired as to when the State Water Plan was officially submitted and the reply was the first day of the Legislative session.

**Senator Siddoway** said he had a concern about the riparian areas and the fish and wildlife issues relating to water. **Mr. Raybould** said he doesn't feel there is anything in the policy that would require IWRB to make additional releases for cutthroat trout for riparian purposes beyond what is already contained within the State Water Plan. **Senator Siddoway** said if the State is already insuring the survival of the fisheries, why put it in? **Mr. Raybould** said the fisheries are a component on how the water in the State of Idaho is utilized. IWRB felt they needed to include the use of the waters for fisheries and for other wildlife. One of the primary points within the discussion in the implementation strategies was that all private property and water rights were to be protected.

**Senator Siddoway** stressed his concern regarding the use of words and not letting words interfere with irrigation and power generation. **Mr. Raybould** said he shares the same concerns but feels IWRB has taken great care to craft the policy in such a way that it recognizes the need for the State to look at sustainability and to make sure there is water for our existing uses, as well as for future uses.

**Senator Heider** said he did not find anything in the policy regarding invasive species, especially quagga mussels and asked why it was not included. **Mr. Raybould** replied that IWRB would do everything they could to keep invasive species out of the State of Idaho; however, it is his understanding that it is the responsibility of the Department of Agriculture to do the inspections.

**Senator Brackett** asked about the legal status of the water policy. Are there teeth in the plan or is it just guidance? **Mr. Raybould** replied that to the degree that the policy is adopted and becomes effective, all the other state agencies have to recognize that policy and any actions that they take have to conform to the State Water Plan. The plan is a guidance document. **Senator Brackett** asked if private entities and canal companies have to recognize the plan. **Mr. Raybould** said there are statutes that regulate private entities and individuals.

**Chairman Bair** thanked Mr. Raybould for the presentation. **Chairman Bair** said he had been in consultation with the Chairman of the House Resources and the best action to take would be to let the 60 day time period pass.

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

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Senator Bair  
Chair

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Juanita Budell  
Secretary