

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Tuesday, February 23, 2021

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Gibbs, Vice Chairman Lickley, Representatives Moyle, Wood, Boyle, Vander Woude, Gestrin, Mendive, Kauffman, Blanksma, Addis, Moon, Manwaring, Okuniewicz, Yamamoto, Rubel, Davis, Mathias

**ABSENT/
EXCUSED:** Representative(s) Rubel

GUESTS: Gary Spackman and Brian Patton, Idaho Department of Water Resources; Jeff Raybould, Idaho Water Resource Board; Paul Kline, Idaho Department of Fish and Game; Darrell Early, Idaho Attorney General; Emily McClure, Riley Stegner; Robert Anderst, Risch Pisca (Potlatch Delta); Benjamin Davenport, Idaho Mining Association; Dustin Miller, Idaho Department of Lands; Jonathan Oppenheimer, Idaho Conservation League; Bruce Smith, self; Britt Madison, Stimson Lumber Company

Chairman Gibbs called the meeting to order at 1:30pm.

MOTION: **Rep. Manwaring** made a motion to approve the minutes of the February 15, 2021 meeting. **Motion carried by voice vote.**

Jeff Raybould, Chairman, Idaho Water Resource Board, provided an update of the Board's ongoing projects. These projects include raising the water level up to six inches during dry years at Priest Lake to provide flows in the Priest River while still maintaining lake levels; continuing the partnership with Idaho Power for cloud seeding in the Boise, Wood, and Upper Snake Basins; continued progress on the Eastern Snake Plain Aquifer (ESPA) recharge program; continued work with the Lemhi water users to find solutions to the water needs of the Lemhi Valley and surrounding area, including providing better flows in the lower Lemhi River; and continue ongoing talks with the states of Utah and Wyoming, along with Pacificorp, to determine if more water can be stored in Bear Lake.

Gary Spackman, Director, Idaho Department of Water Resources, provided a brief update of ongoing work of the Department. He first commended **Chairman Raybould** for the great work of the Idaho Water Resource Board. Mr. Spackman discussed the snow packs around the state and noted the remarkable improvements due to late season snows bringing up the levels in most areas to 90% or greater. He also discussed the Department's many pending transfers as an indicator of the economic activity in the state and how the Department is expeditiously considering these proposals for changing water rights to address the needs of industry and people across the state.

Chairman Gibbs announced the Resources and Conservation committee has been granted privileged status by **Speaker Bedke** for the purpose of introducing RSs today.

RS 28646C2: **Senator Siddoway**, District 35, stated this proposed legislation will change the classification of the wolf in some big game management units to a predator in order to authorize different methods of take. He stated this proposed legislation has a threshold of 50 packs consisting of at least 500 wolves before management responsibility will be returned to the Idaho Department of Fish and Game. It also mandates a report be filed with the Department within 14 days of taking a wolf.

- MOTION:** **Rep. Moyle** made a motion to introduce **RS 28646C2. Motion carried by voice vote.**
- RS 28477:** **Benjamin Davenport**, Executive Director, Idaho Mining Association, stated this proposed legislation clarifies the minimum design standards for phosphogypsum stacks at phosphoric acid facilities. He explained these design standards reflect the best standards in the industry to minimize the impacts to human health and the environment, and by establishing a minimum design standard, it eliminates the case by case determinations by state and federal agencies on the design of phosphogypsum stacks.
- MOTION:** **Rep. Blanksma** made a motion to introduce **RS 28477. Motion carried by voice vote.**
- RS 28662:** **Paul Arrington**, Executive Director, Idaho Water Users Association, stated this proposed legislation amends **Idaho Code, Section 42-1760**, which establishes the Idaho Water Resource Board's Water Management Account. Those amendments include 1) replacing the list of potential projects with authority for projects which "conserve or increase water supply, improve drought resiliency, address water sustainability or support flood management;" 2) aquifer recharge above Milner Dam on the list of specific projects for consideration; 3) confirming all water rights, including hydropower water rights, must be protected, and identified water uses must be considered in the approval of projects; and 4) providing additional information as part of the Board's Annual Report.
- MOTION:** **Rep. Addis** made a motion to introduce **RS 28662. Motion carried by voice vote.**
- RS 28455C1:** **Rep. Okuniewicz**, District 2, stated the subject of this RS has been before the committee several times. In summary, he stated this proposed legislation will transition the hunting framework for sage grouse from a sport permit-based model to a tag-based model to better support sustainable hunting opportunities and contains a fee increase for certain nonresident tags.
- MOTION:** **Rep. Wood** made a motion to introduce **RS 28455C1** and recommend it be sent directly to the Second Reading Calendar. **Motion carried by voice vote. Rep. Okuniewicz** will sponsor the bill on the floor.
- RS 28668:** **Rep. Young**, District 31, stated this proposed legislation provides for the establishment of the Sage Grouse Preservation Program for the purpose of showing that sage grouse may be successfully captive raised and as a result populations can be increased. She explained the Department of Fish and Game would oversee the certification of persons or entities wishing to participate and the University of Idaho would establish best practices for the program. In addition, she stated it also provides a mechanism for future funding and a requirement for regular reviews and evaluation.
- MOTION:** **Rep. Moyle** made a motion to introduce **RS 28668. Motion carried by voice vote.**
- H 187:** **Emily McClure**, Lawyer and Lobbyist, Riley Stegner and Associates, stated Idaho's recreational access laws encourage private landowners to grant public access to their property for recreational purposes. While most recreational users behave responsibly, occasionally a member of the public causes substantial damage to gates, fences, crops, or other areas closed to motor vehicles. This bill will clarify when a landowner enters into a recreational access agreement with the Idaho Department of Fish and Game, and both the landowner and the Department agree to certain restrictions on motorized vehicles, the Department will have the authority to enforce those restrictions, as long as recreational users are given notice of those restrictions. Notice includes posting on the property stating there are motor vehicle restrictions as well as posting the details of the restrictions on the Department's website and at the nearest regional office. She concluded by stating this is not an expansion of government; Department officers are already out on these private

lands, but rather this will encourage more consistent application and will maximize efficiencies.

MOTION: **Rep. Addis** stated this is a wonderful program and this bill is very appropriate. He then made a motion to send **H 187** to the floor with a **DO PASS** recommendation.

Paul Kline, Deputy Director, Idaho Department of Fish and Game, stated the Fish and Game Commission is **in support** of **H 187**.

Britt Madison, Stimson Lumber Company, stated they currently have 130,000 acres in the LAP program (Landowner Appreciation Program) and are proud to work with the Department of Fish and Game. They stand **in support** of **H 187**.

Chairman Gibbs requested the record reflect no one else signed up for remote testimony and no one else from the audience came forward to testify.

VOTE ON MOTION: **Chairman Gibbs** called for a vote on the motion to send **H 187** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Mendive** will sponsor the bill on the floor.

H 118: **Rep. Blanksma**, District 23, stated this legislation removes the responsibility of the Office of the Attorney General (OAG) from providing legal representation to the Idaho Department of Lands. This would be accomplished by removing three dedicated Deputy Attorney Generals (DAGs) from the Department and allowing the Department to hire or contract its own legal counsel as needed. She explained, this will give a layer of separation between the Attorney General, who is a member of the Land Board, and the Department. Rep. Blanksma remarked the costs associated with the three DAGs would be reduced from the OAG budget and those savings could be used to offset the anticipated costs the Department would incur by hiring its own legal counsel. She concluded by stating this creates good policy by separating the Board from the Department when it comes to legal advise and does not preclude the AG from providing advise as a member of the Board.

Darrell Early, Division Chief, Natural Resources Division, Office of the Attorney General, spoke **in opposition** to **H 118**. He explained there are three DAGs assigned to the Department who collectively represent over 70 years of specialized experience, provide approximately 7,300 hours of legal support equaling approximately \$400,000 per year of services. He stated in providing legal services, the DAGs assigned to the Department operate as legal advisors; they do not make policy decisions for the Department or the Board, but rather warn of any impending legal risks based upon the laws of the state of Idaho. He clarified, the DAGs at the Department do not represent the AG, they represent the Department and the Board as a whole. Additionally, if there are issues of policy or decisions relating to the Board's role, the Board routinely receives separate legal advice from the Division Chief, Natural Resources Division rather than the DAGs. Mr. Early further clarified there is no conflict of interest between the AG sitting on the Board and the DAGs representing the Department for several reasons. The DAGs represent one client; the Board, not the AG. The AG is one of five members of the Board. The Department is the administrative arm of the Board and the interests of the Department are not in conflict with the interests of the Board. He concluded by stating this bill will take money from the endowment beneficiaries by increasing the costs of legal services exponentially and could potentially cause more litigation at the expense to the endowments.

Committee members spoke with concern over several issues. One concern is the potential loss of approximately 70 years of collective specialized experience from the three DAGs versus hiring or contracting outside legal counsel who may not be as well versed. Another was concern over the potential for much higher costs of hiring outside legal counsel in comparison to the established costs for the three DAGs. The final concern raised was the perceived conflict of interest.

Jonathan Oppenheimer, External Relations Director, Idaho Conservation League, stated they are not taking an official position on this legislation but they have concerns about the Fiscal Note and that it doesn't accurately represent what the costs could be when hiring outside legal counsel.

Chairman Gibbs requested the record reflect no one else signed up for remote testimony and no one else from the audience came forward to testify.

Rep. Blanksma stood and closed. She addressed several of the concerns raised by committee members. She stated although the OAG uses the rate of \$250 per hour, the actual cost of a DAG, including salary, benefits, and overhead is approximately \$382,000 per year. Those totals could potentially be eliminated from OAG budget. She continued, with the conflict of interest issue and layers of separation, if the AG sits on the Board or if one DAG covers for another DAG, there is no separation between the OAG and the Department and Board. She remarked there should be a distinct line between the AG's opinion as a member on the Board and the legal advice provided to the Department and currently that is not the case.

MOTION: **Rep. Vander Woude** made a motion to send **H 118** to the floor with a **DO PASS** recommendation.

Committee members once again spoke with concern over the potential for much higher costs to the Department for hiring outside counsel who may not have the expertise the DAGs could provide.

SUBSTITUTE MOTION: **Rep. Lickley** made a substitute motion to **HOLD H 118** in committee, time certain, Wednesday, March 3, 2021.

ROLL CALL VOTE ON SUBSTITUTE MOTION: **Chairman Gibbs** called for a roll call vote on the substitute motion to **HOLD H 118** in committee, time certain, Wednesday, March 3, 2021. **Substitute motion failed by a vote of 5 AYE, 12 NAY, and 1 Absent/Excused. Voting in favor of the motion: Reps. Lickley, Wood, Kauffman, Davis, and Mathias. Voting in opposition to the motion: Chairman Gibbs, Reps. Moyle, Boyle, Vander Woude, Gestrin, Mendive, Blanksma, Addis, Moon, Manwaring, Okuniewicz, and Yamamoto. Rep. Rubel was absent/excused.**

ROLL CALL VOTE ON ORIGINAL MOTION: **Rep. Vander Woude** requested a roll call vote on the original motion to send **H 118** to the floor with a **DO PASS** recommendation. **Motion carried by a vote of 15 AYE, 2 NAY, and 1 Absent/Excused. Voting in favor of the motion: Chairman Gibbs, Reps. Lickley, Moyle, Wood, Boyle, Vander Woude, Gestrin, Mendive, Kauffman, Blanksma, Addis, Moon, Manwaring, Okuniewicz, and Yamamoto. Voting in opposition to the motion: Reps. Davis and Mathias. Rep. Rubel was absent/excused. Rep. Blanksma will sponsor the bill on the floor.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:27pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary