

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, February 28, 2024

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Burtenshaw, Vice Chairman Adams, Senators Guthrie, Den Hartog, Harris, Okuniewicz, Schroeder, Moser (Sammelroth), and Taylor

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

**MINUTES APPROVAL:** **Senator Harris** moved to approve the Minutes of February 9, 2024. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Guthrie** moved to approve the Minutes of February 12, 2024. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** **Committee Consideration of the Gubernatorial Appointment of Brody Harshbarger of Ashton, Idaho to the Idaho Fish and Game Commission** for a term commencing January 24, 2024 and expiring June 30, 2027. **Brody Harshbarger** presented before the Committee and shared some of his background and his interest in the Idaho Fish and Game Commission (Commission).

**DISCUSSION:** **Senator Harris** asked what some of Mr. Harshbarger's goals were as a Commissioner. **Mr. Harshbarger** responded that he had been involved with the Idaho Department of Fish and Game (IDFG) by going to meetings and trying to influence policy as a constituent, and he thought his insights based on this experience might benefit the Commission. His goals were to protect the wildlife of Idaho and the rights of constituents. He had concerns about the management of predator issues. **Senator Okuniewicz** asked for an example of an issue he was passionate about that he wanted to try to change as a Commissioner. **Mr. Harshbarger** responded that addressing problems with grizzly bears was the problem he was most frustrated about as a constituent. He shared some of his personal experience living with grizzly bears and his feelings about his voice not being heard when he tried to express his concerns. **Chairman Burtenshaw** asked how far Mr. Harshbarger lived from Yellowstone Park, and about his experience living so close to a grizzly bear habitat and with other predators, such as wolves. **Mr. Harshbarger** responded that he lived within 20 miles of Yellowstone Park. He shared his experience with wolves in his yard before they were de-listed and his frustration with the response by the U.S. Department of Fish and Wildlife.

**DOCKET NO.  
13-0108-2301**

**Rules Governing Taking of Big Game Animals - Proposed Rule.** No further testimony was taken. **Amber Worthington**, Deputy Director, Idaho Department of Fish and Game presented for further discussion. **Docket No. 13-0108-2301** was presented in Committee on January 17, 2024 and testimony was heard at that meeting. **Ms. Worthington** explained changes to this Docket related to the muzzleloader only season. As a result of concerns brought by sportsmen around the availability of projectiles, IDFG engaged in negotiated rulemaking and provided public comment opportunities. Changes included removing the words non-jacketed, changing lead or lead alloy to metal or metal alloy, and providing allowance for the use of pressure bases and polymer tips.

**MOTION:**

**Senator Okuniewicz** moved to approve **Docket No. 13-0108-2301**. **Vice Chairman Adams** seconded the motion. The motion carried by **voice vote**.

**S 1323**

**PUBLIC UTILITIES - Amends existing law to revise terminology and to clarify specified terms.** **Norman Semanko**, Attorney, Parsons Behle and Latimer, stated this legislation clarified that the jurisdiction of the Idaho Public Utilities Commission (PUC) did not include corporations or others owning, controlling, or operating a water system which delivered water to a single entity that was not subject to regulation by the Commission. It also confirmed that homeowners associations, cooperative associations, and water districts were not subject to regulation by the Commission. He shared supporting case law, including the Idaho Supreme Court decision in 1924, that held that the furnishing of water to one person or corporation under a contract did not constitute a delivery of water to the public. He referred the Committee to his handout and reviewed the types of water utilities and who regulated them. (Attachment 1) He advised that without this legislation the PUC could take over regulation of these types of utilities, many of them would fold and be absorbed into multinational companies, and costs to consumers would increase.

**DISCUSSION:**

**Chairman Burtenshaw** asked for an explanation of the term "water corporation" on line 23. **Mr. Semanko** explained this was the definition of what a water corporation did not include, so if you were a small water company and you delivered to an entity that was not defined as a corporation, you were not a water corporation. He referred to the updated definition of a corporation on lines 9 to 16. **Senator Harris** asked what the PUC thought of this legislation and if they thought it would be hard to administer. **Mr. Semanko** responded that the PUC Commissioner did not agree with him on this issue, and he had not received a response to his request to meet with PUC staff regarding this legislation. **Senator Okuniewicz** asked how the water for these single entities was regulated. **Mr. Semanko** responded that nothing in this legislation affected regulation by the Idaho Department of Water Resources (IDWR), water quality regulations, or water rights.

**MOTION:**

**Senator Schroeder** moved to send **S 1323** to the floor with a **do pass** recommendation. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

**H 467**

**IRRIGATION AND DRAINAGE - Amends existing law to revise provisions regarding certain special assessments.** **Representative Pickett** explained that excessive use fees and special assessments were used as a tool by irrigation districts to provide incentives for water users to adhere to their water rights and mitigation plans. This legislation increased the statutory limit for excessive use fees from \$100 to \$300 per acre foot of excess water use. He argued that \$100 per acre foot was now too low of a penalty to be effective.

**DISCUSSION:** **Senator Okuniewicz** asked how many gallons of water was an acre foot. **Representative Pickett** responded that an acre foot was twelve inches of water across one acre. **Senator Okuniewicz** asked if there were other deterrents, because even \$300 per acre foot did not seem to be much to discourage people from using excess water. **Representative Pickett** explained that this legislation tried to provide a disincentive, but it also allowed discretion by the Commission to pursue different avenues to address persistent problems. He provided an example of how this disincentive could be significant when considering rental rates. **Chairman Burtenshaw** asked if by raising the price per acre foot of excess water use, were they raising the purchase price of an acre foot of water. **Representative Pickett** responded that the cost of mitigation was already expensive, and this legislation simply tried to keep up with inflation and bring the cost of excessive use to what it would have been five or ten years ago.

**TESTIMONY:** **Paul Arrington** testified in favor of **H 467**. He addressed some earlier questions regarding this legislation as an effective deterrent, and he added that this legislation spoke to the authorities of the groundwater district, but the director of the Department of Water Resources also had authorities, and by failing to comply with your settlement agreement, you put yourself at risk of curtailment by IDWR.

**DISCUSSION:** **Senator Guthrie** shared a concern that someone could abuse their water right and their mitigation plan and pay a penalty, when their water should be shut off. **Mr. Arrington** responded that he would need to give the question about the economics of the price of water in this context more thought. He clarified that this legislation allowed a penalty up to \$300 per acre foot, with the groundwater district having the discretion to set the penalty amount. This was to allow for farm related economics in all areas of the state. He agreed that addressing overuse of water outside of water rights was a challenge for everyone, but this penalty was only one tool in the overall effort.

**Representative Pickett** emphasized that for someone in the farming business, curtailment was a serious threat. He thought this legislation might not be enough, but it was a step in the right direction towards making sure mitigation plans were effective.

**MOTION:** **Senator Harris** moved to send **H 467** to the floor with a **do pass** recommendation. **Senator Schroeder** seconded the motion.

**Senator Okuniewicz** reserved the right to change his vote.

**VOTE:** The motion to send **H 467** to the floor with a **do pass** recommendation carried by **voice vote**. **Senator Adams** requested to be recorded as voting nay.

**ADJOURNED:** There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 2:18 p.m.

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Senator Burtenshaw  
Chair

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Shelly Johnson  
Secretary