

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 05, 2018

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Senators Brackett, Heider, Vick, Bayer, Johnson, Stennett, and Jordan

ABSENT/ EXCUSED: Vice Chairman Siddoway

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 meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m. He announced that each Committee member has been given the 2017 Director's Annual Report from the Idaho Department of Water Resources and encouraged them to read it. He then asked the Secretary to call the roll.

MINUTES APPROVAL: **Senator Brackett** moved to approve the Minutes of January 17, 2018. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Johnson** moved to approve the Minutes of January 22, 2018. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Vick** moved to approve the Minutes of January 24, 2018. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Bair** said the gubernatorial appointment of Dr. John Rusche to the Idaho Water Resource Board to serve a term commencing August 31, 2017 and expiring January 1, 2019 was open for discussion or a motion. **Senator Bayer** said he would like to discuss this appointment. He felt there were some important issues, and further dialogue was needed. **Senator Bayer** said his concerns are in regard to the nature of the responsibility of the position and - for lack of a better term - politics.

Senator Bayer said he stated that with the utmost respect and recognition of the right to freedom of speech. Wearing elected "hats" and wearing appointment "hats" come with certain compromises with regard to those responsibilities. **Senator Bayer** stated he is referring to social media and commentaries in the media that can be rather frank and polarizing. These can cause concern in regard to when one has responsibilities in an elected or appointed position. **Senator Bayer** expressed his thought that it would be proper to have further conversations on the matter.

MOTION: **Senator Bayer** moved to hold the Gubernatorial appointment of Dr. John Rusche, subject to the call of the Chair, so that those conversations can constructively take place. **Senator Vick** seconded the motion.

Senator Stennett asked for clarification as to what the next steps are for reconsideration; she queried what those discussions would be. She inquired if this would be in front of the Committee or independently. She queried if this will be a litmus test to be applied to all appointees in the future. **Chairman Bair** replied that it is a litmus test that ought to be applied to all political appointees to the various boards and commissions throughout the State. **Chairman Bair** added that we ought to make sure that, especially on boards that are non-partisan in nature, there is a level of decorum and expectation.

Chairman Bair said he would be glad, and welcomed any Committee member, to visit with Dr. Rusche and share the sentiments that were expressed.

Senator Jordan stated that she is reluctant to support the motion; other appointees have not been as tactful as they might have been, and yet they were moved forward. **Senator Jordan** said Dr. Rusche is a person of great respect for the process and a person who would be willing to take any feedback and make the most of it. **Senator Jordan** said this is a step that is not needed. **Chairman Bair** stated that the Committee has held Republicans as well as Democrats in similar situations. A Republican nominee, at one point, did not get confirmed.

Senator Bayer said there is no question of respect. He stated that it is his intention to analyze an appointee without regard to political influence. He would have the same concerns if it came from a different facet of the political spectrum. **Senator Bayer** stated this is not a single incident that he is referring to. This is more of a transition of responsibilities and how that position is best served. **Senator Bayer** said the way forward is to have a healthy, clear dialogue with the Gubernatorial nominee and have professional exchanges to recognize those concerns. **Senator Bayer** said his motion was intended to facilitate that.

Senator Johnson said he has known Dr. Rusche for awhile and, often, they have disagreed; but it has never stopped them from being objective and serving honestly. He inquired as to the concerns and their validity. **Senator Johnson** stated that he does not have any reason to not support the nomination, but wants to respect the concerns of the Committee. He then asked as to how long it will take to complete the dialogue. **Senator Bayer** said he proposes as soon as possible, hopefully within this week, pending availability and scheduling.

Senator Brackett stated that it is important to not read into this anymore than what is there. He said this is not unprecedented, as other appointees have been questioned, then later confirmed. **Senator Brackett** said he thinks Dr. Rusche will perform well after he is approved.

**ROLL CALL
VOTE:**

Chairman Bair asked if there was further discussion and, hearing none, inquired if there were more motions. He then asked for a roll call vote on the motion to hold Dr. Rusche's appointment consideration, subject to the call of the Chair. **Chairman Bair** and **Senators Johnson, Bayer, Vick, Heider, and Brackett** voted **aye**. **Senators Stennett** and **Jordan** voted **nay**. The motion carried.

**GUBERNATORIAL
APPOINTMENT
HEARING:**

Chairman Bair invited Ms. Lori Thomason, Executive Director, Outfitters and Guides Licensing Board (OGLB), to introduce the two candidates who have been reappointed by the Governor, George McQuiston, Jr. and Robert Barowsky.

Chairman Bair welcomed Mr. Barowsky and asked him to speak first. **Mr. Barowsky** said his career has been in law enforcement for 35 years, 24 years as Payette County sheriff. He said he has appeared before this Committee several times, having previously served on the Idaho Fish and Game Commission. **Mr. Barowsky** said OGLB is a self-governing board that relies on the outfitters association to let them know what they expect from their members. Most of the recommendations address the health and safety of the association.

Chairman Bair inquired if there are, or have been, any particular issues that have arisen; if so, he inquired as to how it was resolved. **Mr. Barowsky** said there is one issue regarding tag allocation which is presently in a court review. Most cases have to do with guides' backgrounds and decisions are made as to approve the licensing or deny the licensing. Most guides follow the guidelines set forth, and OGLB ensures that those guidelines are followed.

Mr. Barowsky's public service history includes: Fruitland City Council from 1974 to 1980; Deputy Sheriff with Payette County from 1972 to 1980; Payette County Sheriff from 1980 to 2005; Idaho Fish and Game Commission from 2006 to 2015; and OGLB from 2015 to 2017. Mr. Barowsky's education and training include over 2,000 hours of training in law enforcement and receiving an Executive Certificate in 1999. He also studied criminal justice at Treasure Valley Community College from 1970 to 1972. Community service includes: 43-year member of the Fruitland Lions Club and 9 years on the Payette County Abatement District Board.

Chairman Bair thanked Mr. Barowsky for his service to OGLB and the community. He then welcomed George McQuiston, Jr. and asked him to address the Committee. **Mr. McQuiston** said this is his thirteenth season as an outfitter; he is the owner of Wild Idaho Outfitters, Inc. which is located in Challis, Idaho.

Senator Stennett inquired about the activities of OGLB and his reaction to them. **Mr. McQuiston** replied that it is a self-governing board, as Mr. Barowsky earlier stated, and he has been on the Board for four years. **Senator Stennett** asked if the Board is helpful to the industry. **Mr. McQuiston** replied that it is very helpful, as there is a critical need for a governing licensing agency.

Senator Heider asked Mr. McQuiston if he ever encountered other guides or outfitters who violated the code of ethics, and if so, how he would reprimand that person. **Mr. McQuiston** said it is seen often, but he has no jurisdiction in the field. As far as his company, he has a written policy. Most of the violations they might see are Fish and Game violations.

Mr. McQuiston's resume listed his skills and abilities as follows:

- licensed real estate principal broker;
- licensed Realtor;
- licensed outfitter/guide;
- former race team mechanic; and
- business owner.

Mr. McQuiston's education includes:

- Kearns High School, Kearns, Utah;
- Salt Lake Community College, Salt Lake City, Utah; and
- Stringham Schools, Salt Lake City, Utah;

Mr. McQuiston has many years of experience in several different types of businesses, and also as a real estate investor in properties in the Salt Lake City and Challis areas. He operates the Flying J Outfitters in Myton, Utah, as well as the Wild Idaho Outfitters in Challis, Idaho.

Chairman Bair thanked Mr. McQuiston and said consideration of the reappointments would occur at the Committee's next meeting.

He welcomed Paul Arrington, Executive Director, Idaho Water Users Association (IWUA), to present **RS 26017**.

RS 26017

Mr. Arrington said IWUA is an association of irrigation districts, canal companies, groundwater districts, and professionals throughout the State of Idaho. The association has a legislative committee that voted to present **RS 26017**. The amendments seek to update and modernize some drainage districts statutes to provide for more flexibility in the operation of a drainage district.

Mr. Arrington said the first proposed change seeks to provide more flexibility in setting the compensation for drainage district directors. Presently, compensation is set at \$50 for meetings that usually take a significant amount of travel and require one-half day or more. The second amendment seeks to clarify a limitation on assessments. The way the statute is written permits assessments to be issued for 20 percent of the original cost; there is some confusion as to what is applied. This seeks to clarify that the 20 percent only applies to warrants and bonds. It would also provide flexibility in the sale and trade of personal property.

MOTION:

Senator Brackett moved to print **RS 26017**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

INTRODUCTION:

Jane Whittmeyer, Whittmeyer & Associates, introduced representatives from the Southern Idaho Timber Protective Association and the Clearwater Potlatch Timber Protective Association. **Ms. Whittmeyer** invited the members of the Committee to a reception at the Wheat Commission Building to visit with these representatives.

**DOCKET NO.
13-0104-1701**

Chairman Bayer asked Sharon Kiefer to review **Docket No. 13-0104-1701** for the benefit of the Committee. This rule was held so that testimony could be taken from constituents who were unable to attend the previous hearing.

Ms. Kiefer, Deputy Director of Programs and Policy, Idaho Department of Fish and Game (IDFG), said this docket addresses two special tag programs that are authorized by statute. One program is a children's special needs tag that is only available to children who are terminally ill; the other is a special tag program for disabled American military veterans. The rule docket creates certain limitations on these tags, which exclude controlled hunts which have less than five tags. The tag is valid for only one of the following species: deer, elk, pronghorn, moose, black bear, or mountain lion. Any other open hunt for that species - whether it is a controlled hunt, general hunt, or a capped zone - would be available for use with that tag.

Up to five big game tags will be made available for children with life-threatening medical conditions each year. In order to be eligible for a special needs big game tag, the applicants must be a resident or nonresident minor (17 years of age or younger) and must have a life-threatening medical condition, as certified by a qualified and licensed physician. Furthermore they must be sponsored by a nonprofit organization that qualifies under Section 501(c)(3) of the Internal Revenue Code. A hunting license is not required to apply for, or receive, a special needs big game tag. However, an applicant must be accompanied by an adult who has a current hunting license. Applicants may receive only one special needs tag in a lifetime. Eligible applications will be randomly drawn for tag issuance if the number of applications exceeds the number of available tags. No more than one special needs tag will be issued to a nonresident unless there is an insufficient number of applications for resident applicants.

Ms. Kiefer said up to five big game tags will also be made available for disabled veterans, of which one tag will be designated to the Idaho Division of Veterans Services (IDVS) for a resident applicant. Eligibility for resident or nonresident disabled veterans to receive a disabled veterans special big game tag must be certified by the United States Department of Veterans Affairs. The applicant must also be sponsored by a nonprofit organization that is qualified under Section 501(c)(3) of the Internal Revenue Code, or by a governmental agency. Applicants may receive only one special needs tag in a lifetime. Hunter education requirements are waived and a license is not required to apply for, or receive, a disabled veterans special big game tag. Eligible applications will be randomly drawn for tag issuance if the number of applications exceed the number of available tags. Not more than one disabled veterans special big game tag will be issued to a nonresident, unless there is an insufficient number of applications for resident applicants.

Ms. Kiefer noted that there is one change of substance for the disabled American veterans special big game tag that does not apply to the special needs children's tag. Since the inception of this program, the IDVS has sponsored two disabled American veterans in a competitive process that includes an essay as to why this hunting opportunity would be important to them. Because they are a partner state organization, **Ms. Kiefer** said that IDFG felt there was legitimate interest in "hard-wiring" them in for a tag every year. Under this proposal, one of the five tags available would automatically go to the IDVS for a disabled American veteran resident.

DISCUSSION:

Senator Stennett inquired as to the demand for these tags for children and also the number of resident veterans versus nonresident veterans. **Ms. Kiefer** said she has already returned 15 applications. If there are children's unused tags by July 15, those remaining tags are then transferred to the veterans drawing; however, this year the demand is rising.

Senator Heider asked about the definition of a disabled veteran. **Ms. Kiefer** replied that the definition is a 40 percent or greater disability service rating as outlined in code.

Senator Brackett said the disabled veterans sponsoring organizations are one side of the equation. He asked for a further explanation. **Ms. Kiefer** said for these tags, there are no requirements for landowner participation and some of these organizations work directly with landowners and some have outfitters who are willing to provide the hunts at no cost. Freedom Hunters is an organization that typically hunts in north Idaho with a mix of public and private land. **Senator Brackett** asked if this applied to all tags. **Ms. Kiefer** said it does apply to all ten tags - children's special needs and the disabled American veterans.

TESTIMONY:

Bill Mulder, representing Tree Top Ranches (TTR), testified in support of IDVS and the job they have done in collaboration with TTR and the program. TTR had the honor and privilege of hosting the two veterans selected each year and provides necessary materials, except for personal items. **Mr. Mulder** stated that it is quite an adventure for veterans who might be confined to a wheelchair (Attachment 1) or who have lost their sight (Attachment 2).

Mr. Mulder said of those they have hosted, there has been a 100 percent record of success. It works very well to have two veterans on a hunt. The new rule proposes one tag, rather than two, to be designated to IDVS and the rest of the tags be put into a random drawing. **Mr. Mulder** said they are not in favor of random drawings. When this program was started, the intent was to provide the best experience to the most deserving, worst-wounded veterans. When TTR became involved, Dr. Wright, who was Chairman of the Idaho Fish and Game Commission, referred to it as "worst-wounded" program. **Mr. Mulder** said they understand IDFG's handling of tags, but the experience of TTR in this program, discretion is much more important.

Mr. Mulder stated that the current rule has worked extremely well, and in their opinion, the Committee should send the proposed rule back and work on some options, such as a more defined application form. **Mr. Mulder** said a random draw does not align with the intent of the program.

Mr. Mulder provided letters to the Committee from Tree Top Ranches (Attachment 3); Specialist Andrew Pike (Attachment 4); and David E. Brasuell, Administrator, IDVS (Attachment 5).

Jay Rosenthal, Attorney, said he was asked to be involved with this program since the beginning. He explained that disabled veterans don't cease to function, they just function differently - emotions are different and their confidence level is different. When two disabled veterans are together they work together and the hunt is more productive and successful. **Mr. Rosenthal** said the efforts of TTR to provide every service to the veterans has been well-received and he urged the Committee to keep the program as it is now.

Josh Callihan testified that he is a disabled veteran and works for the Department of Veterans Affairs at the Boise VA Medical Center. He was chosen to go on a hunt, and since that time, Mr. Callihan has stayed involved with the program. **Mr. Callihan** said he is concerned about the change in the rule which would remove one of the designated tags. He asked the Committee to consider the testimony of Mr. Mulder and Mr. Rosenthal.

Chris Tschida stated that he is a veteran and participated in a hunt. He was very thankful that another veteran was along on the hunt, as it helped to relieve some of the anxiety.

Chairman Bair thanked everyone that testified. He then asked Ms. Kiefer to make closing remarks.

Ms. Kiefer said the work done by IDVS with TTR has been phenomenal. Those tags have not been carved out specifically for IDVS, but because of the close agency relationship, they understood the existing rules and are committed to submitting the applications. **Ms. Kiefer** stated that she wanted to clarify the Idaho Code that describes 36-4087. It talks about notwithstanding any other provisional law. The Commission may issue permits or tags to disabled military veterans who have been certified eligible by a qualified organization.

Senator Johnson inquired if the various organizations determine what applicant is put in the pool for the random drawing. **Ms. Kiefer** said that is the role of the qualified organization to certify applicants.

MOTION:

Senator Brackett moved to approve **Docket No. 13-0104-1701** except for Subsection 901.01, and to form a special committee comprised of various interests to consider this rule and to make a recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Chairman Bair inquired of Dennis Stevenson, Administrative Rules Coordinator, as to the next step with regards to the House Resources Committee accepting the docket in its entirety. **Mr. Stevenson** replied that a concurrent resolution be made and presented to the House Committee to see if they would concur.

ADJOURNED: There being no further business at this time, **Chairman Bair** adjourned the meeting at 3:03 p.m.

Senator Bair
Chair

Juanita Budell
Secretary