

MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Monday, January 23, 2012

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippets, Werk, and Stennett

**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.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 p.m.

He welcomed **Mr. Jake Howard, Executive Director of the Outfitters and Guides Licensing Board**, and his staff, to the meeting. The **Chairman** then asked Mr. Howard to introduce the appointees to the Board.

**GUBERNATORIAL APPOINTEE:** **Mr. Howard** stated that the weather (and snow) has kept **Mr. Chris Korrell** from attending today's hearing and will come before the Committee at a later date. However, the other candidate, **Mr. Alex Irby**, is in attendance and will address the Committee. Mr. Howard said Mr. Irby has been reappointed by the Idaho Fish and Game Commission to the Outfitters and Guides Licensing Board for a term commencing May 31, 2011 and to expire May 31, 2014.

**SPEAKER:** **Mr. Irby** is from Orofino and has been a resource manager, sportsman and outdoor enthusiast from the Clearwater Region. Mr. Irby is a lifetime member of the Rocky Mountain Elk Foundation, National Rifle Association, Clearwater Basin Advisory Committee, past president of the Orofino Chamber and was a supervisor for the Clearwater Soil and Conservation District for 11 years. He also served two terms (1999-2007) on the Idaho Fish and Game Commission.

He felt that with his experience on the Idaho Fish and Game Commission, it will serve him well in the capacity of a Board member for the Outfitters and Guides Licensing Board. Mr. Irby stated that a great deal of the Board's time is spent on issues for the betterment of the public.

**Senator Werk** applauded Mr. Irby for the amount of time that he has spent in public service and also said that it is an honor to have Mr. Irby serve.

**Vice Chairman Bair** inquired as to what the main issues of concern are that are before the Board and asked how will they be solved? **Mr. Irby** replied that one of the concerns at the present time is the overlapping of allotments (bears, lions, and wolves), which started in the Clearwater Region. Some outfitters did not wish to hunt in some areas previously, but now it has become an issue. Another concern is outfitting on private land and the Board is working through that with the help of the Farm Bureau.

**Chairman Pearce** asked about what is being done about the predators. **Mr. Irby** replied that he thought the plan that is in place now is the answer to the problem. At one time, the Clearwater Region had the largest population of elk in the United States, but it is now down to a 50 percent reduction, which is at a bare minimum for the Clearwater Region. He feels it is really important to create a balance between the predators and the big game.

**Senator Siddoway** stated that he appreciated Mr. Irby's contribution to the Board, then inquired if the efforts to expand the industry (cross-country skiing, spending a day or two in a yurt in the backcountry, etc.) to create more revenue has been acted upon. **Mr. Irby** said there has been some interest, but not to the point that it has accelerated, probably due to the economy. **Senator Siddoway** then inquired about the finances of the Board. **Mr. Irby** replied that the finances are at rock bottom; however, they have retained their staff (with no increase in wages) and he praised Jake Howard and his employees for their diligence.

**Mr. Irby** said that last year they brought forth a RS for a fee increase, with the blessing of the outfitters, but it was rejected by this Committee. He indicated that they needed it then and still need it now and that they will be back with another request.

**Chairman Pearce** wondered how long it will take to rebuild the population of the elk in the Clearwater region. The response was that it is not only a predator problem, but also a vegetation problem. The Clearwater Basin Collaborative is working with the federal government to find money to restore this area. They have found that the summer range is lacking in good protein. **Mr. Irby** hopes that within 10 years they can show a dramatic improvement.

**Chairman Pearce** thanked Mr. Irby for talking to the Committee today and said that voting on his appointment would take place later.

The **Chairman** then introduced **Mr. Brian Patton**, with the **Department of Water Resources (IDWR)**, who will present RS 20904.

**RS 20904:** **Mr. Patton** said that the purpose of this RS would be to approve an appropriation of water by the Idaho Water Resource Board for the purpose of minimum lake levels in Cocolalla Lake.

**Mr. Patton** stated that Title 42, Chapter 15 of the Idaho Code lays out a process whereby the Water Resource Board may appropriate water for minimum streamflow, or minimum lake levels, purposes. The Board conducts its investigations, and based on the investigations, applies to the Department of Water Resources for a water right for these purposes. If the Department issues a water right permit for these purposes, it is submitted to the legislature for approval by concurrent resolution. This provides a check on the Board actions. However, if the legislature does not act on the concurrent resolution by the end of the legislative session, the minimum stream flow or minimum lake level water right shall be considered approved.

Cocolalla Lake is located along Highway 95 about 10 miles south of Sandpoint. It is about 800 acres in size, has public access and is heavily used for recreation purposes, including boating and fishing. In 2004, area landowners, through the Cocolalla Lake Association, petitioned the Water Board to establish a minimum lake level water right in the lake. The Board conducted its investigations and agreed that a minimum lake level water right is warranted and filed a water right application for this purpose. A formal hearing on this matter was heard in October of 2009 where representatives of the Cocolalla Lake Association spoke in support of this proposal and no one spoke in opposition. The Department issued an order approving this water right permit on January 15, 2010, which became final in January of 2011. It was then submitted for legislative review and approval to the current legislature.

**Mr. Patton** said the purposes for the Cocolalla Lake minimum lake level water right include the preservation of aesthetics, water quality, and recreational uses. This water right is junior in priority to all prior water rights from the lake, but would be senior in priority to any future water uses from the lake.

Questions from the Committee included one from **Senator Stennett** inquiring as to how the requirement for minimum levels are reached. **Mr. Patton** said that the term "minimum" in the statute refers to the minimum amount of water necessary for the purposes for which the water right is being established.

**Vice Chairman Bair** asked what would happen if the natural outlet of the lake changes? **Mr. Patton** stated that he doesn't think they have ever been faced with that situation and he does not have an answer to the question. **Vice Chairman Bair** then inquired if there were irrigators downstream and the reply was that there was a small number of irrigators downstream. **The Vice Chairman** asked if they would be adversely affected if this water right is granted for this minimum lake level and the reply from **Mr. Patton** was no.

**MOTION:** **Vice Chairman Bair** made the **motion** to send RS 20904 for printing. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**RS 20875:** **Vice Chairman Bair** said that a similar bill to this RS passed the House last year and when it was before this Committee, they saw some minor technicalities and problems with the bill. In his opinion, it has now been rectified. The bill is called the "Governor's Auction Tag" bill. It provides for the Commission to auction several tags every year to raise funds for the Department. The Commission may authorize up to three deer tags, up to three elk tags, up to three antelope tags, one moose tag, and may issue a goat and big horn sheep, depending on the population of those animals. Five percent of the proceeds may be kept by the non profit organizations who hold the auctions, 30 percent will go to sportsmen's access programs, and the balance of the money will be retained by the Department for use in wildlife habitat, wildlife management, research planning, and other programs.

**MOTION:** **Senator Tippetts** made the **motion** to send RS 20875 for printing. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

**RS 20970:** **Senator Heider** presented RS 20970. It proposes an amendment to the Constitution of the State of Idaho. He said that hunting, fishing and trapping are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people. The exercise of this right by the people shall not be prohibited but shall be subject to the laws, rules and proclamations of the State. The rights set forth herein do not create a right to trespass on private property, shall not affect rights to divert, appropriate and use water, and shall not lead to a diminution of other private rights.

**MOTION:** **Senator Tippetts** inquired of the Chairman if this legislation would be returned to the Committee for further discussion. **Chairman Pearce** indicated that it would. **Senator Tippetts** then made the **motion** to send RS 20970 for printing. The motion was **seconded** by **Vice Chairman Bair**.

**Senator Cameron** said that he has concerns with the words "subject to" on lines 23-24. **Senator Heider** responded by saying that the rights can be superseded by the laws that apply to those rights. **Senator Cameron** said that perhaps it could have been worded differently, such as, "to give the right (or protection)" and "but nothing in this article shall prohibit the Department of Fish and Game, or the State, to be able to manage ..... He said it would not be subtracting from the rights of the citizens by some law that a future legislature might pass. **Senator Cameron** said that he would like to visit with Senator Heider regarding this RS. **Senator Heider** thanked Senator Cameron for his views.

**Chairman Pearce** said that a motion had been made, and seconded, and he called for the vote. The motion **passed** by unanimous voice vote.

**PASSING OF GAVEL:** **Chairman Pearce** passed the gavel to Vice Chairman Bair, Rules Chairman. **Vice Chairman Bair** then called on **Mr. Shelley Keen, Idaho Department of Water Resources**, to present IDWR's pending changes to "Beneficial Use Examination Rules."

**Docket  
No. 37-  
0302-1101:**

**Mr. Keen** said the Beneficial Use Examination Rules establish acceptable standards for conducting examinations and reporting beneficial use. Some of the rules contain ambiguous language that causes confusion about the information to be provided. The proposed rule changes would alter or clarify certain examination requirements to make it easier for the Certified Water Right Examiners (CWRE) to complete reports. Complete, accurate reports result in water right licenses being issued more quickly. The proposed changes are important at this time because IDWR has a water right licensing backlog of about 3,500 permits, and they anticipate more examinations being conducted by CWREs to help address the backlog.

The most significant among the proposed changes are: (1) Clarifying that examinations for some water rights may be conducted without an "on-site" inspection; (2) Clarifying when the examiner must report an annual diversion volume and clarifying how annual diversion volumes are to be determined; (3) Establishing that an aerial photograph must be submitted with all field reports; (4) Removing the water measurement exemption for diversion systems where IDWR did not require the permit holder to install a measuring device or access port; (5) Clarifying that IDWR employees are not CWREs, but they may be authorized by the Director to conduct beneficial use examinations; (6) Conforming the descriptions of large tracts of irrigated land to the provisions of Section 42-2190, Idaho Code; and (7) Establishing that irrigated acreage shall be reported to the tenth of an acre for parcels of land covering less than 10 acres.

**Vice Chairman Bair** thanked Mr. Keen for explaining this rule and said that voting would be in a few days. There was no one in the audience that indicated their desire to testify for or against the rule. He then called on **Mr. Barry Burnell, Water Quality Division Administrator for the Department of Environmental Quality, (DEQ)**, to present the Rules for that agency.

**DOCKET  
NO. 58-  
0102-1101:**

**Mr. Burnell** said that he had several rules to present and each rule is intended to reduce costs to the regulated community, provide more flexibility, implement legislative directives, and/or remove unnecessary requirements. They will all benefit the regulated community while still providing the same degree of environmental protection.

The first one is the Water Quality Standards - Thermal treatment requirements. This rule benefits the dischargers to the Boise River and Indian Creek and was requested by these municipalities. In order for dischargers to discharge effluent into surface water in Idaho, they are required to have a National Pollutant Discharge Elimination System (or NPDES) permit. In Idaho, those permits are not issued by the State, but instead are issued by EPA. In issuing those permits, EPA does use Idaho's Water Quality Standards to set various effluent limits. As NPDES permits are coming up for renewal, EPA has begun including thermal effluent limits in permits. In doing so, it has been determined that two parts of Idaho's Water Quality Standards relating to temperature are outdated, thus potentially causing unnecessary expenses to dischargers getting permit renewals. This rulemaking was undertaken to update our Water Quality Standards to avoid causing inordinate thermal treatment costs to permit holders such as the City of Boise. Without this rule change, thermal effluent limits in NPDES permits and costs to meet those limits will be greater than needed to protect aquatic life resources. The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**DOCKET NO. 58-0102-1102:** This rulemaking was undertaken at the request of Idaho Power. DEQ proposes to revise its Water Quality Standards to include a site-specific temperature criterion for the Snake River from Hells Canyon Dam to the Salmon River. This change will make it easier for Idaho to meet our temperature water quality standards while still protecting the most sensitive beneficial use on this part of the Snake River, which is fall Chinook salmon spawning. This proposed rule, changes the temperature criteria for this stretch of the Snake River from 13°C to 14.5°C for the first 14 days of the fall Chinook salmon spawning period. It has been determined that this site-specific change will be protective of fall Chinook salmon spawning, while also conveying a benefit to other uses such as Idaho Power's Hell's Canyon Complex.

Studies have been conducted that demonstrate successful spawning at higher water temperatures than specified in the Water Quality Standards. In addition, the Snake River Fall Chinook Salmon population has demonstrated a significant recovery over the last 10 years. A site specific temperature standard was adopted by the Board in 2004 and approved by the legislature in 2005. This standard was based on the EPA Region 10 temperature guidance. Since that time, NOAA Fisheries and Idaho Power Company have conducted studies. David Geist has conducted controlled declining temperature research and published the data in 2006 specific to fall Chinook salmon.

There was a controversial issue regarding raising the water quality temperature criterion from 13°C to 14.5°C for 14 days in the Snake River below Hells Canyon Dam to the confluence of the Salmon River. Supporting the proposal is NOAA-NMFS, USFWS, and Idaho Power. Opposing the Rule change are the Tribes and Idaho Rivers United. EPA does not make pre-decisional comments on this rule, but does make specific comments that need to be addressed in DEQ's rule submittal. The DEQ reply to comments addresses these specific comments.

**DOCKET NO. 58-0102-1103:** This rulemaking implements the legislative direction provided in H 153 in correcting the antidegradation portion of the water quality standards. DEQ consulted with the Attorney General's Office to incorporate into the rule the language passed by the 2011 Legislature. All of the legislative changes were incorporated.

The Legislature rejected portions of the Water Quality Standard and approved the majority of the rule. The 2011 Legislature passed H 153 to replace the rejected sections. The sections that were rejected are the following: Definition of Degradation or Lower Water Quality; Treatment of General Permits; Identification of Tier II Waters; and Insignificant Activity or Discharge. House bill 153 also put into statute that Special Resource Waters shall be evaluated in the same fashion as all other waters.

Due to time constraints, the remaining Rules on the agenda will be heard at a future meeting.

**PASSING OF GAVEL:** **Vice Chairman Bair** returned the gavel to Chairman Pearce.

**ADJOURN:** **Chairman Pearce** adjourned the meeting at 3:00 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary