

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 07, 2012

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, 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: The meeting was called to order at 1:32 p.m. by **Chairman Pearce**.

APPROVAL OF MINUTES: **Senator Heider** made a motion, **seconded** by **Senator Siddoway**, to approve the minutes of February 15, 2012. The motion **carried** by a unanimous **voice vote**.
Senator Heider made a motion, **seconded** by **Vice Chairman Bair**, to approve the minutes of February 29, 2012. The motion **carried** by a **voice vote**.

CONFIRMATION HEARING: **Chairman Pearce** called **Chris Korell**, Outfitters and Guides Licensing Board, to testify.

TESTIMONY: **Mr. Korell** said he was born in Garden Valley in 1970 and he had an outfitting business for the past 17 years at the southwest Payette River in the Lowman area. He said he really liked serving on the Board, felt it was a real honor and this would be his second term. **Vice Chairman Bair** asked **Mr. Korell** to tell the Committee about the more difficult issues he has worked through over the last year or two. **Mr. Korell** said the economy was a real limiting factor and his business was operating at 30 to 40% of what they had been in the past 13 years. He said a lot of game was lost and they had to cut back on the number of clients. He commented that has turned around a little bit due to a slight improvement in the economy . He said that right now his business was 100% booked for the next year for the first time in four years. **Mr. Korell** said the elk population is starting to improve because Fish & Game helped with preservation.
Senator Tippetts asked **Mr. Korell** if there was a process for the outfitters and guides to give feedback to the Fish & Game. **Mr. Korell** replied yes, they have a representative on their Board from the Fish & Game and they have a good working relationship.
Senator Siddoway indicated since the Board wanted to enhance revenues a couple of years ago, one of the options was they were looking at offering cross-country skiing and spending the night in a yurt. He asked if **Mr. Korell** could tell him if there were any kind of outreach programs to bring in other nontraditional outfitters and guides to help offset some of the expenses of the organization. **Mr. Korell** said they are always looking to add these types of things, but it depended if it met the actual code and policy, for example, being a hazardous excursion. He said they have opened some doors and have added some new activities to help. **Senator Siddoway** asked if it helped and was it enough to offset the expenses or was the association still looking for some different enhancements, such as increasing licensing or anything like that now. **Mr. Korell** said he had hoped they had solved the problem, but anything is a help. He said he lost a number of licensed

outfitters in the last three or four years, but he said he didn't think it had solved the problem, but they were always entertaining new activities.

Chairman Pearce asked **Mr. Korell** what types of hunts did he book. **Mr. Korell** said all of their hunts were booked, including elk, mountain lion, bear, and wolves. He said they had seven wolf hunters this winter, which helped them financially and the land capability to keep the wolf numbers down. **Chairman Pearce** thanked **Mr. Korell** for coming and he indicated the Committee would vote next Monday, March 12 and he wished him good luck in having a successful year.

H 396: **Chairman Pearce** introduced **Brian Patton**, Department of Water Resources, who presented H 396.

PRESENTATION: **Mr. Patton** said that this legislation was to approve the Rathdrum Prairie Comprehensive Management Plan (RCAMP) as a component of the Comprehensive State Water Plan. The RCAMP was authorized by Sections 2-1734A and 42-1779, Idaho Code. The RCAMP establishes long term strategies to preserve Idaho's ability to manage its water resources for Idaho's need within a shared aquifer system. He then introduced **Helen Harrington**, Idaho Department of Water Resources, who did a slide presentation, a copy of which is attached to the minutes.

TESTIMONY: **Ms. Harrington** outlined the key elements of the plan. She said the key elements on pp. 3 and 4 were as follows: promote establishment of water rights by municipal water providers under the Municipal Water Rights Act of 1996; 2) Improve coordination with downstream interests, with Idaho taking the leadership role in framing the discussion; This plan is directed at water quantity, but recognizes the high quality water in the aquifer; Promote water conservation and efficiency to demonstrate good stewardship of the water resource and be a good neighbor as we share this resource.

TESTIMONY: **Bob Graham**, Water Resource Board Member from Bonner's Ferry, gave a brief history of the planning of the Rathdrum Prairie Aquifer Management Plan. He said there was a great demand from that aquifer from the state of Washington, in particular from Spokane. Some of the legislators and people from northern Idaho were wondering why southern Idaho got all of the attention and nothing was happening in northern Idaho. There were two requests for extreme heavy water use of the Canadian natural gas pipelines that come down from Canada through this area into California. A few years ago, a couple of different outfits put in an application for use of that gas for power generators. He said the amount of water needed was tremendous. At that time, the applications were turned down.

Mr. Graham said the committee was a good cross-reference of the people and the stockholders in the Rathdrum area and it became a very effective committee. He said he thought they had a good plan and he hoped the Committee could see that and could pass on it and get it finalized. He said there was a good 50 years of water, which was unique to Idaho. That made it a little easier to deal with and cut down on the major concerns opponents may have had.

TESTIMONY: **Mr. Patton** concluded the presentation and said he would stand for any questions.

Vice Chairman Bair said he was curious about the stability of the Rathdrum Aquifer and asked if it was in a state of decline. He said that with all of those lakes feeding into it, it looked like a very stable aquifer. **Mr. Patton** said the aquifer was very stable and they have not seen any major declines on this aquifer. What he has seen, however, is where the aquifer discharges into the Spokane River downstream of the state line. They have seen some declines in flow to those springs and that is what has the state of Washington looking upstream, saying that Idaho needs to limit their water use and stop issuing water rights. So this has led to a little bit of tension between the two states. **Vice Chairman Bair** asked how much of that water has been appropriated for use. **Mr. Patton** referred this question to **Ms. Harrington**. **Ms. Harrington** stated this was a prolific aquifer.

Senator Heider asked **Mr. Patton** how much money was going into the Rathdrum Plan. He said the state money was used in the development of the plan in 2008. He said there were several different things being paid for by that fund. **Mr. Patton** said they did not anticipate any money being provided from the general fund. They will use the allocation of funds in a case-by-case basis.

Senator Brackett asked **Mr. Patton** if he could assure the Committee that the local water users and residents that they are fully on board with this plan. **Mr. Patton** said yes, the local folks were fully on board with this plan. He said the Water Resource Board appointed an Advisory Committee that represented cities, agriculture, the power company in the area, the local Indian tribe and other users. There was very broad-based support from this group of Advisory Committee members.

Mr. Patton said he was not sure that the individual homeowners with individual wells were not actively represented on the Advisory Committee. He said, though, the plan should not affect them in any way. **Senator Brackett** asked **Mr. Patton** if it would be possible for his team members to confirm what he just said.

Ms. Harrington asked **Senator Brackett** if he was asking about representation in support of this plan. He said not necessarily about representation, but, at the end of the day, is there broad local support for what is being done here. **Ms. Harrington** said yes because they did hold a hearing with public notice to provide any testimony to hear any opposition and they did not receive any. Much like any group of people brought together in Idaho, some may be representing the city of Coeur d'Alene but they might have had a private well. She thought there was an involvement from people by the multiple roles they play. She stated again they have not heard any opposition to this plan. The area this covers is part of phase 1.

Mr. Graham stated that when the original Rathdrum Plan was done, there was a line drawn designating the aquifer and that line was on the Bonner-Kootnai County line. In a very short period of time when they started this, someone from one of the federal agencies recognized that the aquifer went beyond the Bonner County line and went north of it about 2 or 3 miles and covered only a portion of Bonner County. That created some waves because the bottom part of that line included this very southern hand of Pend Oreille Lake. A few of the Idaho legislators were very concerned about why that line moved to start with and whether or not that move was necessary. The answer was that it moved because somebody realized that the aquifer was out there and the plan was to study the entire aquifer. For that reason it was moved and for no other reason. He said after we met with the Idaho legislators and explained to them how and why that happened, he was pretty sure they were satisfied. He commented we met with the legislators during the study process and that did not come up again.

Senator Brackett said he wanted to be supportive, but he wanted to have assurance, which he thought they had received, that this was what people wanted.

MOTION: **Vice Chairman Bair** made a motion, **seconded** by **Senator Heider** that H396 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a **voice vote**. **Senator Keough** will carry this bill on the floor with **Vice Chairman Bair** as an alternate.

H 397: **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented this bill.

PRESENTATION: **Mr. Semanko** said this legislation changed the dates when an unopposed irrigation district director candidate shall be declared elected from five days after the written nomination deadline expires to the next regularly scheduled meeting of the board of directors. He said he was asking to eliminate the provision for a special election when the irrigation district director candidate was unopposed.

MOTION: **Senator Tippetts** made a motion, **seconded** by **Senator Siddoway** that H397 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a **voice vote**. **Senator Tippetts** will carry this bill on the floor.

H 399: **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented this bill.

PRESENTATION: **Mr. Semanko** said this legislation provides that proposed appropriations of water involving the use of diversion works or the irrigation system of a canal company or irrigation district require the consent of such company or district prior to approval.

He said all they were doing was mirroring the language and concept in 42108 for transfers and having the same requirement for the appropriations of water. **Mr. Werk** said he wanted to make sure that he was fully comprehending and he said he thought **Mr. Semanko** said that currently if a new water right was granted that, but he was not sure if he was saying that under current law, the person or the entity that gets the right can automatically use the elements that would be involved in transferring the water with the district or whether or not he was saying that right now the district can say no. **Mr. Semanko** said it is the latter. He said 42108, the transfer statute, requires that whenever someone is seeking, for example, **Senator Cameron** wants to transfer his portions of his irrigation use to Washington state, the irrigation district has to consent to that transfer because his potential change could affect everyone in the entire system and so that was the rationale. It is curious, he said, that for appropriations there is no corresponding requirement because obviously there can be an impact there too, but it is the latter. There has to be some permission granted at some point for a new appropriation wanting to use the canal facilities.

Senator Werk asked **Mr. Semanko** if there could be an instance under the language that you have here that an irrigation district or such corporation could say no, simply no and never grant consent. **Mr. Semanko** replied he thought this would be read the same as 42108 that requires that consent. If the irrigation district determined it didn't make sense or it wasn't going to work for the facilities or the other users in that canal entity, then this does allow them to say no. If it is going to be consistent with 42108, and he is not aware this was going to happen all of the time, but he is sure there have been circumstances where they have said no, this won't work for the shareholders at large in the canal company, but the answer is yes.

MOTION: **Senator Cameron** made the motion, **seconded** by **Vice Chairman Bair** that H399 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a **voice vote**. **Senator Cameron** will carry the bill on the floor.

H 400: **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented this bill.

PRESENTATION: **Mr. Semanko** said this legislation establishes a statute of limitations of two years for stream channel alteration violations. This limitation is identical to the existing limitation for environmental quality violations under Idaho Code Section 39-108.

Senator Stennett asked what determined the two years for a statute of limitations. **Mr. Semanko** said they looked at 39-108, which is an existing code section in the DEQ code. He said it is very broad and as far as he could tell from reading it that all environmental quality violations were handled by DEQ, so they didn't want to be less restrictive than that.

Chairman Pearce asked **Mr. Semanko** that if someone put a head gate on a stream or something that they didn't get permission to do, in two years of nothing being done about it, they would no longer be in violation of the statute? **Mr. Semanko** said that assuming that it was a violation of a Stream Channel Alteration Act, his understanding was the way the statute of limitations works was that from the time the perceived problem is discovered or should have been discovered by the agency, that two year statute runs. However, it works in the DEQ it would work the same in the IDW world. After that two year period, unless there has been a renewed problem, a new potential violation from that two year period running, that statute of limitations would be done. If someone was sued in the third year, they would have the opportunity to raise the defense, as they do now under all of the environmental laws, except this one, apparently. They would raise the statute of limitations as their defense.

MOTION: **Vice Chairman Bair** made a motion, **seconded** by **Senator Siddoway** that H400 be sent to the floor with a "**do pass**" recommendation. The motion **passed** by a **voice vote**. **Vice Chairman Bair** will carry the bill on the floor.

H 401 **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented this bill.

PRESENTATION: **Mr. Semanko** said this legislation provides a process for the transfer of lands between irrigation districts through exclusion from one district and annexation into another. He said they have been working on this for two years. There is no process in the code and they are asking the Committee to support this concept and have the attorneys work on developing the language. He said both irrigation boards would have to agree to this. He explained that one irrigation district would exclude the lands from their district using the existing process in the code and the other one would annex the lands in their district using the existing process. The land owners that would be impacted need to be involved in this. There is a procedure for appeals, for decisions and the criteria that need to be considered. He said he felt this was drafted very tightly and provides a process, which is much better than a hodge-podge. He feels it will provide a great deal of flexibility as they continue to organize, particularly in this valley and in Bonneville County and allow the irrigation districts to cooperate to have a process to do that. This is supported by the Water Users of Idaho.

Vice Chairman Bair asked **Mr. Semanko** if there was a provision so that water district members from both water districts can vote on the decision that has been made or was that just an arbitrary board decision. **Mr. Semanko** said he hoped the decision by the district was not arbitrary because the board takes their job seriously, but more importantly, the code section does lay forth the criteria that needs to be considered and included in the resolutions. He referred to page 2, section 431123. Both of the districts proposing to do the transfer of lands would need to adopt the resolution either separately or jointly. These folks are ultimately responsible to the landowners and the district at regular elections. The following items need to be identified by the annexing district, the legal description, the reasons for the transfer, that it is in the best interest of the land owners, etc. There are 11 criteria. Notice has to be provided, there is a hearing where people get an opportunity to

comment and then the decision is rendered through the order that is appealable and then it is recorded. Irrigation district 1 could vote to exclude the land and irrigation district "b" could vote to annex the land, but there would be no requirement that any of these criteria would have to be considered. It would not be voted on by all of the landowners in the district.

Vice Chairman Bair asked what would be wrong with the shareholders of the water district having an opportunity to vote on a resolution rather than just the water voters. **Mr. Semanko** said he supposed it could be structured that way and he guessed it affects one person or a couple of people in the district whose lands are being transferred and the board is able to hear that testimony and make a decision. He said he didn't know how that worked and he didn't know how that criteria would be considered. The Board is charged through the statute with the responsibility to consider all of these criteria and then make a decision that can then be appealed if it is something folks feel injures them. However, with elections, it is not something one could appeal.

Senator Stennett asked **Mr. Semanko** if everything originates and runs through the Board, she was trying to think of a situation when she was told there was a possibility of a group who may want to withdraw and create a new district before they could move themselves over to the new district. It is something that may impact her area, and she was wondering if this new legislation is something that is guiding and directing and in the end the determiner would be the Board of Directors and whether that is possible.

Mr. Semanko said they have had this discussion. He said this legislation does not relate to that situation. This would be a transfer of lands between two existing irrigation districts. The idea of an irrigation district breaking apart and having separate districts or whatever would be something that would have to be done in a separate piece of legislation or maybe an attorney could figure out how to do it under the existing code. He said he believes creating a new irrigation district requires going through the County Commission process.

MOTION: **Senator Siddoway** made a motion, **seconded** by **Senator Heider** that H401 be sent to the floor with a "**do pass**" recommendation. The motion **passed** by a **voice vote**. **Senator Siddoway** will carry the bill on the floor.

S 1378: **Norm Semanko**, Executive Director of the Idaho Water Users Association, asked that this bill be continued until next week on Wednesday if possible. He said they had a serious issue and they want to discuss it with the Committee, but they don't want to waste their time today. They have indications from FEMA that they need to talk with them additionally about this language and they don't want to try to force anything and they need to work with them. The Director of Homeland Security, who is an integral part of working with FEMA, had a death in the family and he was attending the funeral today and he will be back on Monday. They want to try to find a way to salvage the particular language and this is already the second version. This is a replacement bill and it has forced the discussion between agencies.

MOTION: **Senator Tippets** made a motion, **seconded** by **Senator Werk**, that we hold S1378 **at a time certain**, which would be up to the discretion of the **Chairman**. The motion **passed** by a **voice vote**.

Senator Werk asked that for the record, that he noticed the authorization for the background check that was delivered to him for **Mr. Korell**, has a social security number on it and on others it was blocked out. There have been requests, and he said he thinks these are coming from the Governor's Office, but it seems inappropriate for us to have that kind of personal identification and he would love to have it so the Governor's Office insures that we don't see social security numbers.

ADJOURNMENT: **Chairman Pearce** adjourned the meeting at 2:30 p.m.

Senator Pearce
Chairman

Linda Kambeitz
Secretary