

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 14, 2013

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Stennett, and Lacey

**ABSENT/
EXCUSED:**

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 Pearce** called the meeting to order at 1:30 p.m.

**INTRO-
DUCTIONS:** He introduced the Committee's newest member, **Senator Roy Lacey**, who is from Pocatello, and welcomed him to the Senate Resources and Environment Committee. **Chairman Pearce** also introduced and welcomed the Committee's Page, **Michael Swanson** from Rigby.

Chairman Pearce said the first order of business would be to introduce four RS's for printing and called on **Ms. Sharon Kiefer, Deputy Director, Idaho Department of Fish and Game (IDFG)**, to present them.

RS 21607 **Ms. Kiefer** said the purpose of RS 21607 is to revise provisions relating to disease research and to remove obsolete language in Section 36-107, Idaho Code. Moneys received from the sale of licenses, tags and permits are deposited in the account of the Fish and Game. Each year, by August 1, \$100,000 is transferred to the University of Idaho Caine Veterinary Teaching and Research Center and the state wildlife veterinarian for disease research regarding the interaction of disease between wildlife and domestic livestock. As there is no longer a state wildlife veterinarian, the money will instead go to the Director of the Department of Fish and Game.

MOTION: **Senator Siddoway** made the motion to send RS 21607 to be printed. The motion was seconded by **Vice Chairman Bair**. The motion **passed** unanimously by voice vote.

RS 21619 **Ms. Kiefer** stated that this legislation would exempt duplicate licenses and tags from set-aside account provisions of the dedicated Fish and Game Fund because the set-aside account provisions are met at the time of the original license or tag purchase. It would also exempt disabled combination and fishing licenses from the set-aside provision in Section 36-111(b), Idaho Code because a disproportionate amount of the disabled licenses, which are the lowest cost licenses, is directed to the set-aside account from other combination and fishing licenses. This would provide for broader use of these license funds to uphold disabled customer services.

MOTION: **Senator Cameron** made the motion to send RS 21619 to be printed. The motion was seconded by **Senator Stennett**. The motion **passed** unanimously by voice vote.

RS 21625 Currently, there are multiple junior and youth hunting licenses, which are confusing to customers. This legislation would consolidate the licenses currently available for young hunters. Current age limitations for hunting turkey and big game and existing mentor requirements would not be changed. **Ms. Kiefer** indicated there would be no fiscal impact to the general fund or to the dedicated Fish and Game Fund.

MOTION: **Senator Tippets** made the motion to send RS 21625 to be printed. The motion was seconded by **Senator Heider**. The motion **passed** unanimously by voice vote.

RS 21630 **Ms. Kiefer** said RS 21630 is to provide for three year licenses, rather than purchasing annually. A license survey showed high interest by customers in a three year license costing three times the annual fee, with only one vendor issuance fee required.

MOTION: **Senator Brackett** made the motion to send RS 21630 to be printed. The motion was seconded by **Senator Cameron**. The motion **passed** unanimously by voice vote.

PASSING OF GAVEL: **Chairman Pearce** thanked Ms. Kiefer for her presentation of the RS's. He then passed the gavel to **Vice Chairman Bair** who will conduct the hearing on the Pending Rules for the Idaho Fish and Game Commission.

DOCKET NO. 13-0102-1201 **Ms. Kiefer** said the Commission was authorized to promulgate rules to establish a mentored hunting program. The mentored hunting program will allow a person who is interested in trying hunting to participate in hunting without completing hunter education or purchasing a hunting license for one calendar year. The person must obtain a Hunting Passport from IDFG and be accompanied by a mentor who holds a valid Idaho hunting license and is at least 18 years old.

MOTION: **Senator Tippets** made the motion to adopt Docket No.13-0102-1201. The motion was seconded by **Senator Siddoway**. The motion **passed** unanimously by voice vote.

DOCKET NO. 13-0104-1201 **Ms. Kiefer** stated that this rule establishes the framework for issuing and use of the Governor's Wildlife Partnership Tags. Also, the outfitter allocation rule is amended to allow equitable adjustments in resident and nonresident elk tag allocation where resident demand exceeds tag availability and nonresident tags are under-subscribed. The date at which unsold nonresident deer and elk tags may be sold to residents or nonresidents as a second tag is changed to August 1.

MOTION: After some discussion, **Senator Siddoway** made the motion to hold Docket No.13-0104-1201 in Committee. The motion was seconded by **Chairman Pearce**. The motion **passed** by voice vote, eight ayes and one nay.

Vice Chairman Bair asked Ms. Kiefer and Mr. Burkhalter to see what the ramifications would be if subsection 701.01.c (disqualifying a person) was stricken.

DOCKET NO. 13-0104-1202 **Ms. Kiefer** explained that the Commission proposes three changes to the Landowner Appreciation Tag (LAP) program. (1) Implement a one year waiting period for those who draw antlered deer and elk LAP hunts that are oversubscribed by a ratio of 2:1 or greater; (2) Apply LAP allocation of an additional 10 percent of regular controlled hunt permit levels to all LAP hunts; and (3) Define "designated agent(s)" as referenced in Idaho Code, Section 36-104(b)(5)(B) as immediate family, youth, disabled veterans, and/or direct employees as valid designations to receive LAP tags.

Senator Tippetts inquired about the language on page 17 regarding negotiated rulemaking. He said that he didn't see in any of the Department's pending rules where any negotiated rulemaking was conducted, and quite often the reason given was because the issue was controversial or divisive. The Senator then asked for justification of why the Department does not use negotiated rulemaking more often than it does. **Ms. Kiefer** stated that on this particular subject matter (which the Fish and Game Advisory Committee has achieved significant consensus on certain elements of the program), there were elements that either the Committee, Sportsmen, or Landowners, outside of the Committee, were not in consensus on. Because of that, the Commission did request that these Rules be brought forward, based on some substantial long-standing input that they had had from Sportsmen about the LAP process.

Senator Tippetts inquired as to the last time the Department conducted a negotiated rulemaking process. **Ms. Kiefer** deferred the request to **Mr. Dallas Burkhalter, Deputy Attorney General, assigned to the Idaho Department of Fish and Game and to the Idaho Fish and Game Commission.** **Mr. Burkhalter** said that the Commission has not utilized negotiated rulemaking.

Senator Tippetts then asked Mr. Burkhalter if he sees that policy as being contrary to the guidelines in the Administrative Procedures Act which says that "...agencies shall proceed through such informal rulemaking whenever it is feasible to do so ..." The Senator said it sounds like a mandate to him and asked Mr. Burkhalter to comment. **Mr. Burkhalter** said that it was his understanding that the Commission and Department had made the determination that it was not feasible. **Senator Tippetts** said that he would like the Department to at least reconsider whether or not negotiated rulemaking ought to be involved in the process. **Ms. Kiefer** said that she would relay the Senator's guidance.

Senator Cameron also expressed his thoughts regarding the subject of the negotiated rulemaking process and totally agreed with Senator Tippetts. He stated that he is inclined to not support rules that do not go through that process.

Chairman Pearce also agreed with Senators Tippetts and Cameron, then stated that the Commissioners and the Department had essentially brought the fight to the Legislature, rather than taking care of it last summer. **The Chairman** said he and the Committee do not appreciate being the "fall guys" on this rule. **Ms. Kiefer** said the Commission was advised that this rule would be very controversial.

TESTIMONY: **Mr. John McCallum** said that his ranch is in Unit 45 and they control 30,000+ acres and own 80,000 acres in the state of Idaho. On their lower property, there are over 1,000 cow/calves and 130 bulls. He said Unit 45 is rather unique as it is mostly privately owned and that is where the game stays. Mr. McCallum feels this new ruling is very unfair. At times, he has observed from 1,000 to 2,000 deer and/or elk in his fields and they eat the hay when the cattle are fed. He feels that being told he may or may not receive LAP tags is wrong.

TESTIMONY: **Mr. Rod Gonzales, manager of Camas Creek Ranch,** said the ranch is comprised of 33,000 acres in Unit 45 and 5,500 acres in Unit 52. The rules were changed in 2011 that took the landowner tags from two to one and stated that he is not totally against the additional changes.

Senator Siddoway inquired of **Mr. Gonzales** if he participated in any of the depredation tags that are available on his land. The reply was that he received five cow tags and well over 1,000 elk are on their place. They are on irrigated crops, which are barley and wheat. When asked if he received depredation payments, he said no - but if the rule goes into effect, then he will definitely apply.

TESTIMONY: Next to testify was **Mr. Larry Williams, owner of Tree Top Ranches**. He provided the Committee with a booklet containing his testimony and other pertinent information.

He said they are a medium-size cow-calf operation with ranches in Idaho and Oregon and he will only speak about the happenings in Unit 45. The ranch had been heavily grazed when they purchased it in the mid 90's, so they cut back on grazing and now manage for cattle and wildlife. For the past several years, the ranch has supported around 50 elk in the spring and summer, and a herd of 300-500 in the fall. Bear, moose and many other species of wildlife are also supported there.

Not only has Tree Top Ranches provided significant wildlife habitat, but they have provided access and hunting opportunities for many sports - men and women. Their general rule is "over 80, under 15, or a worst-wounded veteran". Over the past five years, 31 out of 38 hunters have fallen into these categories.

Mr. Williams said that one of their primary objectives with Bennett Mountain has been to provide very high-quality hunting experiences for people who might not otherwise be able to do so on public lands. They drafted a Bennett Mountain wildlife trust designed to protect this opportunity for generations to come, but it is "on hold" because of their concerns about how game management and hunting regulations could be politicized. He stated that the proposed rule change is a good example of that concern.

Mr. Williams indicated that if the Commission doesn't care enough about what they have accomplished in Unit 45, and won't provide landowners with reasonable opportunities to hunt or to be compensated for the forage consumed by wildlife, then Tree Top Ranches will totally eliminate all hunting access to their properties in Units 31, 44, and 45. He urged the Committee to reject the proposed rule change and to also be aware that the Idaho Fish and Game Commission has severely harmed habitat efforts and damaged landowner relations in Unit 45 with this kind of proposal.

Vice Chairman Bair asked Mr. Williams, if he could be "king for a day", what would the LAP program look like to him? **Mr. Williams** responded by saying if he had the same amount of property in Oregon as he does in Idaho, he would receive 15 wildlife tags to do with as he pleased. The tags could not be sold, but they could sell access, which would generate dollars for them and help to replace dollars lost for cutting their herds back. He said they went from 4,500 animal unit days (which is 300 head for five months) to 975 animal unit days. **Vice Chairman Bair** then inquired if it would be important to Mr. Williams to sell the tags outright, sell for access rights, or keep for himself? **Mr. Williams** stated that he would not sell them, just use them to give to older folks to have a hunting experience.

Chairman Pearce stated that he wanted to express his gratitude to Mr. Williams for what he has done for the veterans.

TESTIMONY: Written testimony was submitted by **William J. Mulder, an authorized representative of Tree Top Ranches**, and is on file. Part of his testimony stated "the pending rule is contrary to the habitat and access intents of the LAP. The pending rule has no biological benefits. We believe the LAP should be about habitat, not a social program. For these reasons, we respectfully request that the Committee NOT adopt pending rule Docket No. 13-0104-1202."

- TESTIMONY:** Next to testify was **Mr. Charles Henry**, a retired teacher and a sportsman for many years. In 1999 and 2000, he served on the Wildlife Advisory Committee and said that most of their time was taken up with LAP issues and he feels that he is well-versed. He said that he is acquainted with many of the landowners in Unit 45 and they feel that for the last 12 or 13 years, the program has been workable. In Region 4, where most of the LAP tags occurred, there was a greater number of landowners and the amount was increased from 10 percent to 25 percent in 2009. Now, that has been reversed. Another issue is the one year waiting period. **Mr. Henry** feels that does not show appreciation.
- TESTIMONY:** **Mr. Wally Butler, Range and Livestock Specialist for the Farm Bureau**, testified in opposition to Docket No. 13-0104-1202. The Farm Bureau is also concerned about the lack of use of the negotiated rulemaking process and would like to be involved.
- Senator Siddoway** said that his ranching operation participates in the LAP program and he sees problems with the program. He also declared a conflict of interest, according to Rule 39, and said that he does intend to vote on Docket No. 13-0104-1202.
- MOTION:** **Senator Siddoway** made the motion to hold Docket No. 13-0104-1202 in Committee for time certain. The motion was seconded by **Chairman Pearce**.
- Senator Cameron** inquired as to what Senator Siddoway intended to do. **Senator Siddoway** indicated that he would like some time to talk to the Commissioners regarding this issue. **Senator Cameron** said that he felt since the rule did not go through the negotiated rulemaking process, the only way to make the Commissioners go through the process is to reject the rule and start over. **Chairman Pearce** withdrew his second to the motion and **Senator Siddoway** withdrew his motion.
- MOTION:** **Senator Siddoway** then made the motion to reject Docket No. 13-0104-1202. The motion was seconded by **Chairman Pearce**. The motion **passed** by unanimous voice vote.
- DOCKET NO. 13-0107-1201** **Ms. Kiefer** said they have been working on bringing clarity to the Motorized Hunting Rule and this docket rescinds the Motorized Hunting Rule from this chapter of rules, which are rules governing the taking of Upland Game Animals.
- MOTION:** **Senator Stennett** made the motion to reject Docket No. 13-0107-1201. The motion was seconded by **Senator Lacey**.
- TESTIMONY:** **Mr. John Robison, Public Lands Director, Idaho Conservation League**, said that he represents 20,000 members and supporters, and on their behalf, he expressed opposition to the proposed rule change. He said they do support changes to motorized rules where it would increase public involvement, make them more understandable, and more comprehensive. He asked that the Committee reject this rule.

Senator Siddoway inquired if there were any public hearings and **Ms. Kiefer** responded in the affirmative. She said they had an email distribution list of many names, including Mr. Robison, as to when the Commission was taking out these rules, as well as when the rules would be published in the Administrative Bulletin. **Ms. Kiefer** said that Mr. Robison's group did comment on the Administrative Bulletin publishing, specifically to sage grouse. This docket is specific to Upland Game Animals, not Upland Game Birds, so it has nothing to do with sage grouse in this particular docket. This docket deals with rabbits and the Commission's rationale was the biological vulnerability, which is a cornerstone of the Motorized Hunting Rule when it was developed for big game hunting, and is not an issue for Upland Game Animals.

Chairman Pearce asked if it involved only rabbits? **Ms. Kiefer** said yes, cottontail rabbits.

Senator Lacey withdrew his second to the motion made by Senator Stennett. **Senator Stennett** withdrew her motion.

MOTION: **Senator Siddoway** made a motion to adopt Docket No. 13-0107-1201. The motion was seconded by **Chairman Pearce**. The motion **passed** by unanimous voice vote.

PASSING OF GAVEL: **Vice Chairman Bair** announced that the remaining dockets on today's agenda will be heard on Wednesday, January 16. He then passed the gavel back to **Chairman Pearce**.

ADJOURNED: **Chairman Pearce** thanked everyone for their participation, then adjourned the meeting at 3:03 p.m.

Senator Pearce
Chairman

Juanita Budell
Secretary