

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 13, 2013

TIME: 1:30 P.M.

PLACE: Room WW55

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

ABSENT/ EXCUSED: Chairman Pearce

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: **Vice Chairman Bair** called the meeting to order at 1:30 p.m.

MOTION: **Senator Heider** moved that the minutes of February 4th be approved. **Senator Siddoway** seconded the motion. The motion carried by **unanimous voice vote**.

Vice Chairman Bair introduced Mr. Curt Fransen, Director, Department of Environmental Quality (DEQ), who will speak to the Committee regarding the "Fish Consumption Study".

SPEAKER: **Director Fransen** provided some background involving this study and this report is very similar to the presentation that he made earlier to JFAC. In July 2006, DEQ submitted updated Water Quality Standards to the Environmental Protection Agency (EPA) which included new, more stringent human health based criteria for toxic pollutants allowable in Idaho waters. The Clean Water Act requires EPA to review and approve or disapprove state water quality standards. EPA took no action regarding Idaho's 2006 standards for nearly six years until disapproving them in May 2012.

Though EPA publicly supported Idaho's revised toxics criteria in 2006, EPA's ultimate disapproval asserted that DEQ did not adequately consider information regarding local and regional fish consumption. The amount of fish consumption is important in calculating safe levels of toxic substances that are allowable in water. Human consumption of fish is a primary way we can be exposed to toxic substances that are in the water where such fish live. In other words, toxic substances in water can concentrate in fish which, if consumed by humans, can cause unacceptable health risks. The pollutants they talked about, the standards that were disapproved included water quality criteria for 88 different toxics. This includes substances such as benzene, cyanide, carbon tetrachloride, and polychlorinated biophonyls (PCBs).

Prior to 2006, Idaho's human health criteria was based on a fish consumption rate of 6.5 grams/day which is about 7 ounces of fish per month. The 2006 criteria which EPA disapproved were based on EPA's national recommended "default" rate of 17.5 grams/day which is about 4 ounces of fish per week. Contrary to EPA's assertion, DEQ selected the 17.5 grams/day level after reviewing available information on local and regional fish consumption and concluding that none of that information reflected actual fish consumption in Idaho.

According to the Clean Water Act, new standards must now be developed by EPA or by the state. On August 6, 2012, DEQ notified EPA that DEQ would initiate a negotiated rulemaking to consider fish consumption rates and develop new human health based criteria for toxic pollutants.

Oregon recently based its EPA-approved toxics criteria on a fish consumption rate of 175 grams/day, or 10 times the level used by Idaho's 2006 submittal. One hundred seventy five grams per day is about 6 ounces of fish consumption every day, 365 days a year. In general, this means that Oregon's criteria are about 10 times more stringent than Idaho's 2006 criteria. EPA has indicated that if it is required to establish toxics criteria for Idaho, it will use a fish consumption rate similar to the 175 grams/day used by Oregon. The negotiated rulemaking process recently reviewed available studies and information concerning fish consumption, and reached the general conclusion that no reliable data exists regarding actual fish consumption in Idaho. As a result, to establish appropriate toxics criteria, Idaho is left with one realistic option and that is to conduct a study of Idaho fish consumption.

This issue has serious implications for our citizens, communities and industries. Fish consumption rates and toxics criteria are inversely related. The higher the fish consumption rate, the lower the acceptable level of toxics. The challenge before us is to develop standards that will protect citizens who consume fish from Idaho waters without unnecessarily burdening industrial and municipal sources which treat and discharge wastewater into such waters.

The focus and design of the fish consumption study will utilize input provided through the negotiated rulemaking currently in progress. To help design and conduct the actual study or survey, DEQ will utilize the requested funds to contract with private consultants or possibly academic institutions with specialized expertise. The anticipated survey will seek information from Idahoans about their actual fish consumption, including amounts, frequency, types and sources of fish consumed. Obtaining reliable and representative data regarding fish consumption in Idaho is critical for establishing toxics criteria that will be protective, feasible and defensible.

In closing, **Director Fransen** said DEQ is requesting a one-time funding request in the amount of \$300,000 to provide contract support for this work. (See Attachment 1).

**WRITTEN
TESTIMONY:**

A letter of support was submitted by the Idaho Association of Commerce and Industry for the budget request to conduct an Idaho-specific fish consumption study. (See Attachment 2).

Vice Chairman Bair thanked Director Fransen for his presentation.

Senator Cameron said that he feels this is a very important issue and would encourage the Committee to support it.

Senator Tippets said that he may have a potential conflict of interest as he works for a company that operates a mine. He also stated that the only way to know the impact is to do the studies and it is a huge issue. **Senator Tippets** also recommended that the study be done so that the right levels can be found.

Vice Chairman Bair told the Committee that Chairman Pearce had directed him to invite Director Fransen to enlighten them about the "Fish Consumption Study". The Chairman also requested that Committee members provide him with input so that when he goes before JFAC, it will be the Committee's decisions as to what his report contains.

Another issue that Chairman Pearce wanted reviewed was regarding sage grouse and raven depredation. **Senator Siddoway** presented information relating to sage grouse predation and sage grouse nesting areas. The Committee agreed that something needs to be done. A hearing has been scheduled next week and the speakers include representatives from the Office of Species Conservation, the Department of Fish and Game, Idaho Fish and Wildlife Services, and the Department of Agriculture - Wildlife Services. During the discussion, no dollar amount was specified for a study, but it was suggested that funds come from the Department of Agriculture's Depredation account.

The next issue to be discussed is in regards to rangeland fire protection districts. Both Senator Brackett and Senator Cameron have done interim work on this subject and they will speak to the Committee so that guidance can be given to Chairman Pearce.

Senator Brackett said the bill that will be forthcoming is **H 93**. It will help ranchers and landowners to respond to the fires, no matter the cause. Training and equipment will be provided and will be under the supervision of the Bureau of Land Management (BLM). The training is an intensive week-long school, taught by the BLM. These districts would help fill in the gaps in fire suppression. A one-time funding request of \$400,000 for startup costs will be submitted. **Senator Brackett** indicated that liability insurance had also been discussed and was deemed a necessity to protect everyone in the process.

Senator Cameron stated that between Senator Brackett's district and his district, there were some fires that if the landowners could have helped, the fires would have been put out much sooner and there would have been less damage to the habitat. The **Senator** commended the governor and others who have brought this bill forward and are in support of it. He stated that he supports it also.

Senator Brackett said that he has witnessed instances where ranchers and landowners showed up to help fight fires and were discouraged from helping and were threatened with civil action.

There were no negative comments and **Vice Chairman Bair** said he would pass along the information to the Chairman.

The last issue to be discussed regarding funding was the Idaho Rangeland Research Center. The funds requested would be used to include more students at the Center. The recommended amount for appropriation was \$190,000.

Speaking in favor of supporting this action were **Senator Siddoway and Senator Brackett**.

Vice Chairman Bair thanked the audience for their patience in the deviation from the agenda. The reason was because some Committee members needed to be excused early due to a conflict of scheduling. He then invited Ms. Louise Stark, gubernatorial appointee to the Outfitters and Guides Licensing Board, to speak to the Committee.

HEARING:

Ms. Stark said she was honored to appear before the Committee again, as this is a reappointment. She is to serve a term that commenced April 20, 2012 and will expire April 20, 2015. When asked why she wants to serve on the board, her reply was "as a 25 year veteran business owner of White Cloud Outfitters with my husband, I feel I have a solid background in this industry. I would like to maintain reasonable state regulation of the industry while protecting the public who use our services. Since our business operates in both Arizona and Nevada with an assistant guide license in Alaska, I believe I bring a unique perspective to issues facing Idaho. We also operate in all facets of the industry including hunting, trail rides, pack trips, boating and fishing on the Upper Salmon River." She said that she had considerable experience working with the federal government land managing agencies and she feels her relationship with IDFG is one of mutual respect.

Organizations that Ms. Stark is associated with include the Idaho Outfitters and Guides Association, Wild Sheep Foundation, Grand Slam/OVIS, Challis Chamber of Commerce, Challis Arts Council, Ketchum/Sun Valley Chamber of Commerce, Salmon Chapter Idaho Outfitters and Guides Association, Safari Club International, Sawtooth Society and the North America Moose Foundation.

Professional licenses that Ms. Stark has are: licensed (recreation) guide - 15+ years; American Red Cross, certified and CPR/First Aid/AED instructor - 20+ years; and a Bachelor of Arts degree in Physical Education.

Vice Chairman Bair asked Ms. Stark what she has learned while being on the board. **Ms. Stark** replied that it was the complexity of the duties and tasks of the board. When asked what she has contributed to the board, she feels it is the knowledge that she has gained from her contact with outfitters in other states, as well as her interest, background and experience.

Senator Heider inquired as to how important is it to have experience in the outfitting business in order to serve on the board. **Ms. Stark's** answer was it is very important to have the experience - one just can't read the rules and statutes.

Senator Brackett inquired as to what she would do if she deemed there was a conflict of interest. **Ms. Stark** stated that one needs to be able to recognize it and if necessary, not vote and recluse oneself.

Vice Chairman Bair thanked Ms. Stark for talking to the Committee and said they would vote on her confirmation at the next Committee meeting.

The **Vice Chairman** then welcomed Mr. Tom Schultz, Director of the Idaho Department of Lands (IDL).

S 1049

Director Schultz said he was asked to explain **S 1049** which addresses the Oil and Gas Conservation Commission. The present Oil and Gas Conservation Commission supports this proposed statutory change.

The changes will replace the current members of the Commission, who are also the State Land Board, with five gubernatorial appointees. The appointed Commission members would include:

- one member knowledgeable in oil and gas;
- one member knowledgeable in geology;
- one member knowledgeable in water;
- one private land owner with surface and mineral rights in an area with oil and gas activity; and
- one private land owner without mineral rights.

Director Schultz said the exact process for member selection has not been determined, but they will be appointed by the governor to four year terms. The terms would be staggered initially to avoid all five terms expiring at the same time.

IDL researched how oil and gas development is administered in the 44 states that regulate oil and gas drilling and development. Twenty-six states delegate the oversight to a commission and 18 states delegate the oversight to an executive agency. No other state with commission oversight has the State Land Board also functioning as the commission.

The highly technical nature of oil and gas development does not lend itself well to oversight by a commission with little to no knowledge of oil and gas development. With no historic production in Idaho, most Land Board members have little exposure to oil and gas. Governor Otter is the only exception, as he previously worked in the oil and gas industry for a few years outside the state. Given the limited oil and gas knowledge base in Idaho, IDL determined that the Commission should include members who are knowledgeable about oil and gas.

In the **Director's** closing remarks, he said a separation of the Land Board and the Commission is needed to remove, at very least, the appearance of a conflict of interest. **Director Schultz** provided a copy of his remarks (See Attachment 2) and a State Oil and Gas Commission Agencies Summary Table (See Attachment 3).

MOTION: **Vice Chairman Bair** said a motion was in order. **Senator Tippetts** moved that **S 1049** be sent to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **unanimous voice vote**. **Senator Siddoway** will be the sponsor of the bill.

H 40 **Ms. Tamara Humiston**, representing the Idaho Department of Parks and Recreation (IDPR) presented **H 40**. She said that after IDPR completed a review of Chapter 71, Title 67, Idaho Code relating to the registration statutes, it was determined that Idaho Code 67-7119, Cross-Country Skiing Advisory Committees is not needed. Ms. Humiston said IDPR would like to repeal this code section.

MOTION: **Senator Siddoway** moved that **H 40** be sent to the floor with a **do pass** recommendation. **Senator Brackett** seconded the motion. The motion carried by **unanimous voice vote**. **Senator Heider** will be the sponsor of the bill.

Vice Chairman Bair welcomed Ms. Karen Launchbaugh, Director of the Idaho Rangeland Research Center, University of Idaho (UI).

SPEAKER: **Ms. Launchbaugh** provided two handouts (See Attachments 4 and 5). The following information was taken from them.

Researchers, educators and outreach specialists from seven departments, three colleges, and U-Idaho Cooperative Extension have come together to create a new model for interdisciplinary research, education, and outreach to fulfill the land-grant mission. This Center is a group of 25 faculty members with expertise in grazing, rangeland ecology, entomology, soil science, economics, rural sociology, fish and wildlife resources, invasive plants, forage production, animal science, wildland fire, restoration, and the use of spatial technologies to understand rangelands.

The U-Idaho Rangeland Center was established in August 2011 and affirmed in Idaho State Code in Spring 2012. They have partnerships with Backpack Guide; Range Science Information System; Online Rangeland Information with eXtension; Rangeland Science Guides; and Journal of Rangeland Applications. Their local connections include the Intermountain Range Livestock Symposium; Pasture Management Professional Development Workshop; Winter Beef Schools; and the Rangeland Center Annual Symposium.

The next generation of Land Managers:

- Western National Rangeland Assessment event gives FFA high school students west of the Rocky Mountains the opportunity to learn about rangeland assessment and show expertise in a contest format.
- Collegiate Rangeland Assessment Teams are created every summer by the Rangeland Center to conduct field work on a variety of topics such as ecological site analysis and sage-grouse habitat assessment.
- Rangeland Education websites provide information on rangeland and environmental science for high school teachers. The Rangeland Center also works with six high schools and hundreds of students in Idaho to offer a dual-credit course in Rangeland Principles.
- Recruiting students to rangeland degrees and careers through a new world-class website.
- Graduate student involvement includes an interdisciplinary team of four Ph.D. students who will direct several future scenario-building exercises with rangeland stakeholder to identify opportunities for adaptive management choices among land management alternatives.

Ms. Launchbaugh said there are three hot topics they are studying and they are fire, grazing and sage-grouse. There are land managers and ranchers in the Boise and Mountain Home area who are trying to stop the fire cycle with local landowner involvement and grazing to reduce fuel loads. The Center will provide expert witnesses to address the role of grazing in sagebrush ecosystems and sage-grouse habitat in federal court. Also, a collaborative research plan is being proposed for a 10 year research effort to examine the effects of spring cattle grazing on sagebrush ecosystems, sage-grouse habitat and vital rates, and wildland fuels. Partners include UI, IDFG, BLM, US Geological Survey, ranchers, land managers and conservation organizations.

That concluded Ms. Launchbaugh's report.

Vice Chairman Bair thanked Ms. Launchbaugh for her presentation to the Committee. He then said that Senator Siddoway would like to make an acknowledgement.

PAGE APPRECIATION: **Senator Siddoway** asked the Committee's Page, Michael Swanson, to stand. The **Senator** said that he had sponsored Michael, who is from Rigby, and was proud of his willingness to be a Page for the Senate. (He had sisters before him that were Pages.) **Senator Siddoway** presented Michael with a gift certificate to Hastings, as he is an avid reader and a letter of acknowledgement signed by all the Committee members. **Michael** thanked the Committee and said his future plans are to go on a mission for his church, then attend college.

ADJOURNED: **Vice Chairman Bair** adjourned the meeting at 2:55 p.m.

Senator Bair
Vice Chairman

Juanita Budell
Secretary