

MINUTES  
JOINT MEETING

**SENATE RESOURCES & ENVIRONMENT COMMITTEE  
HOUSE RESOURCES & CONSERVATION COMMITTEE**

**DATE:** Monday, February 03, 2014

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

**PLACE:** Lincoln Auditorium

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

Chairman Denney, Vice Chairman Gibbs, Representatives Wood, Barrett, Moyle, Eskridge, Raybould, Andrus, Shepherd, Wood, Boyle, Gestrin, Miller, Anderson, Pence, Erpelding and Rubel

**ABSENT/ EXCUSED:** Senator Siddoway and Representative Vander Woude

**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 of the Senate Resources and Environment Committee (Committee) and the House Resources and Conservation Committee (Committee) to order at 1:30 p.m. in the Lincoln Auditorium. He welcomed the members of the Committees and the near-capacity audience to the meeting on "suction dredge mining". **Chairman Pearce** noted that several written testimonies had been turned in from people who were unable to be present at today's hearing and those testimonies will be recorded in the Minutes of the meeting.

He then asked Representative Paul Shepherd, who was instrumental in arranging the program, to speak. **Representative Shepherd** said he wanted to welcome everyone and appreciates the turnout, as it is an important issue that is to be heard today.

**SPEAKER:** The first speaker was Joe Greene. **Mr. Greene** stated that he is a retired, U.S. EPA Research Biologist, an environmentalist, and a small-scale gold suction dredger. He was asked, as a concerned citizen of Idaho, to speak because of his scientific and mining experiences and credentials. He will not receive any income for his testimony.

Mr. Greene has over 30 years of national and international professional experience in research, and teaching. This includes a seven year courtesy faculty appointment at Oregon State University in the Department of Civil, Construction and Environmental Engineering where he was an adjunct professor working on environmental research projects in the Western Region Hazardous Substance Research Center. His association with problems of mining and surface water contamination began as early as 1974 in the Coeur d'Alene mining district with an investigation of the Kellogg, Idaho Sunshine silver mine and the Bunker Hill smelter. **Mr. Greene** said that he is very familiar with small-scale gold suction dredge mining, and over the past 30 years, he has observed and participated in suction dredge mining operations.

He was an invited member of the California Department of Fish and Wildlife Environmental Impact Report Public Advisory Committee. In 1994, they reached the conclusion that small-scale gold suction dredge mining had a less than significant effect on the environment. Seven published environmental impact reports also support this position. Millions of dollars have been spent to establish the fact that small-scale gold suction dredging has a less than significant effect on the environment.

A fair and balanced review of the scientific literature should also look for beneficial impacts to the environment from the operations of small-scale gold suction dredges. Reports on this subject generally overlook this fact. Some beneficial impacts are:

- Fish survival improves under turbid conditions;
- Holes create safe habitats for fish;
- Dredging breaks up compacted stream beds;
- Dredge tailings protect established redds by offering additional spawning substrate; and
- Dredging improves water quality by removing massive amounts of lead weights, used water bottles, car debris, nails, bolts, etc.

Small-scale gold suction dredge miners expect to be regulated fairly when operating on the public domain. Federal law reinforces that expectation. However, misapplication of the law is not desirable or acceptable. The Environmental Protection Agency (EPA) Region 10 implementation of the Idaho National Pollution Discharge Elimination System (NPDES) permit for small-scale gold suction dredging is a classic example of mission creep, where a body of permanent bureaucrats unanswerable to the public, changes the intent of Congress. The original regulation of clean water was a good idea, but the EPA has since used pollution to impose a vast matrix of regulations that do not reflect the fact that the nation's air and water is now as clean as it ever can be. The U.S. has been harmed by the many laws whose justification is based on the totally unscientific hoax. At this point, control of the nation's water quality should be returned in full to the states.

Small-scale gold suction dredges, operating in the rivers and streams of Idaho, are working within the normal high water mark of a river channel, and they cannot add a pollutant to the water system. Because the miners and prospectors are in the river channel, they can't add anything that isn't already there. Furthermore, mining debris is chemically inert, makes no oxygen demand on the stream and therefore takes away from the flowing water nothing that the fish require. This is equally true of this material whether placed in transit by nature or by man since the products are alike in nature and comes from the same sources.

Mr. Greene talked about the outrageous fines that the EPA and NPDES can impose upon the miners. A civil penalty for violations of permit conditions is \$37,000 per day for each violation. Administrative penalties are \$16,000 per violation, but not to exceed \$37,500. Negligent violations have criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than one year, or both. Knowing violations are subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than three years, or both. Knowing endangerment, upon conviction, is a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. These are just some of the penalties.

**Mr. Greene** closed his remarks by quoting Chief Justice Sandra Day O'Connor who likened a water system to a pot of soup. She reasoned that, "If one takes a ladle of soup from a pot, lifts it above the pot, and pours the soup back into the pot, one has not 'added' anything else to the pot."

A copy of Mr. Greene's full testimony and handouts are on file (see attachment 1).

**Chairman Pearce** thanked Mr. Greene for his presentation, then called on Mr. Tom Kitchar to speak next.

**SPEAKER:**

The following are the opening remarks of **Mr. Kitchar's** testimony:

"Dear Committee Members: I am Tom Kitchar, and I have the honor of being, since 2001, the President of the Waldo Mining District (WMD) located in SE Oregon. I have also been for the last 28 years a suction dredge gold miner living on and working my own claims near Cave Junction, Oregon (approximately 35 miles south of Grants Pass).

I was asked as a concerned citizen and a fellow miner to provide testimony to you today regarding NPDES permitting because of my eight plus years of experience fighting against NPDES permitting, and my 28 years' experience fighting for my and every citizen's congressionally granted rights under the 1872 Mining Law, as amended.

I present this testimony based on my 28 years of suction dredge mining experience; my knowledge of the U.S. Mining Law of 1872, U.S. Forest Service and BLM mining regulations, Sections 402 (U.S. EPA's NPDES permit system) and 404 (Army Corps) permitting (as applied to suction dredge mining), and numerous court decisions; and my experiences dealing with all of these laws, rules and regulations in my capacity as a citizen miner and as president of WMD (for example: WMD has been heavily involved in litigation since 2005 against the Oregon Department of Environmental Quality (ODEQ) over their continued issuance of the NPDES permit (for the EPA in Oregon). I have also participated extensively in the drafting of ODEQ's 700PM<sup>2</sup> permit in 2005 and 2010 (and the upcoming 2015 permit)."

**Mr. Kitchar** said that the EPA of Region 10 has saddled small-scale suction dredge gold miners in Idaho with a demand that they obtain NPDES permits issued by the EPA under Section 402 of the Clean Water Act (CWA). He said that raises the question - does the CWA require permitting for small-scale suction dredge gold mining operations in Idaho and if so, under what authority, agency and permit system? There does not appear to be a definitive clear-cut answer to this question. Because of this uncertainty, in Part I, he will examine the CWA, under the assumption that it does apply to suction dredge gold mining, and under Part II, under the assumption that the CWA does not apply to suction dredge gold mining.

**Mr. Kitchar** came to four conclusions. They are:

- 1) There is no "addition". The discharge from a suction dredge does not meet the "addition" test as 100 percent of the discharge from the dredge into the stream came from the very same stream, a few feet away. None of this discharge came from the "outside world".
- 2) There is no "pollutant". Because the suction dredge adds nothing to the sediment or water, there is no discharge of a "pollutant".
- 3) Not all waters in Idaho are "waters of the United States" as waters of the United States are "navigable waterways". The CWA does not apply to the non-navigable waters in Idaho.
- 4) Activities subject to § 404 regulation are not subject to § 402 regulation. Section 402 and NPDES permits are not correct for the discharge from small-scale suction dredge mining operations.

During the eight year battle with ODEQ (and the EPA) over NPDES permitting, the State has relied on court decisions that in almost all situations do not apply to the issue at hand. In Mr. Kitchar's research for his testimony, he came across several court decisions that at least hinted that there is no addition of a pollutant if the material being discharged is basically the same as what is present at the discharge site or causes no new change to the environment. Without an "addition of a pollutant", the CWA cannot apply.

The congressionally granted statutory rights granted to citizen miners under the U.S. Mining Law of 1872, even as amended, says that all unappropriated public lands belonging to the United States and the valuable minerals within "...shall be free and open" to exploration, occupation, and purchase. Mr. Kitchar feels that prospectors, miners, and mining claim owners, have a very real property right, which includes the right to mine - a concept that seems to be quite alien to such agencies as the EPA and the Army Corps. That concluded his presentation and his full testimony is on file (see attachment 2). Additional material was provided on this subject. It includes: Small Scale Mining vs EPA (see attachment 3); NPDES-GP (see attachment 4); and Mercury, God of Thieves (see attachment 5).

**SPEAKER:**

Mr. Doug Giddings, Sheriff of Idaho County for the past five years, was the next featured speaker. He said that he would share some situations that have occurred in Idaho County. As elected sheriff, he enforces local and state laws and does not enforce federal law. As his primary focus, he said that he enforces any violations that the citizens of his county violate. **Mr. Giddings** said that when federal agencies start making rules and regulations, and become heavy-handed, they become arbitrary. He was raised that elected officials make the rules and are answerable to the people. Federal law and regulation enforcement do not answer to the people and Mr. Giddings feels that it is not the way that government is supposed to work. **Mr. Giddings** said that it puts a lot of stress on the people that are stopped by a federal law enforcement officer.

**Mr. Giddings** stated that the people that are hired as federal officers are usually not local. "Inspectors" stop by, look at the dredges, takes pictures, make a report, and then leave. Miners feel okay until they get a letter in the mail from the EPA indicating that they owe X numbers of dollars and must get their dredge out of the water or whatever has been decided in Seattle. **Mr. Giddings** said that the people in the Seattle office do not understand the process or the people of Idaho County.

**Mr. Giddings** said that, as an elected sheriff, he stands between the people whom he represents and the EPA, or whoever is making the charges, none of which are elected officials.

With regard to the numerous studies that have been done, as mentioned in earlier testimony, **Mr. Giddings** said that the EPA blames the U.S. fisheries for the rules that the EPA requires to obtain a permit to dredge. Elected officials have not made these rules; apparently the EPA had permission to make rules, so they hired someone to do this. Mr. Giddings feels that they lacked good information. He also said that one forest fire along a river or one blowout in the river causes more damage than all the dredges in the world. As far as mercury is concerned, it is a natural occurrence which can't be changed.

Communication has been poor between the people of Idaho County and the EPA. When Mr. Giddings asked the EPA for information, they sent him "lots" of papers telling him why they had the authority to come into Idaho County to inspect and fine the dredges. In return, he sent them a copy of his book, the one that was written by elected people, and told them what he could do if he caught them in his county.

In closing, **Mr. Giddings** said that their (EPA) rules and regulations are not acceptable to the majority of the people, especially those in Idaho County. Idaho County has 8,500 square miles of awesome beauty and lots of water. He feels that the EPA wants them (miners) out of the river without a valid excuse; jet boats will be next, followed by the fishermen. The EPA wants to control the people and control the access to the rivers. Mr. Giddings used the analogy of filling a bucket one drip at a time and eventually it would be full to the EPA shutting down the miners, closing the rivers, and shutting down the forests by closing roads. **Mr. Giddings** stated that we all need regulations, but to have rules and regulations that we don't even know what for is insulting. In his opinion, these situations are escalating and they are intensifying and it is his job to represent the people. He hopes the Committees will think about what has been brought forth in the testimonies when they are dealing with issues concerning water, forests, and the citizens - as that is who elected officials represent.

**Chairman Pearce** called on Mr. Jim Chmelik, Idaho County Commissioner, the final speaker on today's program.

**SPEAKER:** **Mr. Chmelik** said that he is representing the people in the room, as well as those of Idaho County, and thanked the Committees for listening to their story. He said it is not so much the rule of law, but the foundations and principles of what we have in the Declaration of Independence and the Constitution.

**Mr. Chmelik** said that the EPA rule by their rules, makes them up as they go along, and operates by intimidation and fear. That is not the way the government was set up to operate. He then talked about the economic impact in Idaho and Idaho County, and said the radical environmental community is destroying the economy. He stated that we need to get back to protecting the rights of the people in this room and to defend the Constitution of the United States.

**TESTIMONY:** **Mr. Brad Bristol** who is representing himself and is a fourth generation Idahoan, said that the EPA told him that he was a criminal and had been since 1972. When they were asked how mercury contamination should be cleaned up, they did not respond. Also, miners clean up trash in the rivers and receive no credit for it.

**TESTIMONY:** **Mr. Ron Hancock** said what he had to say had already been covered.

**TESTIMONY:** **Mr. Roger Jorstad** said he is a veteran, has \$10,000 worth of junk, a dredge and \$1,000 of gold. He stated that the Idaho Conservation League went through the EPA to cause problems for the dredge miners. He then referred to the Water Quality Summary Report 34 by the Idaho DEQ stating that the water quality study on the South Fork of the Clearwater River did not indicate any impacts due to dredging operations (see attachment 6). He stated that the Idaho Department of Water Resources (IDWR) had a one page application for suction dredging and the EPA has 44 pages. Last year, there were 911 applications and only 61 were approved by the EPA.

**TESTIMONY:** **Mr. John Stickley** was the last member of the audience to testify. He has been mining on the South Fork of the Clearwater River for several years and was notified by the EPA on August 11, 2013 that he was not in compliance. He was informed that he could be fined \$50,000, plus \$37,500 a day, plus three years in federal prison. **Mr. Stickley** said he and the others are here today to stand up for their rights.

**WRITTEN  
TESTIMONY:**

Written testimony was received from the following people regarding the subject of suction dredge mining and/or problems with the EPA and NPDES:  
Dan Catherman (see attachment 7);  
Victor L. Schneider (see attachment 8);  
Sandy Staab (see attachment 9);  
a copy of a letter sent to Tim Luke by Gay Richardson and Ed Kelly (see attachment 10);  
and a copy of a letter sent to Congressman Raul Labrador by Gay Richardson (see attachment 11).

Chairman Pearce invited Chairman Denney to share his thoughts. **Chairman Denney** thanked the people for coming to the hearing and educating the legislators as to what is going on. He said if there is more written testimony, please give it to the secretaries for the record.

**Chairman Pearce** apologized for not having more time to devote to the hearing, but the auditorium has been scheduled for another meeting at 3 p.m. He announced that the Senate Committee will convene in WW55 to conduct some Committee business in approximately five minutes.

**ADJOURNED:** **Chairman Pearce** adjourned the meeting at 2:37 p.m.

**CONVENED:** **Chairman Pearce** called the Senate Resources and Environment Committee to order in WW55 at 2:42 p.m.

**MOTION:** **Senator Lacey** made the motion to approve the Minutes of January 27, 2014. The motion was seconded by **Senator Stennett**. The motion passed by unanimous **voice vote**.

**RS 22713:** This legislation, **RS 22713** is sponsored by Chairman Pearce; however, he asked Ms. Sharon Kiefer, Deputy Director, Idaho Department of Fish and Game (IDFG) to explain it. **Ms. Kiefer** said that this proposal adds nonprofit organizations that assist veterans and have a 501(c)(4) status of the Internal Revenue Code as qualified organizations to apply for the free big game tags issued to disabled military veterans as prescribed by rules of the Idaho Fish and Game Commission. This change allows chapters of Disabled American Veterans to participate in this program on behalf of resident and nonresident disabled military veterans.

**MOTION:** **Vice Chairman Bair** made the motion to send **RS 22713** to print. The motion was seconded by **Senator Cameron**. The motion passed by unanimous **voice vote**.

**RS 22659:** **Senator Keough** said the purpose of this legislation, **RS 22659**, is to clarify Idaho law to uphold constitutional authority for state land to be exchanged in order to meet the constitutional mandate of maximizing long term financial return to the Endowments. It also seeks to clarify that lands known as 'cottage sites' can be exchanged for land of equal value regardless of whether the land exchanged for is used for cottage sites, ranching, forestry, or other permitted uses of state lands.

**MOTION:** **Vice Chairman Bair** made the motion to send **RS 22659** to print. The motion was seconded by **Senator Heider**. The motion passed by unanimous **voice vote**.

**RS 22619:** **Senator Patrick** said **RS 22619** revises provisions of eligibility and fees for the nonresident disabled American veterans hunting license and certain tags by rescinding the requirement that nonresident disabled American veterans must hunt in association with a qualified organization to be eligible for a reduced fee hunting license and certain tags. Reduced fees for eligible individuals are aligned with fees for nonresident junior hunters, which is a substantial reduction from adult nonresident fees. The revisions will simplify hunting license and tag purchase by nonresident disabled American veterans.

- MOTION:** **Senator Tippets** made the motion to send **RS 22619** to print. The motion was seconded by **Senator Heider**. The motion passed by unanimous **voice vote**.
- RS 22730:** **Mr. Norm Semanko**, Executive Director, Idaho Water Users Association, presented **RS 22730**. This legislation updates the process relating to the sale or personal or real property of an irrigation district.
- MOTION:** **Senator Brackett** made the motion to send **RS 22730** to print. The motion was seconded by **Senator Cameron**. The motion passed by unanimous **voice vote**.
- RS 22731:** **Mr. Semanko** said there are several purposes for **RS 22731**. It requires each irrigation district director to meet director qualification requirements during the term of office; it requires each director to notify the other directors if he will no longer meet those requirements during his term; it allows a disqualified director to serve until a successor takes office if necessary to conduct the district's affairs; it authorizes the directors to declare a vacancy in the office of director; it conforms the bonding requirement for an appointed director to the bonding requirement for an elected director; and provides that an appointed director has all of the rights, powers, liabilities, duties and obligations of the director's office.
- MOTION:** **Vice Chairman Bair** made the motion to send **RS 22731** to print. The motion was seconded by **Senator Heider**. The motion passed by unanimous **voice vote**.
- RS 22737:** **Mr. Semanko** said that this legislation, **RS 22737**, clarifies the irrigation district code by correcting all instances when an irrigation district officer is mistakenly referred to as a director.
- MOTION:** **Senator Heider** made the motion to send **RS 22737** to print. The motion was seconded by **Senator Tippets**. The motion passed by unanimous **voice vote**.
- RS 22739:** **Mr. Semanko** asked that **RS 22739** be held until a later date.
- ADJOURNED:** **Chairman Pearce** adjourned the meeting at 2:55 p.m.

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Senator Pearce  
Chair

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Juanita Budell  
Secretary