

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 26, 2014

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: 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.

CONVENED: **Chairman Pearce** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m. and stated that the first order of business would be to approve some Minutes.

MINUTES: **Senator Siddoway** moved that the Minutes of February 10 be approved. The motion was seconded by **Senator Heider**. The motion carried by unanimous **voice vote**.

MINUTES: **Senator Lacey** moved that the Minutes of February 14 be approved. The motion was seconded by **Senator Siddoway**. The motion carried by unanimous **voice vote**.

RS 22995: **Mr. Norm Semanko**, Executive Director, Idaho Water Users Association, presented **RS 22995**. He said that he is working with Roger Batt, Idaho Heartland Coalition, who is also a sponsor of this RS.

The purpose of this legislation is to provide legislative direction for the implementation of water quality pollutant trading and other innovations in attaining and maintaining water quality in Idaho's bodies of water. The Idaho Department of Environmental Quality (DEQ) supports and has developed guidance for water quality trading. This is done by directing that Idaho's water quality laws be administered to support and maximize such innovations; defining "water quality pollutant trading"; authorizing DEQ to review and approve or certify water quality pollutant trades; trading frameworks and means of verifying that trading will contribute to the attainment of water quality standards; and authorizing DEQ to adopt rules relating to water quality trading.

UNANIMOUS CONSENT REQUEST: **Vice Chairman Bair** asked for unanimous consent to send **RS 22995** to the Judiciary and Rules Committee for printing. There were no objections.

H 371: **Ms. Betty Munis**, Forest Products Commission, said that after reviewing the concern regarding **H 371** at the previous meeting, an amendment has been prepared addressing that issue. The amendment reads: On page 2 of the printed bill, in line 5, delete "Withstanding current member terms, beginning" and insert: "Beginning". **Ms. Munis** asked that the Committee consider the amendment and send **H 371** to the 14th Order (Amending Order).

MOTION: **Senator Siddoway** moved that **H 371** be sent to the 14th Order for amendment. The motion was seconded by **Vice Chairman Bair**.

Senator Tippetts thanked Ms. Munis and the Committee for their patience in resolving his concern. The motion carried by unanimous **voice vote**.

PRESENTATION: **Ms. Terri Murrison**, Administrator of the Idaho Soil and Water Conservation Commission, presented their 2014 Annual Report via a PowerPoint program (see attachment 1). She introduced Ms. Ali Hardy, who is assisting her with the presentation.

The Idaho Soil Conservation District Law was enacted on March 9, 1939 establishing the Commission and providing for the formation of local conservation districts. Earlier in the 1930s, the federal government formed the Soil Erosion Service, now the Natural Resource Conservation Service (NRCS), to deal with soil health on a national scale. They assigned a state conservationist to work with the State and local farmers and ranchers in establishing a statewide conservation movement.

The Conservation Commission has three core functions: 1) providing district support; 2) programs; and 3) administration. Regarding district support, there are 50 districts in Idaho. Last year, all districts completed statutorily-required five year antidegradation plan updates. The Commission helped 31 of the 50 districts with projects, initiated 24 new projects, worked on 41 ongoing projects, and with partners, served 246 landowners.

This year the districts received about \$1.15 million in operating support from the General Fund. They raised another \$500,000 from local government and other local matching sources to total almost \$1.6 million dollars statewide. Many also secured grants for projects. The Commission provided \$50,000 for capacity building activities. Their records show that since 1990, they have been involved with over \$88 million worth of projects. Of that, over \$22 million dollars have been Commission funds. The Commission has impacted almost 1.5 million acres with Conservation the Idaho Way.

Beyond district support services, **Ms. Murrison** said they manage incentive-based and general conservation programs such as the Conservation Reserve Enhancement Program (CREP). CREP conserves water usage on marginal farm ground in the Eastern Snake River Plain Aquifer. Participating landowners receive modest federal payments from the Farm Service Agency in exchange for not farming these lands. Existing CREP contracts numbered 179, enrolling 17,227 acres in the program. It saved 34,454 acre feet of water - enough to serve about 330,000 people. It saved 68 million kilowatt hours of electricity; almost 138,000 tons of soil erosion due to wind and water; diverted up to 4.5 million pounds of fertilizer from enrolled acres; and significantly benefitted wildlife and fish habitats.

Ms. Murrison stated that the Rangeland Resource Conservation Development Program (RRCDP), since 1990, has funded almost \$25 million in loans, impacting close to 133,000 acres. Loan rates range from 2.5 to 3.5 percent. The maximum loan limit is \$200,000 per loan, or \$300,000 per borrower. In exchange for low interest loans, landowners operate under a conservation plan and improve practices or replace equipment to produce a conservation benefit resulting in water savings, erosion reduction, etc. As of December 31, they have 108 outstanding loans totaling \$4,098,507.

The Idaho Code designates the Commission to assist DEQ in preparing Total Maximum Daily Load (TMDL) program implementation plans to strategically reduce agriculturally-generated pollutant loads for impaired surface waters. Once completed, districts take on projects that go toward reestablishing waters that fully support all their beneficial uses. To date, they have completed 93 implementation plans. Last year, five of their field staff completed five implementation plans and juggled 19 in progress. They now have 17 plans in progress and 18 plans pending.

Ms. Murrison said that they wring every drop of voluntary conservation from every dollar appropriated to the Commission and their efforts are making a difference. There is always more that can be done, but she said, considering the economic times and the constraints of state funding and human resources, she feels they are doing a good job.

Senator Siddoway said that he wanted to thank Ms. Murrison for the good work that she and the Commission have done over the years.

Chairman Pearce thanked Ms. Murrison for the annual report. He also thanked her and the Commission for the good job that they are doing.

H 399:

Ms. Sharon Kiefer, Deputy Director, Idaho Department of Fish and Game (IDFG), presented **H 399**. She said this bill is about a change to eligible minimum age to hunt big game. Youth are not eligible for any hunting license unless they have successfully completed hunter education or they have held a hunting license in another state.

Idaho's current resident Junior Hunting License allows youth who are twelve to hunt big game unaccompanied in the field. Youth who are ages ten and eleven may hunt essentially everything else except big game and they must be accompanied in the field by an adult with an Idaho hunting license.

Ms. Kiefer said that the nonresident Junior Mentored Hunting License has a similar provision except that any nonresident youth possessing this license (ages 10-17) must be accompanied in the field by an adult with an Idaho hunting license.

H 399 simply lowers the age from twelve to ten that youth could purchase big game tags and hunt big game. The requirement for resident youth, ages 10-11, and nonresident youth, ages 10-17, to be accompanied in the field by an adult with an Idaho hunting license is not altered by this bill.

Ms. Kiefer said that this bill is not a requirement that a youth must begin big game hunting at age 10. IDFG has only provided the opportunity for families to make a decision about big game hunting at this age. Relative to safety, **H 399** is founded on technical information from other states and organizations such as Families Afield and the National Shooting Sports Foundation. The information demonstrates that youth hunting with a mentor is not a serious safety risk. A copy of Ms. Kiefer's complete testimony is on file (see attachment 2).

During the discussion, **Senator Stennett** said that she supported youth hunting, but feels lowering the age limit is too young. **Senator Cameron** stated that there had been a tragedy in his district and that he could not support the bill.

MOTION:

Senator Heider moved that **H 399** be sent to the floor with a **do pass** recommendation. The motion was seconded by **Senator Siddoway**. The motion carried by majority **voice vote**. Voting no were **Senators Stennett, Lacey, and Cameron** who asked that they be recorded as such. Senator Heider will be the sponsor.

H 410:

Mr. Matt Anders, Idaho Department of Water Resources (IDWR), presented **H 410**. He said there is a need to clarify the definition of an "injection well" by replacing the term "drilled" with "used". The change is necessary to clarify IDWR's authority to regulate underground oil and gas production wells that are converted to injection wells and used for the injection of waste fluids. The Environmental Protection Agency (EPA) has advised IDWR that EPA approval of Idaho's Underground Injection Well rules may be at risk unless the definition is clarified.

The Underground Injection Control (UIC) program regulates wells used to place fluids underground for storage or disposal. Idaho has primacy from the EPA to administer the UIC program in Idaho on behalf of the EPA. Since 1984, IDWR has regulated Class V injection wells (Examples: stormwater runoff, recharge). In 2012 and 2013, Idaho updated its statutes, Title 42, Chapter 39 and rules, IDAPA 37.03.03, to regulate Class II injection wells associated with oil and natural gas production. The EPA must approve all changes to Idaho's UIC statutes and rules before Idaho can implement them. The EPA will not accept Idaho's current definition of injection well.

The EPA will not accept "...does not include any well drilled for oil, gas or geothermal production activities..." They feel it would exempt from regulation oil, gas, and geothermal production wells which are later converted to injection wells.

Mr. Anders provided a handout (see attachment 3) that gave an overview, proposed change, and reason for the change. It is on file. He stated that the Oil and Gas Industry, the Idaho Water Users Association, the Idaho Ground Water Association, and negotiated rulemaking participants are in support of this change.

Senator Tippets said it had been brought to his attention two years ago that a loophole was being created with the language being used dealing with injection wells. At that time, he didn't understand, but now he does after reviewing the bill and researching the code pertaining to it, § 42-3902(a), which he read aloud. The key word to **Senator Tippets** was "the prohibited action", not just the injection, but the injection to an existing injection well. If it is not an injection well, then it is not prohibited. **Senator Tippets** said that he appreciated the fix, but asked Mr. Anders if he thought it went far enough. **Mr. Anders'** response was yes. **Senator Tippets** asked if the language should be more specific. **Mr. Anders** agreed.

MOTION:

Senator Tippets moved that **H 410** be sent to the 14th Order for amending. The motion was seconded by **Senator Stennett**. Senator Tippets will be the sponsor.

H 413:

Representative Morse said that **H 413** is a simple bill. It repeals an archaic code section for stumpage districts which is no longer needed, used, or functional. The bill states that "Chapter 10, Title 38, Idaho Code, be, and the same is hereby repealed."

There are 28 code sections in Chapter 10 and **Representative Morse** said this is not needed and it reflects conditions from industrial clear cutting times, back in the early 1900s. The statutes were adopted in 1917 and they have never been amended. **Representative Morse** stated that he has been a real estate appraiser for the last 40 years and has not seen nor heard of their use.

The stumpage district legislation allowed these districts to be formed and to go in and to clear stumps from the land. By not having 100 percent landowner approval, that would raise huge issues these days about trespass and eminent domain. That legislation provided no process for the acquisition of temporary easements or payments for those kinds of rights in order to get in and clear stumps from someone else's property.

Representative Morse said that under current law and legal standards, absent emergency powers, a government board cannot enter into another person's property and remove stumps unless they can make a just cause and go through appropriate process procedures. In the current legislation under § 38-1005, the legislation allows bills to the property owners without their consent and if the stumping plan is feasible under Sections 1013 and 1012, the non consenting owners are billed. **Representative Morse** said this would clearly trigger litigation under current times. The costs and fees in Sections 1009, 1003, and 1006 are outdated. In addition to the problems within the code itself, there is simply no need for this chapter. **Representative Morse** said there was no opposition to this bill in the House and he would like your support.

MOTION:

Vice Chairman Bair moved that **H 413** be sent to the floor with a do pass recommendation and the recommendation that the bill be placed on the Consent Calendar. The motion was seconded by **Senator Tippetts**. The motion carried by unanimous **voice vote**.

H 412

Director Gary Spackman, Director of the Idaho Department of Water Resources (IDWR), said **H 412** proposes to revise and broaden the required qualifications for the Director of IDWR. He provided a summary sheet to the Committee (see attachment 4) that describes the changes. Changes in the director's qualifications have been talked about for a number of years. He stated that he wanted to give some background data because of the possible concerns.

When he was appointed as Director of IDWR, one of the assignments given him by the Governor was to look at the requirements and to work with water users, legislators, the Governor's office, and other interested persons and entities to determine if there was a way to update the director's requirements, as the language was archaic, and only allowed registered hydraulic and civil engineers to serve. The Board of Professional Engineers does not license hydraulic engineers. Because of that, the language was old. The types of people they employ and the kinds of disciplines that are required, they not only have engineers in their office that contribute expertise, but have hydrogeologists. About half of their technical people, or at least an equal number of technical people, are geologists trained as hydrogeologists for ground water modeling and analysis, as well as engineers doing some similar work with surface water. They also have employees in the office that are trained primarily with surface water, delivery, forecasting, and those kinds of disciplines.

Director Spackman said as he looked across the department and the disciplines that they employ and the people who now have developed expertise, he felt the limitation was unfair, to just the engineering discipline. He looked at some other states and there are a wide variety of differences. He feels it is a fair proposal that they broaden the disciplines to include these other technical people, who at least within the department, serve adequately and professionally as the engineering core. They have added those particular disciplines. The language in the bill was largely his and he worked with the Governor's Office on this. Some additional language has been added to the qualifications and that is that the candidate has demonstrated experience and expertise in interpreting and applying Idaho law. That language was not in the statute before. The Governor's Office and he both agreed that it was an important requirement, that someone should not come in cold without some acquaintance with Idaho law and the organizational structure of how things operate within the Department.

Director Spackman said if someone comes in and does not know who the Committee of Nine is and what they do in the Upper Snake, and the water delivery, it would make it much more difficult. He said he appreciates the Committee's consideration of this particular bill and asks for a do pass recommendation regarding **H 412**.

Vice Chairman Bair said that he understands what is trying to be done; however, one of the requirements is that one has to have some knowledge of the existing Department of Water Resources. He asked if that would preclude other highly qualified people who have worked in other departments of water resources in other states from applying. **Director Spackman** stated that it could be a limitation.

Senator Brackett inquired as to how the current director's qualifications line up with the proposed legislation. **Director Spackman** answered that he is a licensed civil engineer. His education was in agricultural engineering, which tracks in education much of the civil engineering discipline; however, he took his exam in civil engineering. **Senator Brackett** then asked the Director if he would qualify under this proposal. **Director Spackman** said that he hoped his many years of interpreting water law has helped to develop expertise in applying Idaho water law. He is also familiar with irrigation water uses. **Senator Brackett** said that the Director's qualifications are reassuring and thanked him.

Chairman Pearce added that there has been a need for someone to have experience in water law and asked if that was their only criteria such as lawyers, would that exclude them from becoming the director. **Director Spackman** said that people who manage water in the western United States are typically registered engineers. When they were state engineers, or the equivalent, they were more involved in design work and the delivery of water. He does not want to disparage attorneys, but from his perspective, attorneys are generally interested in advocacy. Engineers and technical people are more interested in addressing problems from a technical basis. He stated that there probably is a lesser likelihood of political influence and he has resisted including attorneys as part of the eligibility pool.

Director Spackman stated that they are broadening the eligibility of technical people, but also narrowing it by saying they shall also demonstrate experience and expertise in interpreting and applying Idaho water law.

Senator Siddoway inquired about the Director's reference to the "Committee of Nine" and if that would restrict someone from out-of-state. **Director Spackman** said it could restrict their ability to serve. **Senator Siddoway** then asked if he thought that was wise. **Director Spackman** said that in his past observations and experiences within the Department, were it not for some assistance and very helpful administrators who had been there over time, there is a risk of possible pitfalls, that if a person has only a shallow acquaintance with organizational structures, they may struggle.

TESTIMONY:

Mr. Lynn Tominaga, Executive Director for the Idaho Ground Water Appropriators, said he would like to share some information with the Committee. He has been associated with water for 30 years and said there were at least 3 attempts to change the director's job description. They did it in the late 80s, mid 90s, and early 2000. Whenever there is a change of Governors, there seems to be an attempt to try to change the job description for the director. Usually, they remove all requirements so that the Governor could appoint someone who might have political favor with him. The water user community has always discouraged that or always opposed that which would completely wipe out the qualifications for the director. They felt the director needed some kind of technical background because of the seriousness of the decisions that had to be made. **Mr. Tominaga** said that there is a great deal of mistrust among the water users community of having an attorney for the director of Water Resources and try to make new law as the director. He feels this legislation

is a good comprise of having a technical person that needs to be in that position, but also has the trust of the water users community.

TESTIMONY: **Mr. Norm Semanko**, Executive Director, Idaho Water Users Association, stated that they do support this legislation. They also feel that a director must be familiar with the irrigation system in Idaho and the water laws that are applied to irrigation in Idaho. He said they would have problems if it included lawyers.

MOTION: **Vice Chairman Bair** moved that **H 412** be sent to the floor with a **do pass** recommendation. The motion was seconded by **Senator Brackett**. The motion carried by unanimous **voice vote**. Senator Bair will be the sponsor.

H 467: **Representative Moyle** presented **H 467**. He said the legislation provides that the Fish and Game Commission may issue additional controlled hunt permits for bear and turkey to landowners or designated agents and there could be a positive effect on the Fish and Game dedicated accounts if permits were issued.

WRITTEN TESTIMONY: **Ms. Kiefer**, IDFG, provided written testimony (see attachment 5) supporting **H 467**.

MOTION: **Senator Brackett** moved that **H 467** be sent to the floor with a **do pass** recommendation. The motion was seconded by **Senator Cameron**. The motion carried by unanimous **voice vote**. Senator Brackett will be the sponsor.

MINUTES: **Senator Cameron** moved that the Minutes for February 12 be approved. The motion was seconded by **Senator Stennett**. The motion carried by unanimous **voice vote**.

ADJOURNED: **Chairman Pearce** adjourned the meeting at 3:05 p.m.

Senator Pearce
Chair

Juanita Budell
Secretary