

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 03, 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.

MINUTES: **Vice Chairman Bair** moved that the Minutes of February 17, 2014 be approved. The motion was seconded by **Senator Heider**. The motion carried by unanimous **voice vote**.

MINUTES: **Senator Siddoway** moved that the Minutes of February 19, 2014 be approved. The motion was seconded by **Senator Brackett**. The motion carried by unanimous **voice vote**.

S 1373: **Mr. Norm Semanko**, Executive Director, Idaho Water Users Association, presented **S 1373**. Mr. Roger Batt, Idaho Heartland Coalition, is also a sponsor of this bill, and they have been working together on this legislation. **Mr. Semanko** thanked the Committee for helping to get the bill printed.

Mr. Semanko said this bill is very important for the future of water quality in the state of Idaho. There has been a lot of talk about water quality trading in Idaho for a long time. He said they have an unfortunate circumstance due to national environmental groups, particularly in the Chesapeake Bay area, who have challenged water quality trading. The substance of their argument is that they say the Clean Water Act (CWA) does not expressly provide for water quality trading. Having it in Idaho Code recognizes specifically to have the Idaho Department of Environmental Quality (DEQ) support that policy into moving forward. **Mr. Semanko** said there is nothing in the CWA that says Idaho can't do water quality trading and that's the major purpose for this.

The Statement of Purpose (SOP) reads: 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 water bodies. The 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 the 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 the DEQ to adopt rules relating to water quality trading.

Chairman Pearce inquired as to how extensive the rules will be regarding the pollutant trading. **Mr. Semanko** deferred the question to Mr. Burnell who will testify later. **Senator Heider** asked how it is based - volume of water or parts per million of discharged pollutants? **Mr. Semanko** said looking at the definition, it is a water quality pollutant trade and credits can be traded. How credits are recognized will be set forth in rulemaking. **Vice Chairman Bair** said does that mean there will be a dollar value placed on the credits. **Mr. Semanko** replied that he understands there will be a value placed on the credits.

TESTIMONY:

Mr. Barry Burnell, Administrator of the Water Quality Division, DEQ, testified in support of **S 1373**. He stated that they reviewed the draft bill and suggested two changes, which the sponsors agreed to. DEQ has language in their water quality standards that addresses pollutant trading. **Mr. Burnell** read from IDAPA 58.01.02.055, Subsection 06, Pollutant Trading; "Development of TMDLs or equivalent processes or interim changes under these rules may include pollutant trading with the goal of restoring water quality limited water bodies to compliance with water quality standards". From that, the DEQ prepared a water quality pollutant trading guidance document, which basically outlines what types of information would be needed to establish their framework for trades to occur in.

Mr. Burnell said they felt it would be helpful if the Water Quality Act included a section of pollutant trading and **S 1373** does that. As far as existing trades that have occurred in the state of Idaho, they have had two which have been between two aquaculture facilities in the mid-Snake area and they were for single months. An aquaculture facility had discharges more than their NPDES permit which was for total phosphorous (pounds per month) and it is pounds that are traded.

Mr. Burnell said that as far as rules go, the main driver for pollutant trading in the state of Idaho will be the NPDES program. As rules are developed, it should include pollutant trading components, definitions, and elements that are in the framework for pollutant trading.

One other type of pollutant that isn't typically expressed in pounds per day is temperature. **Mr. Burnell** stated that temperature and total phosphorus in the valley and throughout the State are the components that will most likely have the marketplace for trades to occur in. With respect to cost, it should be worked out between the parties. A point source would go to a nonpoint source and work out a contract to implement the nonpoint source. They would then purchase that credit for their use in obtaining the NPDES permit.

Senator Siddoway inquired if an industry may trade "likes for likes". **Mr. Burnell** stated that it must be based on pollutant types, such as metal for metal, and phosphorus for phosphorus. **Chairman Pearce** asked if it has to be in the same basin, and **Mr. Burnell** replied that it has to be in the same water body. **Senator Brackett** said that the Twin Falls Canal Company was building sediment ponds for the removal of pollutants and he recollects that there was some sort of trading with the city of Twin Falls to discharge into the river. **Mr. Burnell** said the city of Twin Falls has an off-set as part of their NPDES permit. **Senator Tippetts** asked about the ratios. **Mr. Burnell** said typically there are ratios associated with the trade so there is a better environmental outcome. It could be a 2:1 ratio or 3:1 ratio and it depends on the water body and the framework that is set up for that water body. It may occur that a 1:1 ratio may come about, but it is not likely.

MOTION:

Senator Brackett moved to send **S 1373** to the floor with a **do pass** recommendation. The motion was seconded by **Senator Tippetts**. The motion carried by unanimous **voice vote**. Senator Brackett will be the sponsor of the bill.

H 471: **Senator Rice** presented **H 471** and said that it clarifies gathering lines. Gathering lines are pipelines and other fixtures used to transport, deliver, and distribute natural gas, natural gas condensate or crude oil from a well-head to a transmission line or main line. The legislation also clarifies that a company owning or operating a gathering line is subject to the safety regulations of the Idaho Public Utilities Commission, but is not classified as a public utility unless it applies for that designation. The bill also clarifies the definition of "gathering lines" to include those lines that carry natural gas condensate.

Senator Rice said this legislation was worked on together with the Idaho Public Utilities Commission. They approve of the language and their concerns have been addressed. At some point, if a company with gathering lines wants to become a public utility, they are able to apply and do that. He stated that the real difference is that a pipeline company is not selling retail to the public, they are selling to a transmission line company or a public utility.

Senator Siddoway inquired if the definition of gathering lines would have an effect on taxes. **Senator Rice** stated that he doesn't see that as a concern.

MOTION: **Vice Chairman Bair** moved to send **H 471** to the floor with a **do pass** recommendation. The motion was seconded by **Senator Heider**. The motion carried by unanimous **voice vote**. Senator Rice will be the sponsor of the bill.

HJM 7: **Mr. Norm Semanko** presented **HJM 7** in the absence of Representative Dayley. This House Joint Memorial is addressed to the Senate and House of Representatives of the United States in Congress, to the Congressional delegation representing the state of Idaho, and to the Commissioner of the United States Food and Drug Administration.

The Statement of Purpose (SOP) states that the Food Safety Modernization Act (FSMA) was signed into law in 2011. The proposed Food and Drug Administration (FDA) rule for FSMA would have a devastating impact on Idaho agriculture. Compliance with the water quality rules would be impossible or impractical throughout much of Idaho including an FDA estimated cost of \$30,566 first-year cost per farm. Also, the proposed transportation rules would be difficult and costly to Idaho business. This Joint Memorial expresses the Idaho Legislature's opposition to the proposed FDA rules and requests that the Congress of United States prohibit the FDA from adopting the proposed rules including any numerical water quality standards for irrigation water, transportation rules and any future FSMA rules until a clear understanding of their impact can be determined,

There is a court order for all rules to be in place by the summer of 2016. One of the rules is a produce rule that is proposed by the FDA to include a water quality requirement, and that water quality requirement is a requirement at the farm headgate and it needs to meet the standard. If the requirement is not met, the use of the water must immediately be stopped until the water is brought into compliance with the standard or an alternative source of water is acquired.

Two hundred fifty species of fresh produce will be affected by this rule. Every seven days during the growing season, the water must be tested. If the e coli level exceeds 235 colony forming units of bacteria, the farmer has to stop using the water. Under that standard, for every 1,000 people, 8 would get sick. **Mr. Semanko** said this memorial opposes that standard or any other numeric water quality standard that is almost impossible to achieve.

The Food Producers of Idaho are looking at the produce rules and they want to make it safe, fair, and effective.

MOTION: **Senator Heider** moved to send **HJM 7** to the floor with a **do pass** recommendation. The motion was seconded by **Senator Siddoway**. Chairman Pearce will be the sponsor of the legislation.

ADJOURNED: **Chairman Pearce** adjourned the meeting at 2:10 p.m.

Senator Pearce
Chair

Juanita Budell
Secretary