

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 12, 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 Senate Resources and Environment Committee (Committee) to order at 1:35 p.m.

MINUTES: **Senator Heider** moved that the Minutes of February 24, 2014 be approved. The motion was seconded by **Vice Chairman Bair**. The motion carried by unanimous **voice vote**.

MINUTES: **Vice Chairman Bair** moved that the Minutes of February 26, 2014 be approved. The motion was seconded by **Senator Cameron**. The motion carried by unanimous **voice vote**.

MINUTES: **Senator Brackett** moved that the Minutes of March 3, 2014 be approved. The motion was seconded by **Senator Stennett**. The motion carried by unanimous **voice vote**.

Chairman Pearce said on January 15, several constituents from Senator Brackett's district (the Mayfield area in District 23) appeared before this Committee and talked about the depredation caused by the elk and deer. Ms. Sharon Kiefer, Deputy Director, Idaho Department of Fish and Game (IDFG), also spoke. **Chairman Pearce** requested, at that time, that they work out a solution to the problem and report back to the Committee before adjournment this session. He said they are here today with their follow-up reports.

Senator Brackett said he was appreciative of the Chairman scheduling the time for this issue and added that his constituents are extremely grateful. He stated that it is the first step in getting a handle on the issue.

REPORT FROM IDFG: **Ms. Sharon Kiefer**, IDFG, apologized on behalf of Director Moore for his absence, as he was called out-of-town. He had provided the Committee with an update by e-mail on March 4, 2014 regarding the Department's actions that were taken with the private landowners in the Mayfield area (see attachment 1).

Ms. Kiefer reviewed the action plan as outlined by Director Moore. IDFG has been monitoring the numbers and distribution of big game in the Mayfield area, and as of February 14, 2014 the staff had flown three fixed-wing surveys and plans to continue them every two to three weeks as needed. They are also monitoring big game trends by conducting ground counts by driving established routes once a week and recording species numbers and locations. They have also accompanied one landowner to count deer and elk on his private property.

Some of the draft action plan strategies include:

- 1) Identify and implement forage enhancement cost share projects with landowners on private land;
- 2) Adjust hunting seasons to increase harvest of ungulates before they arrive in Mayfield to reduce wildlife and hunter conflicts with private landowners;
- 3) Establish criteria and implementation plans for depredation hunts in advance;
- 4) Determine appropriate acceptance levels for wintering ungulates in the Mayfield area;
- 5) Continue to meet with individual landowners to determine ranch specific wildlife conflicts and implement strategies that will address them;
- 6) Develop ranch specific cost analysis, prioritize action plan elements and implement individual action plans;
- 7) In the interim, until population and habitat actions have had an opportunity to have their desired effect, use Continued Use Agreements - direct payments to landowners based on ungulate use of private rangeland;
- 8) Develop a standardized and defensible formula to calculate forage loss on private land in order to establish a three year Continued Use Agreement;
- 9) Cost share on private lands impacted by the Pony Fire;
- 10) Commit a dedicated staff person for a minimum of two years to work directly with landowners on a day-to-day basis to reduce the impact of wildlife damage to agricultural operations in the Mayfield area; to further enhance working relationships with landowners; and to develop and implement strategies to increase forage quantity and quality for livestock and wildlife on public and private rangeland.

Mr. Scott Reinecker, Regional Supervisor, Southwest District, IDFG, also reported to the Committee on some updates. They have been working with landowners, individually, to look at specific impacts the wildlife are having on them. Next week, the Commissioners will meet to set big game proposals, and the IDFG has been working with landowners and sportsmen's groups to identify strategies to increase harvest. **Mr. Reinecker** said in another week, there will be an announcement for a biologist position for the Mayfield area. The primary responsibility will be to work with landowners to develop some ranch-specific wildlife management plans, which will include both short-term and long-term plans.

**REPORT FROM
RANCHERS:**

Mr. Steve Damele, Ditto Creek Ranch, said there are two points he would like to address. First, it is a pasture forage loss on private land, not depredation. Second, the opportunity has passed to get a seed mix in the foothills. That would have helped in the long-term. The seed mix that was proposed by wildlife biologists and is used is sagebrush, small burnett, and alfalfa. Other seeds would have benefited the elk and deer more.

Mr. Damele said he did not get much of a response from his first letter to IDFG, so a meeting was set up and it was positive. As far as counting the animals, he feels there needs to be a better way. Aerial counting is a waste of time and money and the count is not very accurate. **Mr. Damele** sent a pasture bill to IDFG but has not had a response from them regarding that issue (see attachment 2). However, he wants to move forward in a positive direction and appreciates the input they had for the big game hunts.

Senator Brackett inquired of Mr. Damele about the seed mix and asked if any of them are a fire resistant species. **Mr. Damele** said he thinks the same seed mix was put in after the 1992 fire and he predicted another fire within the next ten years. **Senator Brackett** asked about other seeds, such as forage kosha, high cress and other wheat grasses that would provide more forage and be more fire resistant. **Mr. Damele** said he seeded as much as they could afford on their private ground and state ground - 3,000 to 4,000 acres - and their seed mix was Siberian wheat grass, kosha, and Russian wild rye.

Mr. Mike Grimm, Cornel Ranches, testified that the issues of their ranching operations have not been addressed. He feels that IDFG needs to get a general consensus on controlling the elk and deer population. They need to agree to a method on counting herd numbers and agree to how much range is needed. **Mr. Grimm** stated that the ranchers feel the problem is becoming more severe since the fire. However, they will continue to participate, when possible, in finding solutions for best practices working with the IDFG. Cornel Ranches' primary concern is that a solution be found now in order to continue their family operation.

Mr. John McCallum said the Iron Horse Ranch consists of approximately 54,000 private acres of which 3,700 acres are farm land. In October, 2000 they had 90 elk come into the ranch on Cold Springs and Bennett Creek, which they thought was great. In Mayfield, there were 300 to 400. Now, in the three locations, the elk are in the thousands. They arrive in September and stay until April. **Mr. McCallum** feels they provide 60 to 70 percent of the winter feed for 5,000 to 6,000 head of elk between Blacks Creek and Bennett Mountain Road.

Mr. McCallum estimates that to replace the feed for that number of elk for four months is \$432,000 per year, and that does not include deer, antelope, fence damage, land damage, major crop damage, or the farms and ranches at Bliss and Bennett Mountain Range.

With regard to cattle, **Mr. McCallum** said on their total ranches, they used to run 3,500 to 4,000 head. Now, they can only run between 1,700 to 2,400. He said they have no choice but to try to recover the damages to their ranches and farms. **Mr. McCallum** stated that IDFG has always had problems with fair compensation for feed and also explaining the reason for compensation to the sportsmen. He suggested the following that the IDFG could do to mitigate some of the damages: 1) Get the wolves down to the federal requirement; 2) Feed the elk away from the main wintering areas for cattle and farms; 3) Stop the September hunting seasons in the higher elevations; and 4) Provide a method for the elk to cross Interstate 184.

Mr. McCallum said these suggestions need to be handled through legislation and it will not be modified by IDFG without representation of landowners. He said that he has taken the rough draft of the Private Land Tag Program by IDFG and modified it to a fairer compensation package that he believes would work for the majority of the land owners (see attachment 3).

Chairman Pearce inquired about the wolf population on Mr. McCallum's property. **Mr. McCallum** said there are seven at the top of one ranch and three at a lower point.

Chairman Pearce said the problem is not solved yet and there is still more work to be done on this issue. He recommended that reports be made available this Fall. He then thanked the participants for their input today.

H 536:

Chairman Pearce asked Representative Vander Woude to present **H 536**.

Representative Vander Woude said this legislation is about exchanges on endowment land. It requires that when an appraisal is done, they also do a review appraisal on both the land they are exchanging and the land they are acquiring.

Senator Cameron said on line 31 and line 42 it talks about exchange, then on page 2, line 7, it says exchange and acquire. He asked Representative Vander Woude if it was his intention that an appraisal be done prior to an exchange or prior to an exchange and/or an acquisition. **Representative Vander Woude** said it was his intention that it be prior to an exchange that appraisals and review appraisals be executed for both the land they are acquiring and the land that they are disposing of.

Senator Cameron then asked about Section 2, Subsection (g) of the bill. First, there is a report, then an audit to be brought to the Legislature by February 1; however, the fiscal note does not speak to the cost of what the Legislative Service Office would have to do. **Senator Cameron** inquired if Representative Vander Woude, who is fiscally conservative, would be willing for the Legislature to hire more auditors to complete this task. **Representative Vander Woude** replied that he did not consider the cost of the audit at the time the legislation was written. He said, however, it would be up to JFAC if they decided they needed more auditors to accomplish this. He feels it would be worthwhile to protect the endowment beneficiaries to make sure they are getting the proper return on exchanges.

TESTIMONY: **Director Tom Schultz**, Idaho Department of Lands, testified in support of **H 536**. He said, as stated by the sponsor, this bill would require the Land Board to conduct review appraisals of any appraisals for properties involved in land exchanges. The bill would also require that the Board report annually on land exchanges completed by the Land Board and the appraisals used in those exchanges.

Director Schultz said questions came up last fall about the adequacy and validity of an appraisal for the property that the department recommended that the Land Board exchange for. Appraisals are opinions of value rendered by professionals following uniform standards and procedures. The cost to implement this bill would be \$3,000 to \$5,000 per transaction. Most likely these costs would be split between the applicant and the State. A copy of his testimony is on file (see attachment 4).

MOTION: **Senator Cameron** moved that **H 536** be sent to the floor with a **do pass** recommendation. The motion was seconded by **Senator Lacey**. The motion carried by unanimous **voice vote**. **Senator Cameron** will be the sponsor.

H 526: **Representative Morse** provided some background information regarding **H 526**. In 2011, the Washington Department of Ecology prepared a feasibility study to address some of the acute draw down and stream flow problems on the Spokane River on the Washington side of the Idaho-Washington state line. Their solution to the problem was to propose the construction of a 72 inch pipeline that would extract water from a point near Bayview, in Lake Pend Oreille watershed, and transport that across the Rathdrum Prairie and recharge the aquifer close to Rathdrum or Chilco. That water would percolate down across the state line, within the aquifer, and would reach the Spokane Valley and recharge the Spokane River at critical times. Their solution to the Washington water problem was to do an inter-basin Idaho project and transfer Idaho's water over to Washington.

Representative Morse said that in studying that proposal and meeting with the Idaho Department of Water Resources (IDWR) at length, it was not clear, under the existing statutes, if that project would fall within our existing statutory and legislative framework, specifically Idaho Code § 42-401. On February 12, the Attorney General's office gave an opinion on amending the statute by deleting the words "transport it for outside the State". Also, two other slight changes were suggested for the current statute: "transportation and" and "transport it". This proposed project would then fall within the scope of a statute and the Director could review it, impose conditions, approve it, or deny it.

Representative Morse said that this legislation is a statutory amendment brought specifically in light of a feasibility study and an extra state transfer project that was considered by the Washington Department of Ecology. The proposed project would make this water transfer solely for the benefit of Washington and does nothing to benefit Idaho. There are major issues about degrading Idaho's water, specifically if surface water infiltrated into the Rathdrum Prairie aquifer, it could degrade what is currently drinking water quality.

What the legislation does is delete the words "transportation and" and "transport it". There are no other changes to the statute. **Representative Morse** said this legislation has been examined by the Idaho Water Users and the agency, and he urged the Committee to support **H 526**.

TESTIMONY:

Director Gary Spackman, IDWR, stated that his first introduction to this concern was from a telephone call from Representative Eskridge, about three years ago. Representative Eskridge was asked to appear on a radio program in northern Idaho to talk about this study and asked the Director about it. Director Spackman said he knew nothing about it, but promised to find out. He said they were alarmed, after reviewing the study, that Washington would take Idaho's water out of the Pend Oreille Basin and ship it down to Rathdrum to satisfy the demands in the state of Washington for additional water in the Spokane River. **Director Spackman** said that he has conversed with all the legislators in District 1 as to what might be done. All the legislators have been actively participating in the discussions.

Director Spackman stated that the threat is not imminent, but it is real and is an alternative that is preferred by folks in the state of Washington. **Director Spackman** said that he has attended some seminars in Washington where they have discussed this issue and they are in favor of this, rather than any of their other choices. He feels they are expecting Idaho to solve their water problems. The solution presented by Representative Morse is a solution that tightens up and further restricts the opportunity for the state of Washington and other out-of-state interests to come in and use water from the state of Idaho.

Director Spackman said with respect to the legal issues, he could address them, but there is another person to testify that is highly qualified regarding the legality of the issues. In closing, he said that he wanted to congratulate the legislators that have been involved with this matter and their attention to it.

Senator Cameron said that he was concerned about lines 11, 13, and 14. It is the public policy statement of this section of code and is the intention of the Legislature. He said what he is being asked to vote for doesn't seem to matter what the out-of-state uses are. **Senator Cameron** said it troubles him that the use of our water would not be in the interest of the public. **Director Spackman** said his response is that this statutory enactment was an attempt to very delicately impose additional requirements for review upon an out-of-state applicant, without violating the Commerce Clause. An out-of-state applicant would have to satisfy these additional criteria in the statute before the Director and the State would approve the out-of-state use. This language is patterned after statutory language that has been challenged and has been upheld in court.

TESTIMONY:

Mr. Norm Semanko, Executive Director, Idaho Water Users Association, said they support **H 526**. Chapter 4 of Title 42 is an incredibly important chapter of Code. The lakes in north Idaho are as important as the rivers are in southern Idaho. The questions about the language in the Code now are on point. Looking at Sections 1, 2, and 3 of the current Code, Subsection 1 is the policy and says it is in the public's interest under certain conditions. This is the battle test of language in the U.S. District Court of New Mexico which was upheld because the rest of the bill, Subsections 2 and 3 are very stringent on a proposed out-of-state use. The words in Subsection 1 must match the words in Subsection 2 and it says "in order to do this use, you must go through the permit process" in Chapter 2 of Title 42.

In Subsection 3, you have to meet all criteria, and in addition, meet all the criteria that has been tested by the Idaho Supreme Court. Under the Commerce Clause, you cannot absolutely prohibit an out-of-state transfer, but the things you can appropriately consider include those of the criteria: water needs for the water in the state of Idaho; and water to other water sources available out-of-state to those folks. In order for all of those criteria, the Court has found that you can use those criteria to apply, it has to be made clear that it will apply for recharge use. **Mr. Semanko** said the real meat of the law is the criteria. The criteria needs to be tight and consistent as it may be challenged.

MOTION: **Vice Chairman Bair** moved that **H 526** be sent to the floor with a **do pass** recommendation. The motion was seconded by **Senator Siddoway**. The motion carried by unanimous **voice vote**. Senator Keough will be the sponsor.

H 597: **Mr. Russ Hendricks**, representing the Idaho Farm Bureau, presented **H 597**. He stated that it replaces H 468 which had some totally unintended consequences. The purpose of **H 597** is to protect private property rights and to clarify the scope of authority of the Outfitters and Guides Licensing Board (OGLB). **Mr. Hendricks** stated that OGLB has taken it upon themselves to require licensing for about every recreational activity, even when the activities are conducted entirely on private property. The current statute does not authorize that, nor do the current rules. OGLB gets their authority from a 1992 Idaho Supreme Court case.

Mr. Hendricks said that what happened in that case was a man from Franklin County was guiding deer hunts on his private property. OGLB sent in an undercover agent who contracted with this man for a guided deer hunt. The man was guiding without a license, but was following all the fish and game rules. This man's defense in court was that he was on his own property and did not need OGLB's license. The Idaho Supreme Court, in their decision, determined because the statute was completely silent as to the difference between public and private property, and because the State has interest in regulating fish and game, and because the game belongs to everyone, the way the statute was written could indeed apply to private property.

Mr. Hendricks said that in their review of the decision, they agreed that the decision would apply to fish and game related activities under that statute, but they do not believe that it gives OGLB, under the current statute, carte blanc to go ahead and regulate all recreational activities when they are on private land. Since that time, OGLB has expanded their scope of activities for which they require a license. Their rule currently defines these activities as including, but not limited to, trail rides, wagon rides, sleigh rides, backpacking, bicycling, and other similar activities.

Mr. Hendricks gave some examples of how this is being applied today: 1) There is a party who has a ranch, and also operates a dude ranch as part of his operation on the premises, with people riding horses, fixing fences, moving cattle, and taking part in that lifestyle. Currently, OGLB requires him to have a license. 2) There is a private fish hatchery who has their own fish that they raise and keep for breeding stock. Towards the end of their useful life, the fish are tagged and put in their private pond. A fishing derby is advertised by the owners and they charge a small fee for participation. When the fish are caught, prizes are given to the participants. Under the current laws and rules, they would be required to have an Outfitters and Guides license. 3) A farmer gives wagon rides, on his private property, out to his pumpkin patch and customers select their pumpkins, then return to their vehicles. Under the current rules, he is required to have a license to operate the wagon rides.

Due to time constraints, **Chairman Pearce** said that the discussion of **H 597** would continue on Friday, March 14. **HJM 10** and **H 398** will also be carried over.

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

Senator Pearce
Chair

Juanita Budell
Secretary