

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, March 04, 2015

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Bair, Vice Chairman Vick, Senators Cameron, Siddoway, Brackett, Heider, Nuxoll and Stennett

**ABSENT/ EXCUSED:** All present, with a vacancy

**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 Bair** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

**CONSIDER- ATION OF GUBER- NATORIAL APPOINTMENT:** Consideration was given to Sid Cellan, Soda Springs, Idaho who was reappointed to the Oil and Gas Commission for a term commencing July 1, 2014 and expiring July 1, 2018.

**Senator Siddoway** moved to send the gubernatorial appointment of Sid Cellan to the Oil and Gas Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. **Senator Stennett** voiced support for Mr. Cellan. The motion carried by **voice vote**. Senator Tippets will be the floor sponsor.

**GUBER NATORIAL APPOINTMENT HEARING:** Mr. Jim Yost, Meridian, Idaho was reappointed to the Northwest Power and Conservation Council (Council) for a term commencing January 15, 2015 and expiring January 15, 2018. He was born in Rupert, Idaho and raised in the Magic Valley of southern Idaho where he learned and applied knowledge of water, agriculture and natural resources.

Mr. Yost graduated from the College of Southern Idaho in 1968 with an Associate of Arts degree and graduated from Boise State in 1971 with a Bachelor of Arts degree in education.

Mr. Yost was elected in 1972 to the Idaho State Senate at the age of 24, the youngest Idaho Senator/Legislator ever elected, and he served two terms.

He owned and operated a dairy distributorship for a number of years in Wendell, Idaho and also worked for the Union Pacific Railroad for ten years. In 1988, he was named Assistant Public Affairs Director for the Idaho Farm Bureau and in 1991 was promoted to Public Affairs Director. For a time in 1995, Mr. Yost worked for the Northwest Power and Planning Council. Governor Batt appointed Mr. Yost as his Natural Resources Senior Policy Advisor, and he was retained by Governor Kempthorne and Governor Risch. In 2007, Governor Otter retained him, then appointed him to the Council in October.

**Mr. Yost** briefed the Committee regarding the background of the Council. The Pacific Northwest Electric Power Planning and Conservation Act of 1980 authorized the states of Idaho, Montana, Oregon, and Washington to establish the Council. The Council has three responsibilities:

1. To assure the region an adequate, efficient, economical and reliable electric power supply;
2. To prepare a program to protect, mitigate and enhance fish and wildlife of the Columbia River Basin that have been affected by the construction and operation of hydropower dams; and
3. To inform the Pacific Northwest public about regional energy and fish and wildlife issues and involve the public in decision-making.

There are 14 multipurpose hydroelectric dams that span the Columbia River mainstem (11 in the United States), and many more are located on Columbia tributaries. In an average water year, dams in the American part of the Columbia River Basin provide more than 16,000 average megawatts of carbon-free, low-cost, renewable electricity to consumers.

The Columbia is a unique river system, as a habitat for fish and wildlife, as the largest single source of electricity for a region of 13.5 million people, and as a vital asset for the Pacific Northwest economy. Dams on the Columbia and its tributaries support commercial and recreational navigation as far as 450 miles inland from the ocean, irrigation of more than 3 million acres, and flood control for some 2 million people.

Renewable resources, mainly wind power, comprise a small but growing part of the region's generating resources. Wind power developed rapidly in the Northwest over the last 10 years and now totals about 9,000 megawatts of installed capacity. Of this amount, 80 percent is located in the states of Washington, Oregon, Idaho, and Montana. The recent rapid development of wind power pushed topics such as generating resource integration, power system flexibility, and marketing and scheduling practices to the forefront of conversations in the region about the future of the electricity supply. The Council is addressing these issues as it works on the Seventh Northwest Power Plan, which is expected to be completed later this year.

Regarding fish and wildlife, the salmon and steelhead returns counted at Bonneville Dam since 1981 have set a record in 2014 of 2,573,919. More than 2,400 river miles of habitat have been improved for fish, endangered Snake River sockeye are being recovered, fish hatcheries have been constructed to help recover threatened endangered species, more than 400,000 acres of habitat have been acquired for the benefit of wildlife affected by dams, and scientific research has contributed to steadily improving knowledge about fish, wildlife, and habitat in the basin.

2014 witnessed a historic coho return to the Gem State. Over 18,000 coho were counted passing over Lower Granite Dam's fish ladder in 2014. The previous high since counts began in 1975 was 5,060 in 2011. Last year's count was ten times the ten-year average return. This was made possible by the efforts of the Nez Perce Tribe, which initiated a coho salmon hatchery program in 1995. The Pacific Coastal Salmon Recovery Fund, appropriated by Congress, funds 100 percent of the associated coho hatchery expenses.

Fish and wildlife costs account for a major portion of the rate Bonneville charges its wholesale power customers. Approximately one-third of Bonneville's wholesale rate of \$30 per megawatt hour is estimated to be associated with its fish and wildlife program. Mr. Yost provided the Committee with the Northwest Power and Conservation Council's 2014 Idaho Annual Report (see attachment 1).

**Chairman Bair** thanked Mr. Yost for appearing before the Committee and said that consideration of his appointment would take place at the next meeting.

**H 94**

**Mr. Jerry Rigby**, substituting for Representative Nate, said there is a need for **H 94** which relates to trespass. Water entities continue to face liability lawsuits for flooding events caused by old growth trees that fall over into waterways and subsequently plug waterways and cause flooding. Often times, water entities are threatened or actually sued under the timber trespass statute, which was enacted for purposes other than governing water management. This change leaves in place the "reasonable and necessary" standard found in Idaho Code Title 42, Chapters 11 and 12. This legislation strikes a balance that should help protect property owners from flooding while leaving in place the requirement that water delivery entities do only that which is reasonable and necessary while maintaining canal banks and right-of-way easements.

**TESTIMONY:** **Mr. Wyatt Johnson**, Idaho Trial Lawyers, testified in opposition to **H 94**. He feels the way the bill is written is a mistake and it is just a language issue.

**TESTIMONY:** **Mr. Norm Semanko**, Executive Director, Idaho Water Users Association (IWUA), testified in support of **H 94**. He stated that the Legislative Committee of IWUA reviewed this legislation and supported it whole-heartedly. He said this Committee, and the one across the Rotunda, has spent countless hours making changes, adding words, and laboring through concepts with regard to maintenance of ditches and use of right-of-ways by canal companies and irrigation districts.

**Mr. Semanko** said that a few years ago, they were before the Committee with the Trial Lawyers making changes to clarify what the duty of care is for maintenance of ditches under Idaho Code § 42-1204. He stated that if canal companies and irrigation districts failed to do something, or did something wrong, then they are responsible. Irrigation districts and canal companies are governed by Chapters 11 and 12. Chapters 11 and 12 are about the rights under a right-away or easement that a person or entity has on a ditch and has the incidental right to maintain it.

**Mr. Semanko** stated that the timber trespass law was clearly designed to deal with timber trespass, not canal maintenance. All they are asking is that irrigation entities and those that are responsible for a right to maintain their ditches within those statutes, and leave the timber trespass statute to timber trespass. **Mr. Semanko** also said that a tree falling into a canal is not a timber trespass issue, it is a maintenance issue. He emphasized that the language in the bill is precise language and **H 94** is a good bill.

**TESTIMONY:** **Chairman Bair** invited Mr. Rigby to offer a wrap-up of this legislation. **Mr. Rigby** said it had all been said and he submits this bill for the Committee's consideration.

**WRITTEN TESTIMONY:** The Idaho Farm Bureau Federation submitted written testimony in support of **H 94** stating that it is a bill which clarifies a water delivery entity's ability to maintain its system in a safe and reliable manner (see attachment 2).

**MOTION:** **Senator Siddoway** moved that **H 94** be sent to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**. Senator Siddoway will be the floor sponsor.

**H 50**

**Chairman Bair** said that the hearing on **H 50** has been carried over from the previous meeting and testimony would be taken from those who did not have an opportunity to testify.

**TESTIMONY:** **Ms. Alma Hasse**, Payette landowner, said she had multiple problems with **H 50**. The biggest problem she has found is on page 2 of the bill, lines 45 - 50. She feels the time frames stated are unrealistic. She also said that property owners should be given written notice that by entering into a gas lease, it may cause them to be in violation of their mortgage.

- TESTIMONY:** **Mr. John Poserich**, Alta Mesa representative, explained the difference between unitization and integration. Unitization deals with multiple units at one time and integration is a single unit. He also talked about the banking issues that were brought up.
- TESTIMONY:** **Director Schultz** provided material (see attachment 3) relating to how oil and gas leasing could affect mortgages, particularly when an oil and gas lease is issued after securing a mortgage on the property. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Mortgage Corporation (Freddie Mac) do not originate mortgages, but purchase them from primary lenders. Because Fannie Mae and Freddie Mac dominate the secondary mortgage market for residential mortgages, lenders must follow their guidelines to ensure their mortgages are eligible for sale to Fannie Mae and Freddie Mac. Such guidelines have several provisions relevant to oil and gas leases.
- Director Schultz** also talked about integration (multiple mineral rights holders working together to reduce waste and making sure everyone is getting their equitable share) and unitization (a broader pool, bringing existing units together).
- MOTION:** **Senator Siddoway** moved that **H 50** be sent to the floor with a **do pass** recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. Senator Stennett voted nay and asked to be recorded as such. Chairman Bair will be the floor sponsor.
- ADJOURNED:** **Chairman Bair** apologized again to the sponsors of **H 123, 124, and H 125** for running out of time and not hearing their bills. He asked them to return on Friday, the 6th. **Chairman Bair** adjourned the meeting at 3 p.m.

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Senator Bair  
Chair

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Juanita Budell  
Secretary