

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 18, 2016

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Siddoway, Heider, Nuxoll, Bayer, Hagedorn, 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 Bair** called the Senate Resources and Environment Committee (Committee) meeting to order at 1:30 p.m.

WELCOME: **Chairman Bair** stated that it was good to see such a large audience in attendance at the Committee's first meeting. He then welcomed the returning Committee members and introduced the new Committee members, Senators Bayer and Hagedorn. The Committee's secretary, Juanita Budell, was also recognized.

The Committee's page, Liberty Stokes, was introduced. Liberty is from Blackfoot, attends Snake River High School, and is heavily involved in music. She plays the French horn in the school's band and orchestra and hopes to attend college on a music scholarship. Liberty has lived on a farm and has learned about hard work and responsibility, which she feels has helped to shape her personality.

Chairman Bair advised the Committee of the contents of the blue and red folders at their desks. Blue folders contain the agenda and handouts from individuals and agencies. Red folders contain only RS's and bills. This procedure will be followed at all Committee meetings. In the blue folders on this day were the agenda, letters from the Nez Perce Tribe, Shoshone-Bannock Tribes, Coeur d'Alene Tribe and IACI (Idaho Association of Commerce and Industry). In the red folder was RS 24143.

Chairman Bair welcomed Mr. Jack Lyman, Executive Vice President, Idaho Mining Association, who presented RS 24143.

RS 24143

Mr. Lyman said that RS 24143 amends the Surface Mining Act in three ways: 1) It amends 45-year-old language related to environmental compliance to bring it into conformity with the state's anti-degradation policy; 2) increases the threshold bond amount to \$15,000 per acre from the current \$2,500 per acre, and an operator is entitled to a hearing before the Land Board to contest the proposed bond amount; and 3) adds a new requirement that when the Department of Lands fails to return a reclamation performance bond or a permanent closure performance bond for a cyanide facility, it is to notify the operator in writing why the bond will not be returned and what the operator must do to have the bond returned.

Mr. Lyman stated that if this RS is introduced and the bill is given a hearing, he will provide the Committee with a history of the Surface Mining Act, the major rewrites of the Act that were completed in 1997 and 2005 and reasons why these changes are appropriate now.

MOTION: **Senator Siddoway** moved to print **RS 24143**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Chairman Bair passed the gavel to Vice Chairman Vick.

Vice Chairman Vick explained the process of the rules hearings as carried out by this Committee. He then welcomed former Senator John Tippetts, who is now Director of the Department of Environmental Quality (DEQ).

Director Tippetts said it was good to be back in the Capitol, as he served on this Committee for a time while he was a Senator. His wish for this Committee is to have a productive session. He then introduced some members of his staff: Jess Byrne, Deputy Director; Barry Burnell, Water Quality Division Administrator; Doug Conde and Paula Wilson.

Director Tippetts said that he wanted to talk briefly about the incorporation of federal regulations by reference and what they have done differently this year. In the past, they usually just asked the Committee to trust DEQ that the changes the federal government made to their code were appropriate for Idaho. This year, rather than asking the Committee to take their word for it that the changes should be accepted, DEQ has a document that summarizes the changes. Director Tippetts hopes this is helpful and would like feedback on how they might improve the document that has been prepared.

Director Tippetts extended an invitation to the Committee to meet with him or his staff on any questions they may have and should you have a constituent request, they will do what they can to assist you. He then turned the time over to Mr. Burnell to present the rules.

**DOCKET NO.
58-0125-1401**

Rules Regulating the Idaho Pollutant Discharge Elimination System Program (IPDES). **Mr. Barry Burnell**, Water Quality Division Administrator, presented this rule, which was initiated to implement Idaho Code § 39-175C, a statute that directs DEQ to seek approval of a National Pollutant Discharge Elimination System (NPDES) program. There was a need to have appropriate regulations in the Idaho administrative code to oversee the implementation of an Idaho Pollutant Discharge Elimination System (IPDES) permitting, compliance and enforcement program. If this rule is not adopted, then DEQ will not meet the September 2016 NPDES application deadline, which was directed by the 2014 legislative session and the passage of 2014 H 406.

Mr. Burnell stated that eight public negotiated rulemaking meetings were held beginning in December 2014 and continuing through July 2015. DEQ held open public meetings during the course of the negotiations. Participation in the rulemaking process included representatives from cities, industry, tribes, the Environmental Protection Agency (EPA) and other environmental groups.

Mr. Burnell said the cost involved in implementing this program is roughly \$3 million annually. Two million dollars would come from the General Fund, and the remainder would be made up by fees paid by municipalities, individual industrial dischargers and construction and industrial storm water permittees.

Several provisions of this rule require a statutory change. The Clean Water Act requires that state programs allow public access to certain permit-related information and that no one issuing or hearing appeals regarding permits has a conflict of interest. The rule addresses these required elements, but statutory changes are also needed. Two companion bills have been drafted to address these issues and they are RS 23979, dealing with appeals, and RS 23978, amending the public records law.

DEQ was cognizant of the stringency clause in Idaho Code, and the resulting rule meets but does not go beyond the federal law and regulations that control state program requirements. This rule incorporates, by reference, several sections of the Code of Federal Regulations (40 CFR 123).

- TESTIMONY:** **Mr. Norm Semanko**, Executive Director, Idaho Water Users Association, Inc. (IWUA), testified in support of this rule. He complimented DEQ for their professionalism and inclusiveness to make sure that all involved got to see the white papers and drafts. IWUA had an opportunity to provide input and offered three sets of written comments on this rule. A concern they had was that the fee burden would not be such that an individual irrigator could not afford to be part of the state program. Other concerns were consultations with federal agencies and stringencies, which were met to their satisfaction.
- TESTIMONY:** **Mr. Justin Hayes**, Program Director, Idaho Conservation League (ICL), said they oppose this rule. ICL did participate in the development of DEQ's rules. As to the stringency clause, it is no more and no less than the federal requirements. **Mr. Hayes** indicated that one change is with the state staffing and state funding. They are pleased that about half of the staff to be added will be used for compliance and enforcement, which ICL feels is critical.
- Mr. Hayes** said that one concern that had been voiced was about the backlog of permits of the existing EPA program. With Idaho in charge of this program and the additional staffing, permits should be more timely and that is critical to the protection of the environment.
- MOTION:** **Chairman Bair** moved to approve **Docket No. 58-0125-1401**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 58-0102-1201** **Water Quality Standards.** Mr. Marcus Coby, Fort Hall Business Council, Shoshone-Bannock Tribes, spoke on behalf of the Shoshone-Bannock Tribes. They are opposed to the rule as it does not protect Idaho's water resources, nor does it protect their membership. A copy of Mr. Coby's testimony is attached (see attachment 1).
- TESTIMONY:** Written testimony in opposition to Docket No. 58-0102-1201 was submitted by Anthony D. Johnson, Chairman, Nez Perce Tribal Executive Committee, and Samuel N. Penney, Chief, Nez Perce Tribe. Copies of their testimony are attached (see attachments 2 and 3).
- TESTIMONY:** Written testimony in opposition to Docket No. 58-0102-1201 was submitted by J. Allan, Chief, Coeur d'Alene Tribe. A copy of his testimony is attached (see attachment 4).
- PASSED THE GAVEL:** Vice Chairman Vick passed the gavel to Chairman Bair.
- Chairman Bair** announced that due to time constraints, discussion on Docket No. 58-0102-1201 would continue on Wednesday, January 20, as would the remaining items on the agenda.
- ADJOURNED:** The meeting was adjourned at 3:00 p.m.

Senator Bair
Chair

Juanita Budell
Secretary