

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, January 22, 2016

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Bair, Vice Chairman Vick, Senators Siddoway, Heider, Nuxoll, Bayer, Hagedorn and Stennett

**ABSENT/ EXCUSED:** Senator Lacey

**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.

**PASSED THE GAVEL:** Chairman Bair passed the gavel to Vice Chairman Vick.

**Vice Chairman Vick** welcomed Jake Howard, Executive Director of the Idaho Outfitters and Guides Licensing Board (OGLB), who presented the rule.

**DOCKET NO. 25-0101-1501** **Rules of the Idaho Outfitters and Guides Licensing Board. Mr. Howard** stated that the purpose of the rule is to update the rule that was put into place in 1992 by clarifying boating access points and guide limits on river sections. The OGLB licenses outfitter businesses that provide boating and fishing services to the public on the South Fork of the Snake River, a section of the Henry's Fork of the Snake River, a section of the Snake River above Idaho Falls and a section of the Teton River.

**Mr. Howard** said that the rule clarifies individual use areas and conforms state licensed outfitter boating limits on these four river sections in Eastern Idaho, with federal permit requirements to be established. It also grandfathers in one outfitter historically licensed for waterfowl hunting on a portion of the South Fork of the Snake River. No fees or charges are being increased or imposed in this rulemaking, and no fiscal impact will occur.

This rule was developed as a result of collaboration with the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS); 246 comments were received. The main concern was the congestion that occurs primarily on the South Fork of the Snake River. **Mr. Howard** indicated that the outfitting industry supports this rule.

The Teton River rule was authored by an outfitter, who is now deceased. One primary change addresses the use of jet boats on a stretch of the South Fork of the Snake River that is now used exclusively for float boats. It was initiated by the outfitters, partially due to the congestion that occurred.

**Senator Nuxoll** asked if this rule would reduce the outfitters' income in any way, and would it affect the state's income from this occupation? **Mr. Howard** said that the state receives no income from the activities, just fees from the licensing process. There is no reduction to the income that an outfitter would receive, and it would be favorable to the industry.

**Senator Heider** inquired if the rule would affect the general public, who are not licensed guides or outfitters, as to the limit of people they might take. **Mr. Howard** replied there is no limit that relates to the general public.

**MOTION:** **Senator Heider** moved to approve **Docket No. 25-0101-1501**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 26-0106-1501** **Rules Governing Cooperator Recognition and Sale of Advertising.** **Anna Canning**, Management Services Administrator, Idaho Department of Parks and Recreation (IDPR), presented this rule. She stated that the 2015 Legislative Session passed S 1089aa that authorized the Board of IDPR to enter into agreements to secure long-term funding sources, to recognize cooperators and for the sale of advertising. The intent of this rule is to fulfill the request made last year by this Committee to write a rule.

**Ms. Canning** said this rule has two main provisions. They are cooperator recognition (which includes the naming rights) and the sale of advertising. The provision for the sale of advertising is based on a policy IDPR has had since 2013. The provisions for cooperator recognition is based on the naming rights policy of the Board of IDPR and is also in the agency's sponsorship policy, which has been in place since 2013.

In the naming section, **Ms. Canning** pointed out that they do differentiate between units and parks. Units are thought of as a camping area, and IDPR works with sponsors and cooperators to name units. Final approval for park names resides with the legislature.

Negotiated rulemaking meetings were held in Coeur d'Alene, Idaho Falls and Boise, with no public comments received. No fiscal impact is expected, and IDPR hopes, in their ongoing efforts, to provide additional revenue sources.

**Senator Hagedorn** inquired if there is language in the rule that would allow IDPR to force the people who have signs to repair them, should they become damaged or are in need of repair. **Ms. Canning** replied that they do have the ability to require the needed repairs.

**Senator Stennett** asked if the contracts are written to cover not only damage but vandalism. **Ms. Canning** said it is covered in the recognition plan, and IDPR would have the option to enforce it.

**Senator Nuxoll** said that since this rule would allow positive effects, will it be possible to reduce the basic fees into the parks and has it been addressed? **Ms. Canning** said IDPR still struggles with the maintenance backlog within all the parks and this effort will hopefully provide resources to fill that gap.

**Chairman Bair** asked for clarification regarding advertising from vendors. **Ms. Canning** said that IDPR cannot endorse products, and that is the intent as indicated in 052.02.a, page 66 of the rule book.

**Senator Siddoway** inquired as to what kinds of advertising would be allowed and also the size of signs and placements. **Ms. Canning** stated that she wrote a framework consisting of a 17-page document addressing size of signs relative to amount of donation. She indicated that they need to be proportionate to one another. **Senator Siddoway** said that it should be tastefully done and not take away from the park experience. **Ms. Canning** said there were concerns about visual clutter and there is a provision in the rule pertaining to that issue.

**Senator Heider** inquired if legal counseling was obtained regarding paragraph 06, Right to Refuse, on page 67 of the rule book. **Ms. Canning** replied that she did have their legal staff review it and some revisions were made. **Ms. Canning** provided a picture of a donor recognition plaque that is in place at the Horsethief Reservoir, State Park Visitor Center.

**MOTION:** **Senator Siddoway** moved to approve **Docket No. 26-0106-1501**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**DOCKET  
NO:  
58-0102-1501**

**Water Quality Standards.** **Barry Burnell**, Water Quality Division Administrator, Department of Environmental Quality (DEQ), presented the rule. This rule - Use Attainability Analysis (UAA) - was undertaken in response to the Legislative Office of Performance Evaluations (OPE) report of July 2014. They received their direction from the Joint Legislative Oversight Committee to undertake an audit of the DEQ Water Quality Trading and Use Attainability Analysis (UAA) programs that are part of the Surface Water Program. OPE conducted the audit and recommended to the legislature that the DEQ complete its UAA guidance document. The DEQ's reply was that the UAA guidance document did not have a basis in state rules and that the DEQ would undertake rulemaking to correct this deficiency. **Mr. Burnell** said the outcome is the rule that is before the Committee today. Not adopting this rule will prohibit the DEQ from meeting the OPE recommendation.

The intent of the rule is to provide a regulatory structure for conducting Use Attainability Assessments. The language used in this rule comes from the federal Clean Water Act. It also provides the DEQ with a basis to develop a guidance document to assist in the development of UAAs.

Negotiated rulemaking meetings were held in Boise, Coeur d'Alene and Pocatello. Participants included the Idaho Water Users Association (IWUA), canal companies, engineering firms, the Nez Perce Tribe and the Environmental Protection Agency (EPA). Modifications were made to the rule and the rule was posted August 5, 2015, for public comment. Comments were received from EPA, Idaho Conservation League (ICL) and IWUA. No changes were made to the rule.

**Mr. Burnell** stated that there are no controversial issues or contentious elements of the rule as the rule combines language from Idaho Code and the Clean Water Act. Regarding the stringency issue, the standards are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**MOTION:** **Senator Hagedorn** moved to approve **Docket 58-0102-1501**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**DOCKET  
NO.  
58-0111-1501**

**Ground Water Quality Rule.** **Mr. Burnell** said this rulemaking was initiated to revise the Ground Water Quality Rule as directed by the 2015 Legislature under **2015 H 197**, which amended Idaho Code § 39-102. That bill clarified that degradation of ground water caused by mining activities was allowed within a point of compliance as long as the mine operator implemented best management practices. The rule revised sections 150, 301, 400 and 401 to accomplish this direction. **2015 H 197** had an emergency clause in it that required the DEQ Board to adopt a temporary rule by June 1, 2015, which the Board did at its May 20, 2015, meeting.

The DEQ posted and published the temporary rule to the DEQ rulemaking website. The DEQ worked with the sponsor of **2015 H 197** to develop the proposed temporary rule language. After Board approval, DEQ undertook the normal administrative procedures process for rulemaking. Only three comments were received, and no changes to the rule were made.

**Mr. Burnell** stated that there are no anticipated costs to the regulated community and no costs to the agency. Also, no controversial issues were expressed during rulemaking. This rule is necessary to be compliant with **2015 H 197**. As far as stringency goes, **Mr. Burnell** said that they undertake direction from the Idaho Legislature.

**Senator Nuxoll** inquired as to who is accountable for the processing facilities clean-up of the silver mines in Shoshone County and who is responsible for enforcement. **Mr. Burnell** said the mining point of compliance rule was developed and it replaced the active mineral extraction exemption that was previously in the rule. When the mining areas were developed, they didn't include processing facilities because processing is not the extraction of the mineral.

**Vice Chairman Vick** inquired as to the difference between best management practices and best practical methods. **Mr. Burnell** responded by saying the language "to the maximum extent practical" comes from Idaho Code. When one sees "best management practices," it is meant to imply there is a higher level of DMD's implemented in the resource.

**MOTION:** **Chairman Bair** moved to approve **Docket No. 58-0111-1501**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 58-0104-1501** **Rules for Administration of Wastewater Treatment Facility Grants.** **Mr. Burnell** said this rulemaking was initiated in order to comply with revisions to the State Revolving Fund portion of the Clean Water Act, passed by Congress on May 20, 2014. The Water Resource and Recovery Development Act revisions require that facility plans include a justification that the selected alternative maximizes the potential for efficient water use, reuse, recapture and conservation, and energy conservation. The current rules only require that the selected alternative be cost effective and environmentally sound.

The DEQ published the initial draft rule to the "Idaho Administrative Bulletin" and requested comments. No comments were received. The DEQ invited stakeholders to a negotiated rulemaking session and no stakeholders attended. The DEQ posted the final draft rule and again requested comments; no comments were received. The DEQ presented the rule to the Association of Idaho Cities and the Association of Consulting Engineering Companies. Both supported the rule. As to the estimated cost, the regulated community should experience reductions in their operations and maintenance costs by selecting alternatives that are more efficient and use less energy. **Mr. Burnell** stated that there were no controversial issues or stringency issues.

**MOTION:** **Senator Stennett** moved to approve **Docket No. 58-0104-1501**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 58-0112-1501** **Rules for Administration of Water Pollution Control.** **Mr. Burnell** said this rulemaking was initiated in order to comply with revisions to the State Revolving Fund portion of the Clean Water Act, passed by Congress on May 20, 2014. The Water Resource and Recovery Development Act revisions require that State loan rules must also include unemployment and population into its Disadvantaged Loan criteria.

Again, the DEQ published the initial draft rule; no comments were received. They invited stakeholders to a negotiated rulemaking session and none attended. When the final draft rule was posted and comments requested, none were received. The DEQ presented the rule to the Association of Idaho Cities and the Association of Consulting Engineering Companies. Both supported the rule.

The rule revises one section of the Water Pollution Control Loans rule. It creates two tiers of median household income impact. If the impact (of paying for the loan) on rate payers exceeds 2 percent of median household income, then the community will qualify as disadvantaged. If the impact on rate payers is between 1.5 percent and two percent, then the community must also have a decreasing population base and unemployment that exceeds the state average.

**MOTION:** **Senator Nuxoll** moved to approve **Docket No. 58-0112-1501**. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**PASSED** Vice Chairman Vick passed the gavel to Chairman Bair.  
**THE GAVEL:**

Chairman Bair thanked Mr. Burnell for his presentation of the DEQ's rules.

**ADJOURNED:** There being no further business, Chairman Bair adjourned the meeting at 2:32 p.m.

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Senator Bair  
Chair

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Juanita Budell  
Secretary