

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 24, 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.

GUBERNATORIAL APPOINTMENT HEARING: **Chairman Bair** welcomed William Booth of Hayden, Idaho, who has been reappointed to the Northwest Power and Conservation Council (NPCC) to serve a term commencing January 15, 2016, and expiring January 15, 2019.

Mr. Booth stated that he was originally appointed to the NPCC in 2007 and it was a pleasure to be before the Committee again. He is a 55-year resident of Idaho, growing up on a farm near Post Falls. After graduating from the University of Idaho, Mr. Booth served a tour of duty in the U.S. Air Force as a missile officer and later earned an MBA. He then was employed in Northern Idaho by the silver mining industry, retiring as Vice President of Government and Environmental Affairs for Hecla Mining Company of Coeur d'Alene.

In January 2016, Mr. Booth was elected Vice Chairman of the NPCC. NPCC was created by an Act of Congress in 1980 with three main responsibilities: 1.) develop a 20-year regional power plan; 2.) implement a program to mitigate for fish and wildlife losses caused by hydropower dams in the Columbia Basin; and 3.) bring transparency and involve Northwest citizens in its decision-making. NPCC has representation from Idaho, Montana, Oregon and Washington and is funded by Bonneville Power Administration.

Mr. Booth said his goals for NPCC in the coming three years are centered on a continued commitment to the principle tenant of the Power Act, which is to "ensure an affordable and reliable energy system while enhancing fish and wildlife in the Columbia River Basin."

Chairman Bair thanked Mr. Booth for appearing before the Committee and said that consideration of his reappointment would take place next Wednesday, March 2.

PRESENTATION: **Tom Schultz**, Director of Idaho Department of Lands (IDL), provided an overview of the Good Neighbor Authority (GNA). The GNA enables the U.S. Forest Service (USFS) to partner with states to achieve restoration and resilient landscape objectives across ownership boundaries through cooperative agreements.

The 2014 farm bill and the 2014 Consolidated Appropriations Act provided the authority for the USFS to enter into contracts and agreements with state agencies to perform forest, rangeland and watershed restoration services, including timber sales. After more than a decade of temporary authority limited to two states, the authority was expanded to include all states with national forest system land and Bureau of Land Management (BLM) public land.

The goal of the GNA in Idaho is to increase the pace and scale of forest and watershed restoration activities in federal forests when similar and complementary actions are occurring on nearby state lands. These cooperative efforts can help improve forest health, reduce fuels and wildfire threats to communities and watersheds and create more jobs and economic benefits. Successful implementation of GNA in Idaho will require a focused and committed effort from all partners over the next several years to achieve these benefits.

The 2015 Legislature passed SCR 126, which requested the IDL perform certain duties with the federal government regarding federal lands and to provide for periodic reports. Following are the four items that were requested and the current status of each:

1. Develop agreements with federal agencies based on the GNA. Status: The IDL hired a contractor and they have met with USFS staff to discuss the development of a GNA master agreement. They also met with forest industry representatives to gauge funding support for implementing GNA projects.
2. Establish an internal working group to meet with federal land management agencies and to identify specific parcels of federal lands suitable for use of the GNA. Status: An internal working group was established in 2014 after passage of the 2014 farm bill. They represent a diverse group of stakeholders. The group met in January and June of 2015.
3. When considering federal parcels for possible use of the GNA, the working group shall consider such factors as proximity to communities, natural resources production, economic viability, minimization of environmental impact and other factors. Status: The GNA contractor is currently working with IDL and forest service timber staff to analyze the economic, operational and biological viability of possible GNA projects that are cleared by the National Environmental Policy Act (NEPA).
4. Report to the Idaho Legislature and to the federal agencies at least annually as to the status and performance of any proposed or executed agreement under the GNA. Status: This update serves as the annual report to the Idaho Legislature and to the federal agencies as to the GNA efforts in Idaho.

During this legislative session, IDL is asking the Idaho Legislature to approve a \$562,000 budget enhancement that will enable IDL to:

- Fill three positions, purchase necessary equipment and supplies and implement GNA in Idaho. The positions include a program manager, forester and grants/contracts analyst (\$262,000).
- Contract with professional foresters to conduct surveys and stand exams and perform timber sale preparation and administration through GNA agreements (\$300,000).

David Groeschl, State Forester and Deputy Director of Forestry and Fire, IDL, provided a PowerPoint presentation. **Mr. Groeschl** stated that the real goal of the GNA is to increase the pace and scale of restoration on federal lands in Idaho.

The 2014 farm bill had three key provisions in the forestry section. The first was the current authorization of stewardship contracting; the second was the expansion of the GNA to all states that had national forest system lands within their boundaries; and the third provision was an amendment to the Healthy Forest Restoration Act (HFRA) that allowed the governors of every state to designate insect and disease areas under the HFRA that were high risk.

In Idaho, work was done by the collaborators in place, including the USFS, to identify the areas of high risk. Idaho has approximately 20 million acres of federal forest land. Under the farm bill, areas that were eliminated were the wilderness areas, as well as the roadless areas. Of the 20 million acres, 12.6 million acres had been designated as suitable for some level of management; of those acres, 8.8 million acres are at high risk of insect and disease mortality, as set forth in the farm bill.

Mr. Groeschl said they were given 60 days to identify the proposed treatment areas and it was a collective effort by the collaborators. Fifty areas, totalling 1.8 million acres, all fell in the high-risk category. In late March 2014, the Governor submitted those 50 proposed treatment areas to the Secretary of Agriculture and they were accepted in May 2014.

Since that time, IDL has looked at the authorities provided under the farm bill and examined how to address the issues. A working group was formed that included county commissioners, conservation organizations, tribes, USFS and IDL. Several meetings were held to look at these authorities and determine what kind of mechanism would work best in Idaho to start addressing these high-risk areas. They looked at stewardship contracting, which is an important tool by the USFS, but IDL felt they could not add value to the process. They also explored what Montana was doing under a master stewardship agreement; some valuable lessons were learned with regard to what they had attempted to do there.

IDL looked at a nonprofit concept, which was met with mixed results. They then looked at the GNA vehicle more closely and compared it to stewardship contracting, which is done under the USFS authority. With the GNA, the USFS enters into a cooperative agreement with IDL in implementing NEPA-cleared projects. The collaborators have an important role in working locally to follow these projects. Once the projects are cleared, IDL evaluates which projects to take on under the GNA. **Mr. Groeschl** stated that their strength lies in implementation and adding capacity to get more work done once the projects have cleared NEPA.

Mr. Groeschl briefly reviewed the four items set forth in SCR 126 as presented by Director Schultz earlier. The initial startup funds for this do not involve any state dollars. They come from some federal funding and dedicated dollars from industry to help until the process generates enough revenue for the GNA to become self-sustained. This is very different from the endowment program. The endowment program is focused on the forest management program on endowment lands to maximize long-term revenue. The goal is to pick the right projects to initiate enough revenue. The net revenue from the GNA fund would be used for two objectives: to accomplish more work on the ground and to cover the administrative costs for staff to administer these projects. After five years, federal dollars will go away and industry dollars will likely go away also.

Mr. Groeschl said the focus is on the end results, figuring out the details as they go and working hard to make the GNA successful in increasing the pace and scale of restoration of the federal lands.

Time was allowed for some discussion.

Chairman Bair passed the gavel to Vice Chairman Vick.

**PASSED THE
GAVEL:**

Senator Nuxoll presented **S 1338** and said that his legislation allows counties in Idaho to declare a catastrophic public nuisance and request abatement from federal land management agencies when the condition of federally managed land presents a danger of catastrophic wildfire, polluted drinking water and air quality and threatens the health, safety and welfare of the citizens. She said it simply brings all involved entities to the drawing table to coordinate goals.

Senator Nuxoll provided some background information. In Idaho, approximately 742,000 acres burned, according to the IDL. In the U.S., the total wildfire acreage burned was over 10 million acres. This was the worst U.S. fire season in at least 55 years. Forty seven percent of the acres burned were USFS land; 31 percent were BLM land; 16 percent were private land; 4 percent belonged to IDL and 2 percent, all other. It has been pointed out that although fire can start anywhere, whether by lightning strikes or by man-made causes, "managed lands" face fewer ill effects. The reason is there is a shorter duration of the fire due to lower fuel loads and better access to forests via roads. In summary, **Senator Nuxoll** said the fires are of lower intensity and easier to fight on "managed" versus "unmanaged lands."

Senator Nuxoll stated that the USFS is not proactively managing their lands with respect to fire abatement by appropriate thinning and logging. Their budget has been reduced for forest management because they are spending all their money on fighting fires. Logging on USFS lands in Idaho is down 90 percent from the 1970s peak. The threat of wildfire can be demonstrated by stand density and fuel load of forested areas, insect infestation or disease infestation. When the condition in the forested area threatens the quality or quantity of the public water supply of a county, the health, safety or welfare of the citizens of a county, the air quality of a nonattainment area or the vegetative resources required to support land health and authorized grazing, the chief executive officer or county sheriff of a county can request abatement with this legislation.

What this bill does is to allow counties in Idaho, through their elected commissioners, to identify forest lands owned by the U.S. government and managed by the USFS as "catastrophic public nuisances." It allows counties to demonstrate the public land nuisance threat by using publicly available forest health data or data from private sources detailing that the conditions in the forested area threaten the quality or quantity of the public water supply of a county, the health, safety or welfare of the citizens of a county, the air quality of a nonattainment area or the vegetative resources required to support land health. The bill also allows counties, after consultation with the Attorney General (AG), to demand that federal agencies abate the nuisance or provide a response with a plan to abate the nuisance by a requested date of 30 days. It allows counties to confer with the prosecuting attorney or AG should no action be taken by the USFS.

Senator Nuxoll then explained what the bill does not do. It does not impair, interfere with, or infringe upon federal laws or regulations or the management of federal lands because it does not authorize or direct the responsible officials to take any action to abate the catastrophic public nuisance beyond notification of the authorities currently managing those lands, and thereafter only authorizes pursuit of legal remedies already available under existing law.

Senator Nuxoll cited three things that opponents say: 1.) Similar legislation was struck down by federal courts in New Mexico 2.) The bill can't compel the federal agencies to do anything that they don't want to do, it confers no new powers 3.) We need more collaboration with federal agencies and this is a step in the wrong direction.

Her rebuttal to the opponents was that the New Mexico legislation was vastly different; it directed counties to take direct action and have contractors harvest timber on USFS land if the USFS did not do so. Utah passed legislation similar to this bill and discussions involving Garfield, Iron County and the supervisor of the Dixie National Forest have moved forward. Arizona is considering similar legislation now.

Senator Nuxoll said that although it is true that the bill can't compel federal agencies to do anything, it can highlight the fire dangers and call out inaction by the USFS. Opponents are fearful because they don't want the public to understand the magnitude of federal mismanagement. **Senator Nuxoll** said that collaboration is a tool, but what if that fails? How does that help a homeowner or community facing an imminent threat?

TESTIMONY: **Fred Birnbaum**, representing the Idaho Freedom Foundation, testified in support of **S 1338**. He reinforced what Senator Nuxoll said as to what the bill does and does not do. He stated that this should not be a partisan issue. The Idaho Conservation League's mission and vision state that they work to "protect the air you breathe, the water you drink, and the land you love." **Mr. Birnbaum** said that is the reason they are here today, to promote proper land management practices by the USFS so that we don't have 8.8 million acres of U.S. forest in Idaho with a high degree of mortality risk and a very real threat of wildfires in our communities.

Jim Chmelik, Idaho County Commissioner, testified in support of **H 1338**. He stated that it is not a cure-all, but will create something in a cooperative fashion with the USFS. Idaho County has 5.4 million acres; of that, 4.7 million acres are federally managed. There is a lot of timber ground and since 2012, over ten percent has burned to the ground. He feels the problem with the agencies is not the funding, but the problem lies with not managing the forests. Mr. Chmelik showed several slides of a fire and the destruction it has caused. One source of destruction was the soot and ashes from the fire going into the streams and rivers and polluting the water. A slide also showed treated areas versus non-treated areas of forest land and how the fire was extinguished much sooner in the treated areas.

Kelly Abersteri, Owyhee County Commissioner, also testified in support of **H 1338**. In a 24-hour period in Owyhee County, 100,000 acres burned. Had there not been previous fires on the valley floor, they would have lost homes. There was a cost of \$67 million to rehabilitate the lands. From 1983 to 1989, approximately 2 million acres were burnt annually; 1990 to 2000, 4 to 5 million acres were burnt annually; and since 2001 to present, approximately 9 to 10 million acres are burnt annually. **Mr. Abersteri** stated that counties need something to counter with against the federal government.

Forrest Goodrum, representing the Ada County Fish and Game League, said it appears that the county commissioners already have the ability to do everything that is in this bill, **S 1338**. **Mr. Goodrum** said there are a number of laws on the books concerning public nuisances and he doesn't disagree that there isn't a problem. He stated that this bill doesn't actually do anything and he is wondering why another law is being added. **Mr. Goodrum** suggested sending a memorandum instead of passing a statute.

Vice Chairman Vick announced that no action would be taken on **S 1338** and discussion would be continued at a later date, at the call of the Chair, as well as the remaining bills on the agenda.

ADJOURNED: Vice Chairman Vick adjourned the meeting at 3:05 p.m.

Senator Bair
Chair

Juanita Budell
Secretary