

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, February 01, 2017

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Bair, Vice Chairman Vick, Senators Siddoway, Brackett, Heider, Bayer, Johnson, Stennett, and Jordan

**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. and said consideration of the four Gubernatorial appointments would be the first order of business.

**GUBERNATORIAL APPOINTMENT CONSIDERATION:** **Senator Brackett** moved to send the Gubernatorial appointment of Vince Alberti to the Idaho Water Resource Board to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Heider will be the floor sponsor.

**GUBERNATORIAL APPOINTMENT CONSIDERATION:** **Senator Stennett** moved to send the Gubernatorial appointment of Albert P. Barker to the Idaho Water Resource Board to the floor with recommendation that he be confirmed by the Senate. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**. Senator Stennett will be the floor sponsor.

**GUBERNATORIAL APPOINTMENT CONSIDERATION:** **Senator Stennett** moved to send the Gubernatorial appointment of Roger Chase to the Idaho Water Resource Board to the floor with recommendation that he be confirmed by the Senate. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. Senator Stennett will be the floor sponsor.

**GUBERNATORIAL APPOINTMENT CONSIDERATION:** **Senator Heider** moved to send the Gubernatorial appointment of John Albert Stevenson to the Idaho Water Resource Board to the floor with recommendation that he be confirmed by the Senate. **Senator Brackett** seconded the motion. The motion carried by **voice vote**. Chairman Bair will be the floor sponsor.

**MINUTES APPROVAL:** **Senator Bayer** moved to approve the minutes of January 23, 2017. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT HEARING:** Margaret Gail Chipman, Weiser, was reappointed to the Oil and Gas Commission to serve a term commencing July 2, 2016 and expiring July 1, 2020. **Ms. Chipman** said that she was appointed by the Governor in July 2013 when the Commission was first established as a separate entity from the Land Board and has served as vice chairman since that time. **Ms. Chipman** stated that she has attended all 27 regular and special meetings of the Oil and Gas Commission.

**Ms. Chipman** said she is currently serving her 24th year on the Weiser School Board and was recently elected as president of the Idaho School Board Association. She has also served for three years on the Professional Standards Commission for the State Department of Education. In addition, **Ms. Chipman** said she is the treasurer of the Fruitland PEO Chapter and also treasurer of the Shamrock Club, a group who maintains the historic Jeffreys Schoolhouse in Weiser.

Ms. Chipman, born and raised in Moscow, graduated from the University of Idaho in 1967 with a bachelor's degree in Business. After her marriage to Gary Chipman, they moved to Southern Idaho, then settled in Weiser in 1971. **Ms. Chipman** said that she is a retired LPN and Pharmacy Tech. She and her late husband spent 45 years in the cattle feeding and ranching business. **Ms. Chipman** stated that she enjoys gardening and visiting the Capitol during the Legislative session.

**Ms. Chipman** said she serves as a representative of landowners with mineral rights and has worked hard to gain knowledge in the area of oil and gas by observing first-hand operations of the Commissions in North Dakota and Utah. Ms. Chipman has approved and participated in a thorough evaluation of Idaho's oil and gas programs conducted by the State Oil and Gas Regulatory Exchange (SOGRE). The evaluation is a study of Idaho's gas and oil statutory authority, implementing regulations, administrative procedures, staffing, and funding.

**Ms. Chipman** said the Commission's goals are: developing effective regulations; establishing organization wide expertise; and building partnerships consistent with the Commission's mission. **Ms. Chipman** said that her personal goal is to learn more and to further educate herself on oil and gas issues.

**Senator Stennett** inquired about the repealing of the oil and gas rules. **Ms. Chipman** said the part that is being repealed will hopefully be replaced by the rules that have been promulgated through the hearing process. **Senator Stennett** then asked Ms. Chipman what she might have done differently. **Ms. Chipman** replied that they have streamlined the hearing process and that should make it much better.

**Senator Siddoway** asked Ms. Chipman if she attended the negotiated rulemaking process that was held this past summer. **Ms. Chipman** replied that she did not attend any of those meetings. She felt that because the rules would be coming before the Commission, she should not be a part of the rulemaking. **Senator Siddoway** said that most of the Committee members have been approached by landowners in the area of exploration. He asked Ms. Chipman if she was confident that the landowners would be treated equitably and fairly. Some of their concerns include proper metering, land being drained, and geologic formations. **Ms. Chipman** said that the Commission shares those same concerns and the rules are not perfect rules. A report will be forthcoming and it substantiates the rules and regulations.

**Chairman Bair** thanked Ms. Chipman for her service on the Oil and Gas Commission and said that voting on Ms. Chipman's appointment would take place at the Committee's next meeting.

## **S 1028**

**Mike McCurdy**, Waste Management and Remediation Division Administrator for the Department of Environment Quality (DEQ), presented **S 1028** and said this is a proposed amendment to the Idaho Underground Storage Bill Act. This bill allows DEQ to collect fees for the underground storage tanks. Fees are not to exceed \$100 per tank per year and any fee balance in excess of \$35,000 on December 31 will be applied to reduce the following year's fees. Idaho has about 3,375 underground storage tanks in 1,180 facilities.

This legislation will establish a dedicated fund for underground storage tank fees to provide for better accountability and transparency. With the Statewide Accounting and Reporting System (STARS), DEQ will be able to complete an accurate fee expenditure report. In addition, a dedicated fund will earn interest which may increase the fund's balance and decrease fees in subsequent years.

**Chairman Bair** said to make things clear, legislation and rules were passed last year dealing with underground storage tanks and the creation of a fund was overlooked. **S 1028** creates a fund for the fees that are to be collected.

**MOTION:**

**Senator Brackett** moved that **S 1028** be sent to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**. Senator Brackett will be the floor sponsor.

**PASSED THE GAVEL:**

Chairman Bair passed the gavel to Vice Chairman Vick.

**DOCKET NO. 58-0103-1501**

**Vice Chairman Vick** welcomed Barry Burnell, Water Quality Division Administrator, DEQ. **Vice Chairman Vick** said there was no need to review **Docket No. 58-0103-1501** in its entirety, as it had been thoroughly covered in a previous meeting. He asked for a condensed overview.

**Mr. Burnell** said this rule changes in how DEQ oversees and manages service providers for complex alternative septic systems and moves away from an operation and maintenance approach. In the service provided approach, there is a certificate that is issued to individuals during the licensing process as licensed system installers.

The question that was raised at the previous meeting was about licensing and permitting. **Mr. Burnell** stated that he reviewed the Environmental Protection and Health Act and found three sections of that Act that provided authority to DEQ's director to prepare rules for the control of water pollution. Section 39-105 states the power and duties of the director, and in subsection 2 it says that the director shall formulate and recommend to the DEQ board rules as may be necessary to deal with problems related to water pollution, licensure, and certification requirements. Subsection 3 says the powers and duties of the director shall include the issuance of licenses and permits as prescribed by law and by rules. Section 39-115 states that the director shall have the authority to issue pollution source permits. **Mr. Burnell** said those are the portions of Idaho Code that address licensure and certification.

**MOTION:**

**Chairman Bair** moved to approve **Docket No. 58-0103-1501**. **Senator Siddoway** seconded the motion. **Chairman Bair** said that he wanted to thank Mr. Burnell for going the second mile regarding the question about authority and it is nice to know that all is in order. The motion carried by **voice vote**. **Vice Chairman Vick** said that he echoes the sentiments of Chairman Bair.

**DOCKET NO. 20-0701-1601**

**Eric Wilson**, Resource Protection and Assistance Bureau Chief, Idaho Department of Lands (IDL) presented **Docket No. 20-0701-1601**. **Mr. Wilson** said that IDL is the administrative agency for the Idaho Oil and Gas Conservation Commission. The Commission's duty under Idaho Code § 47-3 is to prevent waste during the exploration and development of oil and gas resources, protect the correlative rights of mineral owners, and protect fresh waters during oil and gas development on all federal, state, and private lands in Idaho.

**Mr. Wilson** stated that on July 21, 2016, the Oil and Gas Conservation Commission directed the IDL to enter into rulemaking to repeal IDAPA 20.07.01. These are the Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission. These rules went into effect in 1992, and predate the Administrative Procedures Act, also called the APA. The APA has therefore superseded these rules. **Mr. Wilson** said that during the 2016 Legislative Session, changes to Idaho Code § Title 47, Chapter 3, modified how administrative proceedings take place. As a result, 20.07.01 no longer governs actions by the Idaho Oil and Gas Conservation Commission. Repealing this rule section clarifies administrative processes.

**Mr. Wilson** stated that if necessary, IDL may bring forward a new set of rules to govern proceedings before the Idaho Oil and Gas Conservation Commission at a later date.

**Senator Jordan** asked for clarification regarding the repeal of the rules. **Mr. Wilson** said that the APA supersedes these rules and the rules are no longer needed.

**Senator Stennett** inquired as to how many people provided comments. **Mr. Wilson** indicated that no comments were received on this issue.

**TESTIMONY:**

**Ms. Shelley Brock**, an Eagle resident, stated that IDL is attempting to pass new rules and laws to protect the industry over the private property owners. **Ms. Brock** said she doesn't understand why rules are being repealed that offer more protection than the ones that have been worked on all summer that are about to be implemented. **Ms. Brock** said that inadequate setbacks need to be addressed more thoroughly and there are also serious issues where the industry is able to classify its trade secrets, not only the hazardous chemicals that they will be able to use to treat and stimulate these wells, but also to classify as trade secret the proof that they have contained their 55 percent mandated lease acres in a section.

**Ms. Brock** said that it has been three and one-half years since Alta Mesa reported their first production in Payette County and the landowners have no idea how much Alta Mesa has pulled out of the ground and how much the taxpayers of Idaho may have been shorted through inaccurate reporting or inaccurate classification. **Ms. Brock** also stated that she learned just recently that some of the large landowners in Payette County were not offered the option of becoming working-interest owners, even though these are folks who could afford to put money upfront. **Ms. Brock** said the bottom line is that the State is setting very explicit protection for themselves, but is not giving property and mineral owners and taxpayers the same protection. The State is required, by law, to protect correlative rights and this includes mineral rights and private property rights. **Ms. Brock** concluded her testimony by saying it sounds to a lot of people like it is the fox guarding the hen house, but in her opinion, it is the fox designing the hen house. She asked the Committee to reject the repeal.

**MOTION:**

**Senator Siddoway** moved to approve **Docket No. 20-0701-1601**. **Chairman Bair** seconded the motion. The motion carried by **voice vote**. **Senators Stennett and Jordan** asked to be recorded as voting no.

**DOCKET NO.  
20-0316-1601**

**Mike Murphy, Endowment Leasing Bureau Chief, IDL**, presented **Docket No. 20-0316-1601**. On May 17, 2016, the Land Board approved a request from IDL to enter negotiated rulemaking. Two negotiated rulemaking meetings were held in July. Attendees included industry members and members of the public.

**Mr. Murphy** said that changes reached through the negotiated rulemaking include:

- Rule language now points to Idaho Code § 47-801 to establish lease length. Previous rule language and current Idaho Code list a lease term of 10 years. IDL has submitted legislation to allow for oil and gas lease terms of "up to" 10 years. This change gives IDL discretion to issue shorter leases when in the best interest of the endowed beneficiary.
- Nomination fees were increased from \$25.00 to a minimum of \$250.00 per nomination, as set by the Land Board.
- Processing fees for assignments were increased from \$5.00 to a minimum of \$100.00 per lease, as set by the Land Board.

- Annual rental rates were increased from \$1.00 per acre to \$3.00 per acre, with a minimal annual rental payment of \$250.00.
- Lease boundaries are no longer limited to a single section, but will have a maximum size of 640 acres.
- IDL now has discretion to combine nominated tracts into one lease.
- Annual shut-in fees are now twice the rental rate.
- On-line auctions are now recognized as a method for holding lease auctions.
- Definitions were clarified and the rules were reorganized to clarify the nomination and auction process.

**Mr. Murphy** said that a public hearing was held in October and IDL directly emailed more than 80 parties interested in oil and gas issues. Two written comments were received, but one was provided by IDL to address a conflict with the Idaho Public Records Act. Following review by the Office of the Attorney General, this rule section was stricken.

**Mr. Murphy** stated that the second comment letter received came from the Idaho Conservation League (ICL). ICL requested an explicit prohibition of surface occupancy on state lands serving a dedicated purpose in order to protect the dedicated use from degradation by oil and gas infrastructure. IDL agrees dedicated uses should be protected; however, IDL maintains that such a prohibition is unnecessary because IDL already has the ability to develop specific lease stipulations, in coordination with other state agencies, to address any concerns related to impacts by oil and gas development on dedicated uses or environmentally sensitive areas.

**Mr. Murphy** said that ICL also requested prohibition of surface occupancy on lands with split surface and mineral estates. IDL does not support this change based on Idaho Code § 47-708 which identifies the rights of state lessees of mineral rights to prospect and mine subsurface minerals and also sets forth the lessee's duties and liabilities for any damages caused to the improvements of the surface owner. Oil and gas is included in the definition of a "mineral" within this statute.

**Mr. Murphy** said that additionally, IDAPA 20.07.02.110 - Conservation Governing Conservation of Oil and Natural Gas in the State of Idaho, provides for surface owner notification and states that if no surface use agreement exists, surface owner protection in the form of a minimum \$5,000 bond is paid to IDL to safeguard against the surface owner's potential loss. **Mr. Murphy** stated that it is common practice, however, for oil and gas lessees to enter into a surface use agreement to identify the specific uses that can occur on the surface in exchange for compensation.

**Mr. Murphy** said that ICL also commented that Section 050.04 of the proposed rule identifies a setback of 200 feet from a residence for oil and gas wells. The pending rule for IDAPA 20.07.02 identifies a 300 foot setback. ICL recommended consistency across both sets of rules. IDL agrees, and determined the best approach was to delete Section 050.04 of this rule in its entirety, with recognition that IDAPA 20.07.02 pending rules will be in place, if approved, and that IDL maintains the ability to impose a stricter setback, if warranted, through lease stipulations on a case-by-case basis.

**Senator Stennett** questioned the increase in fees. **Mr. Murphy** replied that IDL reviewed other states' fees and chose to be in the middle range. **Senator Stennett** inquired if this increase would be a break-even point for IDL. **Mr. Murphy** replied that the fees that IDL is addressing are cost recovery fees.

**MOTION:**

**Chairman Bair** moved to approve **Docket No. 20-0316-1601**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
20-0214-1601**

**David Groeschl**, Deputy Director and State Forester, IDL, said that **Docket No. 20-0214-1601** deals with the sale of forest products on state-owned endowment lands. Revisions to these rules were driven by three factors. First, the Land Board timber sale approval process was modified and streamlined about a year ago based on recommendations by the Land Board's general consultant, Callan Associates. Language in IDAPA 20.02.14 was revised to reflect this new streamlined timber sale approval process.

**Mr. Groeschl** said the second factor for the revisions were several of the definitions and sale descriptions contained in the rule were updated. Third, Sections 024 and 025 of the rules dealing with the sale of cedar poles has been an area of concern for many years because the current rules:

- limit competitive bidding because of scale conversion and non-bidding requirements that favor one sector of the forest products industry;
- increase management costs and limit IDL's management options;
- result in more site disturbance and stand damage by always requiring an additional entry to remove cedar poles rather than allowing for other possible sale options;
- and most importantly, the current rules are inconsistent with IDL and the Land Board's constitutional duty to maximize long-term returns to the beneficiaries.

To alleviate these concerns, **Mr. Groeschl** said that Sections 024 and 025 were stricken in the pending rule.

**Mr. Groeschl** stated that discussions regarding possible cedar pole rule changes began more than two years ago with a preliminary meeting between IDL and the two cedar pole companies still operating in Idaho, McFarland Cascade and Bell Timber. To establish a starting point for negotiated rulemaking, two preparatory meetings were held in May 2016, followed by two proposed rule hearings in Moscow and Sandpoint during August 2016. IDL also met with District 1 and District 5 legislators to inform them of the negotiated rulemaking effort and to answer questions. IDL approved the current pending rule language on November 15, 2016.

Since the Land Board's approval of the pending rule, IDL has met with McFarland Cascade and others, upon their request, to discuss the pending rule and IDL's plan for selling cedar poles. The letter from Director Schultz to McFarland Cascade, dated January 27, 2017, describes IDL's plan for offering cedar poles over the next two fiscal years, 2018 and 2019.

**Mr. Groeschl** said that in order to evaluate how best to meet IDL's fiduciary obligation to maximize the long-term return to the endowment beneficiaries, IDL plans to conduct a two-year pilot program that compares two different methods of selling cedar poles through both a single and dual entry approach.

Consistent with the existing Land Board policy of offering 20,000 cedar poles per year, approximately 10,000 poles will be offered each year using a single entry approach and approximately 10,000 poles will be offered each year using a dual entry approach. The data gathered during this two-year pilot program on both sale methods will help IDL determine the most efficient, effective and profitable approach to selling cedar poles on state-owned endowment lands. This data will also help IDL establish a cedar pole policy consistent with its fiduciary duty. This proposed pilot program cannot be implemented without approval of the pending rule.

**Mr. Groeschl** said that in conclusion, IDL believes approval of this pending rule will generate more revenue for the endowment beneficiaries over time by:

- removing unnecessary restrictions to allow for increased competition to determine the highest and best use of all forest products, including cedar poles;
- reducing timber sale administrative costs, shortening rotations and regeneration delays, and reducing environmental impacts; and
- by allowing implementation of IDL's cedar sale pilot program to compare different methods of selling cedar poles which will help determine the most efficient, effective and profitable approach to selling cedar poles on state-owned endowment lands.

**Senator Siddoway** asked what was the conflict and how this compromise resolved that conflict. **Mr. Groeschl** stated that the current rules are very prescriptive in setting the requirements in how IDL removes cedar poles, which is by a separate timber sale. There is also a scale conversion issue. Also in the current rules, the pole companies are not required to competitively bid on the non-cedar saw logs that are removed when the cedar quality pole trees are cut.

**Senator Brackett** said that he applauds the IDL for the pilot project to determine which approach is best for the endowment and suggested IDL wait and see which way is the best. **Mr. Groeschl** said that under the current rules, the pilot project could not be implemented. By approving the pending rules that are before the Committee, it allows IDL to continue to offer the poles and compare the methods of how the poles are offered.

**Senator Stennett** asked if the number of 20,000 poles offered each year is sufficient or if it should be increased or decreased. **Mr. Groeschl** responded by saying that at this point, IDL has met that commitment most years; however, some years, 23,000 poles were offered and other years, only 17,000 poles were offered. **Mr. Groeschl** said that as IDL shortens their rotations and look at the sustained yield for the next two years, IDL can determine what that number should be.

**Senator Johnson** stated that his question is in regards to the design of the pilot project and what will happen to the competition in the next two years and how will the poles be offered for sale. **Mr. Groeschl** said that if the pending rule is approved, IDL foresees increased bidding and the highest bidder can determine how they will remove the timber.

**Senator Johnson** inquired as to where the bidders come from. **Mr. Groeschl** said that he anticipates the bidders would be from the Northwest area.

**TESTIMONY:** **Jon Younce**, Vice President, McFarland Cascade, testified in support of **Docket No. 20-0214-1601**, IDL's pilot program for selling cedar poles. **Mr. Younce** said that McFarland Cascade believes that the program is a well designed task to benchmark two methods of selling cedar. McFarland Cascade no longer opposes the 1986 cedar pole rule, as they feel some points had become outdated. **Mr. Younce** stated that McFarland Cascade has confidence in IDL's Land Board and the Legislature to make good decisions for the endowment when provided with accurate financial information. **Mr. Younce** said that he would be happy to provide the Committee with an update on the pilot program in one year and McFarland Cascade will work with IDL to ensure that the pilot program is a success.

**TESTIMONY:** **Jeremy Chou**, Givens-Pursley lobbyist and also representing McFarland Cascade, testified in support of **Docket No. 20-0214-1601**.

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

**ADJOURNED:** There being no further business at this time, **Chairman Bair** adjourned the meeting at 2:55 p.m.

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Senator Bair  
Chair

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Juanita Budell  
Secretary