

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 08, 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.

PRESENTATION: **Chairman Bair** welcomed Keith Allred who provided a PowerPoint presentation about "The Upper Blackfoot Confluence." Assisting with the presentation was Trent Clark, Monsanto Company, and Justin Hayes, Idaho Conservation League.

Mr. Allred said the Upper Blackfoot Confluence (UBC) is a conservation partnership with mining companies and conservation groups that work to improve water quality and the fishery in the Upper Blackfoot River and its tributaries. The mining companies are: Monsanto, Simplot, and Agrium Nu-West. The conservation groups are: Trout Unlimited and the Idaho Conservation League.

Mr. Allred said the UBC was formed in 2011 and was built on common interest in enhancing the Upper Blackfoot River. Work would be done outside of the mining sites, not directly where the phosphate mines are, and the work would be beyond what is required of mining companies by regulation.

Focus was on the health of the fishery, especially the Yellowstone cutthroat trout, and the watershed itself. The Upper Blackfoot is one of the gems and resources of the Yellowstone cutthroat trout and between 10,000 to 15,000 fish come up the river. Fish come from the Blackfoot Reservoir into the tributaries and spawn, then return to the reservoir. Trout Unlimited provided an assessment which included four categories: restoration complex, limiting factors, conservation objectives, and strategies. The assessment was completed in the winter of 2012.

Mr. Allred said additional partnerships were critical to the success of UBC. Local stakeholders include: Bear Lake Grazing Company, Caribou Cattle Company, private landowners, and grazing permittees. In addition to local stakeholders, **Mr. Allred** said they have had very good agency partnerships. Federal agencies include: Natural Resources Conservation Service, U.S. Forest Service, Environmental Protection Agency, U.S. Fish and Wildlife, and Bureau of Land Management. State agencies include: Idaho Department of Fish and Game, Idaho Department of Parks and Recreation, and Department of Environmental Quality.

In the PowerPoint presentation, **Mr. Allred** showed slides of some of UBC's restoration work. They included:

- Fish passages in Diamond Creek, Lanes Creek, and Upper Lanes Creek;
- Fish habitat on Sheep Creek;
- Stream restoration in Sheep Creek;
- Stream function that was done in Browns Canyon and the Main Stem Diversion;
- Improving irrigation efficiency;
- Improving on-ranch operations; and
- Improving recreation and access on Upper Lanes Creek Trail.

At the conclusion of the presentation, **Mr. Allred** invited the Committee to join the project tour in May to view the work that has been done and the projects that are in progress.

Chairman Bair thanked Mr. Allred for the update of the UBC.

H 140

Representative Kauffman presented **H 140**. This legislation is an amendment to Idaho Code § 42-1743B and would direct the Idaho Water Resources Board to notify each member of the legislature of any changes to the comprehensive State Water Plan. This amendment will ensure that any change to the State Water Plan is known by all legislators and the process remains transparent. The approximate fiscal impact is \$100.00 to cover postage and administrative services.

TESTIMONY:

Brandon Jensen, representing the Idaho Farm Bureau Federation, testified in support of **H 140**.

WRITTEN TESTIMONY:

Brian Patton, Executive Officer, Idaho Water Resource Board (IWRB) submitted written testimony indicating that the IWRB does not oppose **H 140**.

MOTION:

Senator Heider moved that **H 140** be sent to the floor with a **do pass** recommendation. **Senator Brackett** seconded the motion. The motion carried by **voice vote**. Senator Heider will be the floor sponsor.

H 169

Norm Semanko, Executive Director, Idaho Water Users Association, presented **H 169**. **Mr. Semanko** stated that Idaho Power Company's Hells Canyon Project is in the process of being relicensed by the Federal Energy Regulatory Commission. The State of Oregon has attempted to require Idaho Power to reintroduce salmon above the dams into Idaho waters. **Mr. Semanko** said that reintroduction of these fish without the consent of the State of Idaho violates Idaho law, policy, and sovereignty. Governor Otter has told Oregon's Governor that Idaho opposes reintroduction because of the adverse economic and regulatory impacts. Oregon is proceeding with requiring reintroduction through its Section 401 Clean Water Act certification process.

Mr. Semanko said that legislative approval is required for reintroduction under current law. **H 169** makes clear that this requirement applies to the actions taken by the State of Oregon, which threatens Idaho's sovereignty.

Senator Stennett asked for clarification regarding using taxpayer money to fight an industry problem. **Mr. Semanko** replied that this particular section of code comes under the chapter where the Constitutional Defense Council is housed. All this statute does is say that if there is going to be reintroduction proposed, it must be approved by the State Legislature. On line nine, it now includes "state and state agency."

Senator Jordan said her question was in regards to the tribes. **Mr. Semanko** said the tribes are actively involved, but there are differences of opinion.

Mr. Semanko said this legislation is supported by the Idaho Water Users Association, Food Producers of Idaho, Idaho Farm Bureau, Idaho Irrigation Pumpers, and the Idaho Association of Commerce and Industry.

**WRITTEN
TESTIMONY:**

Jonathan Oppenheimer, Government Relations Director, Idaho Conservation League, submitted written testimony opposing **H 169**. Mr. Oppenheimer included testimony in opposition to **H 169** from Marie Kellner, Idaho Conservation League's Water Associate.

MOTION:

Senator Siddoway moved that **H 169** be sent to the floor with a **do pass** recommendation. **Vice Chairman Vick** seconded the motion. **Senator Stennett** said she understands what is trying to be done, but cannot support the motion. The motion carried by **voice vote**. **Senators Stennett** and **Jordan** asked to be recorded as voting nay. Senator Siddoway will be the floor sponsor.

H 170

Mr. Semanko said this is the second of three bills dealing with the reintroduction issue. This requires the Governor's approval for reintroduction of species. **Mr. Semanko** said this statute needs to be clarified as it is not as comprehensive as it should be and this change will fix that. The State of Oregon has attempted to require Idaho Power to reintroduce salmon above the dams into Idaho waters. Reintroduction of these fish without consultation and approval by the Governor violates Idaho law, policy, and sovereignty.

Mr. Semanko stated that additional flows for salmon could be required from Idaho's reservoirs, depleting our supplies. Diversions for agriculture, cities, and industry could be reduced or cut off completely in certain cases. A coalition of water user interests has concluded that the costs of reintroduction above Hells Canyon could exceed \$1 billion.

Mr. Semanko said that the Governor's approval is required for reintroduction under current law. **H 170** fills a loophole in the current law to make sure it applies to all species. This will put the statute on par with the legislative approval required under the legislation that was just considered (**H 169**), which already applies to all species proposed for reintroduction in Idaho.

Mr. Semanko said this legislation is also supported by the Idaho Water Users Association, Food Producers of Idaho, Idaho Farm Bureau, Idaho Irrigation Pumpers, and the Idaho Association of Commerce and Industry.

Mr. Semanko advised the Committee that this legislation will have no adverse impact or hold up any of the fish and wildlife activities conducted by the Idaho Department of Fish and Game or by the tribes.

Senator Stennett asked how this would work with the tribes. **Mr. Semanko** replied that if the concern is that someone within the State's boundaries is going to reintroduce a species, both Legislative approval and Executive approval, would be required. Approval may take on different forms. It would be the Governor's responsibility to work with whoever is proposing the reintroduction and there may be different types of approval that is required of the proposals. **Mr. Semanko** said that if species are reintroduced in the State of Idaho and it has an adverse impact upon the economy, power rates, etc., we need to make sure State sovereignty is protected before those species are reintroduced into the State's waters.

Senator Johnson said he would like to know if the Office of Species Conservation (OSC) has reviewed this legislation and also, what would happen if a tribe tried to rebuild a population of a species, such as lamprey, into upstream reaches of a river. **Sam Eaton**, legal counsel for OSC, said they have reviewed **H 170** and have been in talks with the Water Users Association and others. **Mr. Eaton** said, in response to the first question, the bill shores up any loopholes. **Mr. Eaton's** response to the second question was that it would be dealt with on a case-by-case basis.

Senator Brackett asked when drafting the bill, was it ever considered to just add "federally listed and aquatic and terrestrial species." **Senator Brackett** said that wording seemed broader and stronger. **Mr. Semanko** said they looked at different options and the main concern was to make sure they were as comprehensive in **H 170** as they were in **H 169** which is not restricted to any particular kind of species.

WRITTEN TESTIMONY:

Written testimony was submitted by the **Nez Perce Tribe** opposing **H 170**.

WRITTEN TESTIMONY:

Mr. Oppenheimer, Idaho Conservation League, submitted written testimony opposing **H 170**.

MOTION:

Senator Brackett moved that **H 170** be sent to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. **Senator Johnson** said he was not comfortable with the responses he received from OSC and cannot support the bill at this time. The motion carried by **voice vote**. **Senators Johnson, Stennett, and Jordan** asked to be recorded as voting nay. Senator Brackett will be the floor sponsor.

H 171

Mr. Semanko said this bill is the most specific of the three bills. As relicensing moves forward, and the final conditions are arrived at for relicensing, **Mr. Semanko** reviewed the concerns: 1.) the impacts above Hells Canyon on the water supply alone is estimated to be \$1 billion; 2.) water quality; and 3.) time and goodwill efforts spent on the Nez Perce Water Agreement.

This amendment to the statute will ensure that it cannot be used to argue that fish passage and reintroduction should be required for the Hells Canyon Project. If reintroduction is required, Idaho Power customers would be hit with sizable rate increases for the cost of making it happen. Huge costs would be incurred by businesses, cities, and agriculture to comply with more stringent water quality requirements for salmon spawning. Lawsuits and calls for dam removal would be expected, as well. This amendment will help insure that doesn't happen.

Mr. Semanko said this legislation is supported by the Idaho Water Users Association, Food Producers of Idaho, Idaho Farm Bureau, Idaho Irrigation Pumpers, and the Idaho Association of Commerce and Industry. **Mr. Semanko** also said if the question arises, this legislation will not impact any of the existing conditions imposed on the Hells Canyon Project by the Idaho Department of Fish and Game.

WRITTEN TESTIMONY:

Written testimony was submitted by the **Nez Perce Tribe** opposing **H 171**.

WRITTEN TESTIMONY:

Mr. Oppenheimer, Idaho Conservation League, submitted written testimony opposing **H 171**.

MOTION:

Senator Heider moved that **H 171** be sent to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**. **Senator Jordan** asked to be recorded as voting nay. Senator Johnson will be the floor sponsor.

H 141

Senator Anthon said this is a unique bill as it will have very little impact on very few Idahoans. The impact that it will make will be huge, as there is no definition for a commercial wildlife tannery. There is a large tannery in Idaho that has to rely on the existing regulations and statutes that dictate how furs and hides are handled by taxidermists and small operations in this State. **Senator Anthon** said the regulations are onerous and this particular tannery has to spend a lot of money to comply with the current regulations.

Senator Anthon said this particular tannery receives hides and furs from all over the U.S. and the world. In many of the other jurisdictions and locales, there are no regulations as to the markings, tagging of hides, and other means to make sure there is no poaching taking place. What this bill will do is to provide a definition for the commercial wildlife tannery and essentially, shift the requirement to those who send the furs and hides to Idaho. They would need to certify, under penalty of perjury, that they are following the law in their own jurisdiction.

Senator Anthon said **H 141** will solve a lot of problems, save an Idaho business, and will shift the burden of proving compliance with the law is on those who send those furs to Idaho in the first place.

Senator Siddoway stated that he is not comfortable with replacing the current statutes with this legislation and there needs to be a paper trail. **Senator Anthon** said that this proposed statute will not change, nor delete, the current regulations. What this change addresses is that a commercial wildlife tannery is a tannery that takes in an excess of 10,000 hides a year, more than 75 percent of its business arrives by mail, and a compliance statement is signed by the shipper/client.

Senator Brackett asked how many tanneries are being talked about and **Senator Anthon** replied that it is only one. **Senator Brackett** said it appears to him that it would be reasonable to shift the burden of proof on the owner of the hides and supports the bill.

**WRITTEN
TESTIMONY:**

Sharon Kiefer, Deputy Director, Idaho Department of Fish and Game, submitted written testimony stating that the Fish and Game Commission supports **H 141**.

MOTION:

Senator Brackett moved that **H 141** be sent to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. Senator Anthon will be the floor sponsor.

H 168

Due to time constrains, **H 168** will be heard at the next meeting.

ADJOURNED:

There being no further business at this time, **Chairman Bair** adjourned the meeting at 3:00 p.m.

Senator Bair
Chair

Juanita Budell
Secretary