

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 30, 2019

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Heider, Vice Chairman Brackett, Senators Bair, Johnson, Mortimer, Patrick, Guthrie, 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 Heider** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:31 p.m.

H 0001 **Water-Ways and Means Legislation That Adds a New Section to Existing Code Re: Water Storage Projects Larger Than One Thousand Acre-feet.** **Speaker Bedke**, House of Representatives, District 27, presented this bill. He indicated that this new section to Idaho Code is the result of a settlement reached in a multi-year litigation and negotiation regarding the fill and refill of the Boise River System. It requires that any new water storage over 1,000 acre-feet will be subordinate to existing uses, and ensures that new or proposed projects to store more than one thousand acre-feet of surface water do not interfere with the storage of water in existing on-stream storage reservoirs operated for storage and flood control purposes.

DISCUSSION: **Senator Stennett** asked how the limitation of 1,000 acre-feet was determined and how the ponds under 1,000 acre-feet are regulated. **Speaker Bedke** indicated that neighborhood ponds used for lawn irrigation and subdivision aesthetics are generally under 1,000 acre-feet. It was not deemed necessary to include those small ponds in this regulation; they do, however, have a permitting process.

In response to questions from Senator Mortimer and Senator Guthrie, **Speaker Bedke** advised that this new section will apply to all new storage throughout the State of Idaho, and will affect new on-stream storage facilities on the Boise River and the Snake River. He further indicated that stakeholders all along the Snake River and the Boise River were consulted and are in agreement with this proposed legislation. He stated that also blended into this law and the court cases is the concept of not shutting off the water completely for new uses and the ability to develop the land. **Speaker Bedke** stated that the fill of new storage, or the refill of new storage, will be done in priority and not jumped ahead of existing permit holders. As an example, he stated that existing rights filled out of American Falls Reservoir, or any other reservoir along the Snake River, would take priority over new fill at Island Park.

Vice Chairman Brackett asked how this would affect pending applications for water, specifically, Elmore County's pending application for flood water on the Boise River, and the Anderson Ranch Dam project. **Speaker Bedke** indicated that **H 0001** has an emergency clause, and would go into effect upon the signature of the Governor. He stated that pending claims in the system now, including the Elmore County application, will fall in line under the same orderly process that has always been used. He added that all of this has to go before the Water Court for blessing. With regard to the Anderson Ranch Dam project, **Speaker Bedke** advised that when that project is complete, it is going to be a new water right that is going to be filled after other priority rights have been filled..

TESTIMONY: **Gary Spackman**, Director, Idaho Department of Water Resources, spoke in favor of **H 0001**. He stated it is his responsibility to administer Idaho water rights and to optimize the development and beneficial use of the waters of the State while still protecting senior water right holders. He indicated that he believes that this legislation is reasonable and will allow him to accomplish his responsibility as Director.

DISCUSSION: **Senator Mortimer** asked if, in a reservoir of over 1,000 acre-feet, this legislation authorizes the Director to issue water rights for the first 1,000 acre-feet, or is that first 1,000 acre-feet for the benefit of older permit holders. **Director Spackman** stated that if he receives an application for 1,000 acre-feet or more, that application in its entirety would be subordinate to the physical refill of the other on-stream reservoirs in the system.

TESTIMONY: **Paul Arrington**, Chairman, Idaho Water Users Association, spoke in favor of **H 0001**. He stated that the final bill before the Committee today was not the original draft. A lot of people throughout the state were consulted, changes were made, and ultimately this bill came forward. He indicated that the Legislative Committee for the Idaho Water Users Association has voted to support this bill.

DISCUSSION: **Chairman Heider** asked Mr. Arrington to confirm that this bill does not affect the priority doctrine that we have in Idaho of first-in-time, first-in-right. **Mr. Arrington** advised that is correct; this bill is about codifying elements of the prior appropriation doctrine.

Senator Stennett asked if anything prevents an individual from getting many small permits that add up to more than 1,000 acre-feet. **Mr. Arrington** stated that frankly, there is not. However, he added that the Director must consider each application and its impact on other water rights. He advised there is also a protest procedure for those who feel they would be impacted by new applications.

MOTION: **Vice Chairman Brackett** moved to send **H 0001** to the floor with a **do pass** recommendation. **Senator Bair** seconded the motion. The motion passed by **voice vote**. Senator Rice will sponsor the bill on the floor.

RS 26513C1 **Ground Water Districts.** **Senator Bair** yielded to **Lynn Tominaga**, Executive Director, Idaho Ground Water Appropriators, to present **RS 26513C1**. **Mr. Tominaga** advised that ground water district assessments are levied only once per year. This proposed legislation allows ground water districts to recover costs by levying a special assessment when actual expenses exceed projections. It further enhances the ability of ground water districts to enforce compliance with mitigation plans approved by the Idaho Department of Water Resources.

MOTION: **Senator Mortimer** moved to send **RS 26513C1** to print. **Senator Bair** seconded the motion. The motion passed by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Re-appointment of Louise Stark of Challis, Idaho, to the Idaho Outfitters and Guides Licensing Board (Board) to serve a term commencing April 20, 2018 until April 20, 2021.** **Ms. Stark** stated she has served on the Board for over six years. She is a licensed outfitter, and has a big picture perspective of what outfitters and guides do. She and her husband operate on three stretches of the Salmon River, and also have hunt concessions on two national forests as well as the Bureau of Land Management. **Ms. Stark** indicated she has unfinished business on the board, and is looking forward to a third term.

DISCUSSION: **Senator Bair** asked Ms. Stark to share with the Committee what her biggest concerns and biggest challenges have been over her last three year term. **Ms. Stark** indicated that outfitters in the State of Idaho not only hold a license for the activities and the areas in which they operate, but also hold special use permits with federal agencies. The recent government shutdown greatly impacted the ability to conduct business. **Ms. Stark** also indicated that information management has been a big concern. The Board has approved moving toward a new database, which should resolve some of those concerns. She additionally mentioned financial needs may become a concern in the future, as there has not been a fee increase in a number of years.

Vice Chairman Brackett asked what unfinished business Ms. Stark referred to in her introduction. **Ms. Stark** indicated that the Board has been working with outfitters and guides to resolve some concerns with tag allocation, and she looks forward to continuing that work during 2019.

Chairman Heider asked if the people who employ Ms. Stark as a guide generally purchase their licenses from her, or are they responsible for getting their own licenses. **Ms. Stark** indicated sometimes it is more advantageous for them to work with her, as she can deal with allocated tags and some very special tags; however, she is open to accommodating their needs if they come to her with tags already purchased.

Chairman Heider thanked Ms. Stark for appearing before the Committee and indicated that voting on this re-appointment would take place at the next Committee meeting.

**DOCKET NO.
58-0102-1802**

Water Quality Standards, Revise Recreational Use Criteria and Aquatic Life Criteria for Three Toxics. **Barry Burnell**, Water Quality Division Administrator, Idaho Department of Environmental Quality (DEQ), stated that the purpose of this proposed rulemaking is to adopt criteria to protect aquatic life in surface waters from three toxic substances, and to adopt an alternate fecal indicator bacteria criteria (see attachment 1). **Mr. Burnell** indicated that this bill was previously rejected by the Committee due to opposition to the section adopting an alternate fecal indicator bacteria criteria. DEQ is now withdrawing that section from the rule package and asking the Committee to approve the rule with the rejection of that section.

MOTION: **Senator Bair** moved to reconsider **Docket 58-0102-1802**. **Vice Chairman Brackett** seconded the motion. The motion passed by **voice vote**.

MOTION: **Vice Chairman Brackett** moved to approve **Docket 58-0102-1802** with the exception of Subsection 251.02. **Senator Bair** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO.
13-0116-1802**

The Trapping of Predatory and Unprotected Wildlife and the Taking of Fur-bearing Animals. Sharon Kiefer, Deputy Director, Programs and Policies, Idaho Department of Fish and Game (Department), stated that this proposed rule was negotiated with the Idaho Trappers Association, and is a revision of the rules relating to the placement of ground sets, which is a type of trapping set. She advised this rule requires that those sets must be ten feet from the edge of any maintained, unpaved public trails, and adds paved trails to that same distance requirement. She noted that the concern of the Idaho Trappers Association was trying to ensure there was no conflict with recreational use with pets.

MOTION:

Senator Johnson moved to approve **Docket No. 13-0116-1802**. **Senator Stennett** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO.
13-0116-1803**

The Trapping of Predatory and Unprotected Wildlife and the Taking of Fur-bearing Animals. Ms. Kiefer stated that this proposed rule is administrative cleanup. She explained that when the Idaho Fish and Game Commission (Commission) set their fur-bearer season for 2018 and 2019, their season proclamation rescinded the restriction that red fox could only be taken by trapping in Valley County and portions of Adams County. With this rule the Department is rescinding the restriction that red fox could only be taken by trapping in those areas.

DISCUSSION:

In response to a question by Senator Bair, **Ms. Kiefer** advised that in certain circumstances a proclamation can trump a rule. Because the Commission was not adopting a season with that take restriction, and based on the constituents' desires, this did fall within the Commission's ability to establish by proclamation. She further stated that there are numerous examples in the Department's rule book where the Department has passed rules which give the Commission the authority to establish certain criteria via proclamation rather than in rule.

MOTION:

Senator Guthrie moved to approve **Docket No. 13-0116-1803**. **Vice Chairman Brackett** seconded the motion. The motion passed by **voice vote**.

ADJOURNED:

Chairman Heider announced that the presentation by the Legislative Services Office scheduled on the agenda will be moved to the next meeting. There being no further business, he adjourned the meeting at 2:54 p.m.

Senator Heider
Chair

Tyler Brock
Secretary

Lois Bencken
Assistant Secretary