

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 04, 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 1:30 p.m.

PRESENTATION: **Overview of the Legislative Budget Book Regarding Natural Resources and Other Topics.** **Maggie Smitch**, Budget Analyst, Legislative Services Office (LSO), provided an overview of the budgeting process (see attachment 1). She indicated there are two budgets that are germane to this Committee within her agency assignments: Office of Energy and Mineral Resources, and Public Utilities Commission. **Ms. Smitch** provided historical summaries of the operating budgets for each of those agencies from Fiscal Year (FY) 2018 through requests for FY 2020, with a detailed breakdown of FY 2020 budget requests by the agencies and those recommended by the Governor (see attachment 2).

Rob Sepich, Senior Budget Analyst, LSO, reviewed the budget for the Department of Environmental Quality (Department). He provided an historical summary of the operating budget from FY 2018 through requests for FY 2020, and gave a detailed analysis of the Department's budget request for 2020 versus the recommendations by the Governor (see attachment 3). **Mr. Sepich** stated that the Department has carried over \$250,900 from previous years to work on some best management practices. He indicated that most of the line items are the same in the requested budget and the Governor's recommendation, but noted a few differences. The Governor recommended funding only about half of the year's health cost, and did not include all of the replacement items requested by the Department. The Department used the standard 1 percent increase in employee compensation, while the Governor's recommendation is a 3 percent increase for all full time employees. **Mr. Sepich** further explained the line item for Triumph Mine Remediation is a transfer from the Water Pollution Control Fund, and is offset by the Cash Transfers line item. The line item for BURP & LMP Fund Shift represents funds shifted into the General Fund. The Beneficial Use Reconnaissance Program (BURP) monitors the quality of waterways in Idaho, and the Lakes Management Plan (LMP) was set up to prevent a Superfund site in the Coeur d'Alene area. The Governor's recommendation adds an additional line item for the Department's cost-share for statewide network equipment replacement.

S 1041

Ground Water Districts, Assessments. **Lynn Tominaga**, Executive Director, Idaho Ground Water Appropriators (IGWA), stated that under this rule, if IGWA's expenses exceed projections, the IGWA board may levy an emergency assessment to pay those expenses. Additionally, if a mitigation plan has been approved, and an IGWA member fails to pay the assessment, the IGWA board may levy a special assessment against such member equal to 125 percent of all costs incurred by IGWA to mitigate such member's noncompliance. If the noncompliance constitutes excess water use, the IGWA board may alternatively levy a special assessment equal to \$100 per acre-foot of excess water use.

Mr. Tominaga indicated that the Idaho Water Users Association supports this legislation.

DISCUSSION:

In response to questions from Senator Mortimer, **Mr. Tominaga** advised that the 125 percent was arbitrarily set. It seemed a reasonable amount to gain the attention of members failing to participate in mitigation plans, and recover costs incurred in enforcing payment of assessments. He further indicated that over the past two years the cost to recharge one acre-foot of water has been approximately \$60. **Mr. Tominaga** stated that if IGWA is unable to collect an assessment, their remedy is to place a lien against the member's property for three years in a row. In the fourth year they can proceed with a sheriff's sale of the property for the amount owed.

Senator Guthrie asked if IGWA could accomplish this punitive action through their bylaws and their own regulatory powers, rather than through statute. **Mr. Tominaga** indicated that, other than the ability to place a lien against a member's property for nonpayment of assessment, IGWA does not have regulatory authority.

Senator Johnson asked why this legislation changes the term "water user" to "member." **Mr. Tominaga** advised that IGWA has a member category that shares the entire operating cost, and it has mitigation only members, which are usually cities and industrial users that pump groundwater and are paying for mitigation purposes only.

MOTION:

Senator Patrick moved to send **S 1041** to the floor with a **do pass** recommendation. **Vice Chairman Brackett** seconded the motion. The motion passed by **voice vote**. Senator Bair will sponsor the bill on the floor.

S 1039

Wolf Depredation. **Carl Rey**, member of the Idaho Wolf Depredation Control Board (Board), stated that this legislation removes sunset provisions pertaining to the continued authority of the Board, and sunset provisions pertaining to the effective dates of the funding mechanisms upon which the Board is dependent.

DISCUSSION:

Senator Stennett and **Mr. Rey** discussed the methods of non-lethal control of predatory wolves. **Mr. Rey** indicated that the Board has so far perceived its mandate to be control of only problem wolves once they prey on livestock. He is aware of non-lethal control methods occurring with producers such as guard dogs being used, and bringing sheep into areas at night where they are easier to watch. He stated that the Board is not involved in management per se. The Board does have contracts with the USDA Wildlife Services, who then works with livestock producers and with ungulate populations. The USDA Wildlife Services determines what management activities are necessary on the ground, and in some cases it involves the Fish and Game Commission. The Board itself simply administers the funds that oversee those contracts. **Senator Stennett** questioned the convoluted way this Board was set up and the many different agencies involved in its creation. She expressed concern that removing the sunset means there is no cap on the funding. **Mr. Rey** explained the structure of the Board was the result of a long collaborative process with producers, sportsmen, and the Fish and Game Advisory Committee. It took several years to come up with the funding mechanisms and the model that would pass consensus. He further stated that the

funding cap occurs at the authority level of the Joint Finance & Appropriations Committee (JFAC), and what it feels is appropriate in any given year. **Senator Stennett** also noted that at the print hearing it was reported the Board had a \$1.2 million budget surplus and wondered if additional funding was needed at this time. **Mr. Rey** indicated the actual budget surplus at this time is \$700,000, that this is a very high activity period of the year, and all of those bills have not been paid.

- MOTION:** **Senator Patrick** moved to send **S 1039** to the floor with a **do pass** recommendation. **Senator Bair** seconded the motion. The motion passed by **voice vote** with **Senator Stennett** and **Senator Jordan** requesting they be recorded as voting nay. Vice Chairman Brackett will sponsor the bill on the floor.
- RS 26664** **Legislation to Allow for Ground Water to be Diverted and Used at Any Time, With or Without, a Water Right for the Purpose of Fire-fighting.** Vice Chairman Brackett presented this proposed legislation and advised that it clarifies that water can be diverted to fight fires at any time without a permit, regardless of the source.
- MOTION:** **Vice Chairman Brackett** moved to send **RS 26664** to print. **Senator Bair** seconded the motion. The motion passed by **voice vote**.
- VOTE ON GUBERNATORIAL APPOINTMENT:** **Vote on Re-appointment of Louise Stark of Challis, ID, to the Idaho Outfitters and Guides Licensing Board to serve a term commencing April 20, 2018 until April 20, 2021.**
- MOTION:** **Senator Stennett** moved to send the gubernatorial appointment of **Louise Stark** to the Idaho Outfitters and Guides Licensing Board to the floor with a recommendation that she be confirmed by the Senate. **Senator Bair** seconded the motion. The motion passed by **voice vote**.
- DOCKET NO. 13-0117-1801** **Rules Governing the Use of Bait and Trapping for Taking Big Game Animals.** **Sharon Kiefer**, Chief, Bureau of Communications, Idaho Department of Fish and Game (Department) indicated this rule is identical to **Docket No. 13-0116-1802** which she presented at an earlier meeting; it is just in a different chapter. It relates to the setback requirements for ground sets for trapping wolves. The rule was negotiated with the Idaho Trappers Association due to concerns about domestic animals on trails.
- MOTION:** **Senator Mortimer** moved to approve **Docket No. 13-0117-1801**. **Senator Bair** seconded the motion. The motion passed by **voice vote**.
- DOCKET NO. 13-0117-1802** **Rules Governing the Use of Bait and Trapping for Taking Big Game Animals.** **Ms. Kiefer** stated that this rule is an outgrowth of the Department's update to their chronic wasting disease risk management strategy. This rule would restrict the use of natural urine as a lure scent or bait for hunting, and only allow the use of synthetic urine.
- MOTION:** **Senator Bair** moved to approve **Docket No. 13-0117-1802**. **Senator Mortimer** seconded the motion. The motion passed by **voice vote**.
- DOCKET NO. 13-0118-1801** **Rules Governing Emergency Feeding of Antelope, Elk, and Deer of the Idaho Fish and Game Commission.** **Ms. Kiefer** stated this rule makes a technical correction to the title by adding "Pronghorn" prior to antelope and deletes the unneeded reference to Idaho Fish and Game Commission. In addition, the proposed rule includes consideration of the risk of disease transmission, primarily Chronic Wasting Disease (CWD), as a criteria in decisions made by the Department for emergency winter feeding of deer and elk. **Ms. Kiefer** also indicated that the proposed rule adds a new section prohibiting private feeding of deer and elk within a designated CWD Management Zone. She advised that CWD has not been detected in Idaho at this time, and there is no designated CWD Management Zone, so this part of the rule has no effect at this time. She pointed out that incidental grazing on private range land is not a violation of this rule, nor

is incidental feeding when not trying to feed big game animals but providing feed to livestock. **Ms. Kiefer** emphasized that normal agricultural practices of feeding livestock is not considered public supplemental feeding of deer and elk.

DISCUSSION: **Chairman Heider** inquired why pronghorn antelope are not always included when the chapter references animals subject to CWD. **Ms. Kiefer** deferred the question to **Toby Boudreau**, acting Chief of the Wildlife Bureau, Idaho Department of Fish and Game, who advised that pronghorn antelope do not get CWD; it is mostly seen in mule deer, whitetail deer, elk, and moose.

Senator Bair indicated it has always been his feeling that the Department was less than enthusiastic about winter feeding, partly because of the risk of disease. He expressed concern that if we add yet another criteria for not feeding, this will become an historic event. **Ms. Kiefer** indicated winter feeding is always a risk/benefit evaluation. She deferred again to Mr. Boudreau for further response. **Mr. Boudreau** indicated that over the 14 years he has been with the Department, hundreds of thousands of dollars have been spent toward feeding elk in bad winters. This has been done mostly to keep them away from commercial crops and private livestock. Feeding is not as regular as it may have been 25 years ago, but he feels it is important. The Department feeds when it is needed, in the places that it is absolutely required.

Vice Chairman Bracket asked why the Department did not conduct negotiated rulemaking. **Ms. Kiefer** indicated that agricultural feeding of livestock is not affected by this rule. The Department does not know who among the general public, not tied to agriculture, would be feeding wildlife. **Vice Chairman Brackett** commented that when in doubt, negotiated rulemaking should be considered. **Ms. Kiefer** advised that the Department did take public input through its website for 21 days, and the rule was published in the Administrative Bulletin, which provided for an additional 21 days of input.

MOTION: **Senator Jordan** moved to approve **Docket No. 13-0118-1801**. **Senator Stennett** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 2:40 p.m.

Senator Heider
Chair

Tyler Brock
Secretary

Lois Bencken
Assistant Secretary