

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 06, 2019

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Heider, Vice Chairman Brackett, Senators Bair, Johnson, Mortimer, Patrick, Guthrie, and Jordan

ABSENT/ EXCUSED: Senator Stennett

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.

RS 26512 **Ground Water Districts, Relating to Non-payment or Delinquent Assessments.** **Lynn Tominaga**, Executive Director, Idaho Ground Water Appropriators (IGWA), advised that this proposed legislation repeals the current procedure used by IGWA and the Director of the Idaho Department of Water Resources (Director) in dealing with delinquent assessments and nonpayment of mitigation costs, and adds a new procedure for dealing with those issues. **Mr. Tominaga** indicated IGWA has been working with the Director to determine what the fiscal impact of this proposed legislation would be. He would like to report back to the Committee when that determination is made.

MOTION: **Vice Chairman Brackett** moved to send **RS 26512** to print. **Senator Mortimer** seconded the motion. The motion passed by **voice vote**.

GUBERNATORIAL APPOINTMENT HEARING: **Appointment of Gary Spackman of Eagle, ID, as Director of the Idaho Department of Water Resources to serve a term commencing January 7, 2019, and to serve at the pleasure of the Governor.** **Gary Spackman**, appeared before the Committee and described himself as a "humble farmer." He indicated he feels he works well with everyone on water issues, and has learned to listen to both sides of disputes. He noted that progress has been made over the last few years in water matters and disputes across the state, including those issues related to refill of reservoirs in the upper Snake River and in the Boise River.

DISCUSSION: **Senator Bair** asked Director Spackman what types of water issues he sees in the near future that will need to be addressed. **Director Spackman** referenced the settlement agreements executed between the surface water users and ground water users. He indicated it will be a challenge to ensure that those agreements and the provisions thereof are accomplished, so that the goals and the aspirations for aquifer recovery and stabilization are satisfied. He further advised there are some interstate challenges, in terms of water deliveries, that we will be confronted with, both in northern Idaho with Washington, and on the Wyoming and Utah borders.

Senator Patrick asked if Director Spackman sees the Columbia River Treaty as a threat to some water rights. **Director Spackman** responded that he did. He indicated he does not want to disparage the efforts of the Governor's office and those who have been appointed to negotiate, but advised we need to guard against our reservoirs being co-opted for out-of-state flooding that could occur.

Senator Johnson asked whether we have any compacts with adjacent states that deal with water rights, or flow into the Snake River Basin or elsewhere, that may need to be negotiated. **Director Spackman** advised that we have relatively few compacts that have been approved by Congress. He noted we have a compact in the Bear River Basin, and we also have a compact with Wyoming. He indicated we do not, at this time, have any compacts with Oregon or Washington, but there is a possibility of discussions about interstate regulation and a compact in the future.

Chairman Heider thanked Director Spackman for appearing before the Committee and advised that a vote would be taken on his confirmation at the next meeting.

**PASSED THE
GAVEL:**

Chairman Heider passed the gavel to Vice Chairman Brackett for rules review.

**Docket No.
20-0301-1801**

Dredge and Placer Mining Operations in Idaho. **Todd Drage**, Regulatory Minerals Program Manager, Idaho Department of Lands (Department), stated this rule provides for paper or electronic submittal of documents and applications under Idaho's Dredge and Placer Mining Protection Act (see attachment 1 for detailed comments).

MOTION:

Senator Mortimer moved to approve **Docket No. 20-0301-1801**. **Chairman Heider** seconded the motion. The motion passed by **voice vote**.

**Docket No.
20-0302-1801**

Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities. **Mr. Drage** stated that this rule allows for electronic submittal of documents and applications under Idaho's Surface Mining Act. It provides that new plans will show 100-year floodplains within 100 feet of facilities, and provides changes in regard to reclamation bonding (see attachment 2 for detailed comments).

DISCUSSION:

Senator Patrick and **Senator Mortimer** questioned how the 100 feet distance was determined. **Mr. Drage** responded that the Department did not do any calculations to come up with the 100 feet. For consistency with other operators, 100 feet was used as a standard by which to measure.

MOTION:

Senator Johnson moved to approve **Docket No. 20-0302-1801**. **Senator Jordan** seconded the motion. The motion passed by **voice vote**. **Senator Mortimer** requested he be recorded as voting nay.

**Docket No.
20-0304-1801**

Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho. **Andrew Smyth**, Public Trust Program Manager, Idaho Department of Lands (Department), stated that upon statehood, Idaho obtained title to the beds and banks of navigable waterways under the Equal Footing Doctrine. The Department has been given the authority to regulate and control the use and disposition of these lands. Part of managing these lands is administering the Lake Protection Act and corresponding administrative rules. These statutes and rules require lakefront owners to obtain a permit from the Department prior to placing an encroachment, such as a dock or marina, on a lake. **Mr. Smyth** advised this proposed rule would allow applications for encroachment permits to be filed either on paper or electronically. It additionally clarifies and updates the incorporation of other rules, encroachment standards, and violations and penalties (see attachment 3).

DISCUSSION: **Senator Patrick** and **Senator Mortimer** discussed with **Mr. Smyth** the inconsistency in the reference to the Rules Concerning the Idaho State Plumbing Code and the Rules Governing the Use of National Electrical Code. **Mr. Smyth** indicated the goal of the Department is to reference Idaho rules. This rule change strikes the reference to the 2008 National Electrical Code, and adds the reference to IDAPA 7.01.06. He explained this administrative rule, administered by the Division of Building Safety, is entitled Rules Governing the Use of National Electrical Code, and the reference is to that title. **Senator Patrick** indicated he was not comfortable with the language and asked for further clarification. Mr. Smyth yielded to **Eric Wilson**, Bureau Chief, Resource Protection and Assistance, Idaho Department of Lands, who advised that the rule does not adopt the entire National Electrical Code, but makes a reference to the IDAPA rule which has adopted some of the National Electrical Code and changed some. He indicated the reference is to the title of the rule, and the Department cannot change that title because it is administered by the Department of Building Safety.

MOTION: **Senator Patrick** moved to approve **Docket No. 20-0304-1801**. **Chairman Heider** seconded the motion. The motion passed by **voice vote**.

Docket No. 20-0401-1701 **Rules Pertaining to Forest Fire Protection**. **Craig Foss**, Division Administrator, Forestry and Fire, Idaho Department of Lands (Department), stated that the Department is responsible for providing fire protection on 6.3 million acres of state and private forest lands in Idaho. During the 2015 fire season, the Department worked with forest landowners, logging contractors, forest industry representatives, and others to develop and implement additional voluntary fire protection practices to lessen the risk of fire starts from forest operations on forest lands. After further discussion, in 2016 and 2017, with interested stakeholders, the Department determined there was a need to enter negotiated rulemaking. **Mr. Foss** advised the Department received extensive comments during several negotiated rulemaking sessions, leading to this proposed rule revision (see attachment 4 for a summary of the rulemaking process and proposed changes.)

MOTION: **Chairman Heider** moved to approve **Docket No. 20-0401-1701**. **Senator Bair** seconded the motion. The motion passed by **voice vote**.

PASSED THE GAVEL: Vice Chairman Brackett passed the gavel back to Chairman Heider.

PRESENTATION: **Ed Schriever**, Director, Idaho Department of Fish and Game (Department), gave the Committee an update on the results of the license fee price lock implemented in 2017, and the depredation compensation program and the depredation prevention program, both of which were significantly bolstered by additional revenues in 2017 (H 0230). He provided the Committee with a copy of the Fiscal Year (FY) 2018 Idaho Fish and Game Director's Annual Report to the Commission, and a Department brochure entitled: A Landowner's Guide to Preventing Big Game Damage and Filing Damage Claims.

RECORDING LINK: To hear Director Schriever's presentation in full, go to: <https://legislature.idaho.gov/sessioninfo/2019/standingcommittees/SRE/>.

ADJOURNED: There being no more business, **Chairman Heider** adjourned the meeting at 2:56 p.m.

Senator Heider
Chair

Tyler Brock
Secretary

Lois Bencken
Assistant Secretary