

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, January 24, 2022

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Vick, Vice Chairman Heider, and Senators VanOrden (Bair), Blair (Johnson), Patrick, Guthrie, Burtenshaw, and Semmelroth

**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 Vick** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:31 p.m.

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

**DOCKET NO. 20-0000-2100** **Idaho Department of Lands Omnibus Pending Rules**, page 123. **Vice Chairman Heider** introduced **Dustin Miller**, Director, Idaho Department of Lands (IDL). **Mr. Miller** explained that the rules in **Docket No. 20-0000-2100** have not changed since previously reviewed and approved by the Legislature.

**MOTION:** **Senator Guthrie** moved to approve **Docket No. 20-0000-2100**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 20-0000-2100F** **Idaho Department of Lands Omnibus Pending Fee Rules**, page 17. **Mr. Miller** explained that the fee rules in **Docket No. 20-0000-2100F** have no changes since previously reviewed and approved by the Legislature.

**MOTION:** **Senator VanOrden** moved to approve **Docket No. 20-0000-2100F**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 20-0201-2101** **Rules Pertaining to the Idaho Forest Practices Act Pending Rule**, page 156. **Archie Gray**, Forestry Assistance Bureau Chief, Idaho Department of Lands presented testimony on **Docket No. 20-0201-2101**. **Mr. Gray** explained that The Forest Practices Act sets minimum standards to assure the continuous growing and harvesting of forest tree species and to protect and maintain the forest soil, water resources, wildlife, and aquatic habitat. The Idaho Forest Practices Act established the Idaho Forest Practices Advisory Committee (FPAC), to provide technical assistance to the Land Board, in cooperation with the Department, in matters relating to the Idaho Forest Practices Act and the rules promulgated thereunder. FPAC is made up of representatives of stakeholder groups and experts in the field of water quality. **Mr. Gray** stated the rules being considered were approved by FPAC in their current form.

**Mr. Gray** summarized the pending rule changes, which include deletion of unused and redundant definitions, addition of definitions for Traction-Assisted Harvesting (Tethered Logging), narrowed stream definitions to aquatic life, alignment of stream crossing rules, simplification and adjustment of the "Shade" rule, removal of outdated Stream Segments of Concern verbiage, and addition of road measures. Road measures added were rocking of Class I stream crossings for new construction or re-construction, armoring of new stream crossing culverts greater than 30" diameter, and clarification of sediment reduction measures. The

most significant change in this docket is the change to the streamside retention rule or “shade rule”.

**Mr. Gray** provided some background on changes pending for this rule from when the rule was last revised to the current rule language. In 2013, FPAC recommended that IDL begin the rule promulgation process to implement changes to stream protection rules, specifically the Shade rule. The Shade rule was derived from years of work to develop science-based requirements for retention of shade in the form of trees adjacent to Class I streams to protect water temperature and quality. IDL worked with the Idaho Department of Environmental Quality (DEQ) and the University of Idaho to implement a multi-year Shade Effectiveness study to compare the modeled and measured (actual) changes in shade when applying the Shade Rule across different forest types. In January of 2020, the study was published. FPAC’s goal for the 2014 rule was to limit shade loss to 10% based on simulated modeling and the 2020 effectiveness study demonstrated shade loss significantly less than 10% when the rule was properly applied. However, the rule was considered by many to be too complicated and difficult to implement. The current changes simplify the existing rule to make it more easily understood and applied. The objective of the pending rule is to provide management options to landowners while still affording appropriate protections to stream shade and large woody debris recruitment.

Rule updates specific to the use of ground-based logging equipment on steep slopes are due to changes in technology used in the industry. Machinery is now being used on steep slopes while tethered to another machine or anchor point with a winch to maintain tension. This traction-assistance allows the machine to operate safely with reduced soil disturbance. The pending rule language allows for the use of this new family of machines. Additionally, road construction rules are being updated to improve water quality protections at stream crossings. The new rules require additional resource protection measures be implemented when constructing or reconstructing stream crossings.

**Mr Gray** addressed comments made during rulemaking that related to this rule change. Related to the shade rule, comments asked IDL to place restrictions similar to those used by the US Forest Service (300-foot no harvest zones adjacent to fish bearing streams). **Mr Gray** noted these would be inconsistent with the goal of allowing harvest activity to maintain forest health and productivity. The EPA asked IDL to consider a more restrictive version of the Shade rule that would have substantially limited harvest opportunities closer to streams. Some tribal comments called for no-cut zones near streams. IDL received comments that because the rule limits harvest opportunities near Class I streams, it represents a burden to the landowner who pays taxes on these lands. Many commenters felt IDL needed to address tree retention requirements on Class II, non-fish bearing streams. **Mr. Gray** stated IDL agreed, although based on comments and testimony received during the rulemaking process, IDL has no plans to make changes on Class II streams.

**Mr. Gray** stressed the importance of the Shade rule to Idaho and stated if the state does not sensibly regulate harvesting timber in Stream Protection Zones, it is likely the federal government will impose its own mandates that would be far more restrictive. **Mr Gray** concluded by stating IDL's continued commitment to monitoring and updating this rule when appropriate.

**DISCUSSION:** **Chairman Vick** asked for an explanation of the weighted tree count noted in Section 30.07, and for the reasoning for increased count requirements in land further north. **Mr. Gray** answered that there are different growing conditions throughout the state, with those farther north being more favorable to tree growth. This rule attempts to allow the same rule to apply throughout the state, without being too restrictive in one area and under restrictive in another, by dividing the state into geographic areas with different weighted tree count requirements per 100 linear feet of stream. **Mr. Gray** explained stream protection zones (boxes) are 75 feet wide from the edge of the stream, by 100 feet of stream. Within each box, you would count the trees within each diameter class, then multiply by the factor for your corresponding geographic area. If you have more trees (you are above the weighted tree count) in that area, then you have harvest opportunities. If you have fewer, you need to move on to the next zone. **Senator Semmelroth** noted some of the public comments IDL received from the EPA and tribal groups stated reduced protections that IDL defines in the most innermost areas are not supported by science and research, and she asked for an explanation of how the new protections will protect water quality. **Mr. Gray** responded that the EPA suggested higher retention requirements within an inner zone of 25 or 50 feet, but IDL believes the physical limitations of having to go in the full 75 feet and fall a tree out would provide as much protection as creating higher retention requirements within an inner zone.

**TESTIMONY:** **Jonathan Oppenheimer**, External Relations Director for the Idaho Conservation League (ICL) shared that ICL was involved in the development of this rule and they participated in some of the stakeholder meetings and provided comments. **Mr. Oppenheimer** stated ICL has serious reservations about the reductions in the protections for areas zero to 25 feet from streams. He was concerned about protecting streams that are currently under-stocked and about protections to water quality. He referenced language in studies used by ICL that expressed that it is essential to protect this innermost zone. **Mr. Oppenheimer** recommended that the Committee reject these rules and asked that IDL and the Forest Practices Act Advisory Committee be given more time to work on them and get them right.

**DISCUSSION:** In response, **Mr. Gray** gave an example of how relative stocking was determined under the previous rule compared to the current rule, with the final result being that there may be the opportunity to harvest a few more trees closer to the stream under the current rules, although the physical limitations of harvesting may provide some extra protection. **Senator Guthrie** asked for a definition of relative stocking and asked if related rules were consistent between north and south Idaho, and between terrains and applications. **Mr. Gray** explained relative stocking is a combination of relative density and the concept of stocking, although these are almost the same concept. Both relate to the forest carrying capacity of the site. He added that relative stocking varies around the state based on terrain and growing conditions. **Senator Guthrie** asked if there could be different relative stocking requirements for different regions of the same stream. **Mr. Gray** responded, potentially, but IDL changed the rule so that instead of being entirely reliant on habitat type, the state is divided into geographic regions that made more sense and are easier for landowners to understand and implement.

**MOTION:** **Chairman Vick** moved to approve **Docket No. 20-0201-2101**. **Senator VanOrden** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 20-0309-2101F** **Easements on State-Owned Navigable Waterways Pending Fee Rule**, page 210. This is a fee rule, although it is a new rule, so it is listed in the Pending Fee Rule Book as **Docket No. 20-0309-2101**. **Scott Phillips**, Policy and Communications Chief for Idaho Department of Lands presented testimony on **Docket No. 20-0309-2101**. **Mr Phillips** explained that 20.03.09 establishes a consistent process to authorize easements for specific uses of state-owned submerged lands. These uses include bridges, utility crossings, and some dams. Statutory authority for easements on state lands is provided by Idaho Code § 58-6. This proposed rule includes the following substantive changes: the \$300 application fee established in 1993 was increased to \$500, appraisals, if needed, will now be paid for by the applicant and not by IDL staff, and the Director's approval authority is raised from a compensation of \$10,000 up to \$25,000. This corresponds with the same approval authority for easements on endowment lands. The rule changes will only impact new easement applications.

**DISCUSSION:** **Senator Guthrie** asked for clarification if this was a fee rule. **Mr. Phillips** confirmed that this was a fee rule.

**MOTION:** **Senator Burtenshaw** moved to approve **Docket No. 20-0309-2101F**. **Senator VanOrden** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 20-0601-2101F** **Rules of the Idaho Board of Scaling Practices Pending Fee Rule**, page 217. This is a fee rule, although it is a new rule, so it is listed in the Pending Fee Rule Book as **Docket No. 20-0601-2101**. **Archie Gray** testified on behalf of Shawn Inman, the Executive Director of the Idaho Board of Scaling Practices. **Mr. Gray** explained the main change to this rule was the adoption of the new Idaho Cubic Log Scaling Manual, in Subsection 002.02 (page 220). The new cubic manual is an alternative to the current Scriber "Idaho Log Scaling Manual" and is not meant to be a replacement. The intent of the manual is to establish a standard, uniform set of rules for cubic scale in the event someone elects to use cubic scale in the future. Other changes were the removal of rule sections that are duplicative with statute, and removing other unnecessary words, which results in a rule that is easier to read. No fee amounts were changed or new fees added.

**MOTION:** **Senator Blair** moved to approve **Docket No. 20-0601-2101F**. **Senator Semmelroth** seconded the motion. The motion carried by **voice vote**.

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

**ADJOURNED:** There being no further business as this time, **Chairman Vick** adjourned the meeting at 2:13 p.m.

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Senator Vick  
Chair

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Shelly Johnson  
Secretary