

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 15, 2023

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Burtenshaw, Vice Chairman Adams, Senators Guthrie, Den Hartog, Harris, Okuniewicz, Schroeder, Semmelroth, and Taylor

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 Burtenshaw** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

PRESENTATION: **Acknowledgement of Page - Justus Wills.** **Mr. Wills** shared with the Committee his future plans and how much he enjoyed his experience as a Senate Page.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Schroeder** moved to send the Gubernatorial Appointment of Ed Schriever to the Northwest Power and Conservation Council to the floor with recommendation that he be confirmed by the Senate. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment of Louise Stark of Challis, Idaho to the Outfitters and Guides Licensing Board** for a term commencing April 20, 2022 and expiring April 20, 2024. **Ms. Stark** presented before the Committee via video. She shared that this was her fourth appointment to the Outfitters and Guides Licensing Board (Board). She was co-owner of White Cloud Outfitters from 1987 to 2019, when she sold the business. She continued to operate as an outfitter and retain her guide licence in Idaho.

DISCUSSION: **Chairman Burtenshaw** asked Ms. Stark what she thought the future challenges were for outfitters and guides. **Ms. Stark** responded that for older, more experienced members, changes in technology were challenging. She added that increased demand created increased numbers of licensed outfitters and guides and more responsibilities for the Board, and for her personally, the Board's move from an independent board to a function under the Division of Occupational and Professional Licenses (DOPL) was challenging.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment of Dennis Skinner of Boise, Idaho to the Outfitters and Guides Licensing Board** for a term commencing August 8, 2022 and expiring April 20, 2025. **Mr. Skinner** presented before the Committee. He shared he was a new appointee to the Board. He worked for multiple local companies until he started his own business selling specialty wood throughout the Northwest in 1989. This allowed him more time to spend as a guide. He was a licensed river guide in Idaho for about 19 years. He was impressed with the current Board and their help with learning his new job on the Board.

DISCUSSION: **Senator Taylor** asked about the acronyms after his qualification as a former licensed river guide. **Mr. Skinner** stated MF stood for Middle Fork, MS stood for Main Salmon, and HC for Hell's Canyon.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment of Erik Weiseth of McCall, Idaho to the Outfitters and Guides Licensing Board** for a term commencing May 23, 2022 and expiring April 20, 2025. **Mr. Weiseth** presented before the Committee. He shared he began his guiding career in 2000. Since 2006, he had been managing partner for the rafting company Orange Torpedo Trips. This was a river outfitter based in southern Oregon and Riggins, Idaho. He was Board Chair and Founding Board Member of a nonprofit program called LEAP, which provided wilderness programs for people dealing with trauma. He served as the President of the Wild Rogue Outfitters Association Board and was a current member, he was on the Board of Directors of the Oregon Outfitters and Guides Association, and he was Vice President of the Idaho Outfitters and Guides Association Board.

DISCUSSION: In response to a question from Senator Okuniewicz, **Mr. Weiseth** stated he did not have an opinion on Greater Idaho. **Chairman Burtenshaw** asked how he made the most fun thing in the world into his job. **Mr. Weiseth** responded that was an accurate description of his job, but he spent much of his time chasing people who are living their dream life and making sure they actually did their jobs.

PASSED THE GAVEL: Chairman Burtenshaw then passed the gavel to Vice Chairman Adams.

DOCKET NO. 37-0203-2201 **Water Supply Bank Rules (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule.** **Matthew Weaver**, Rules Regulation Officer, Idaho Department of Water Resources (IDWR), stated they will have the individuals who participated in the rulemaking for each specific rule present their rules. He then referred to their Proposed Five-Year Rulemaking Schedule (Attachment 1) and briefly summarized IDWR's rulemaking efforts in 2022. **Brian Patton** Executive Officer, IDWR, presented revisions to **Docket No. 37-0203-2201**, which was a fee rule governing the operation of the Idaho Water Resource Board (IWRB) Water Supply Bank. He referred the Committee to the final form of this Docket in the Pending Fee Rule Book posted on the Idaho Legislature website starting on Page 17, IDWR's handout of a red lined version of this Docket (Attachment 2), and IDWR's handout showing an overview of changes to this Docket (Attachment 3). **Mr. Patton** explained the proposed revisions did not change any of the fee language, but reduced the text of the rule. He described the Water Supply Bank and the general components of the rule. He disclosed that the House did not approve this rule.

DISCUSSION: **Senator Okuniewicz** asked Mr. Patton to describe the rationale behind the House's decision not to approve this rule. **Mr. Patton** responded that there were a certain number of members on the House committee that did not understand the rule or the role and function of a water supply bank and therefore chose not to approve the rule.

Chairman Burtenshaw asked for clarification on the "periods of time" noted on Page 2 of the red lined rules (Attachment 2). **Mr. Patton** responded this was assumed to be one year, and was the period of time that people wanted to lease the water. He clarified that the lease and rental of the water rights in the Water Supply Bank was a contractual arrangement between the water right holder, the IWRB, and water users, and a specified time was associated with those contracts. **Chairman Burtenshaw** then asked for an explanation of the role of the Director if there was an injury as noted on Page 5. **Mr. Patton** explained before parties enter into contracts with the Water Supply Bank, IWRB staff made sure that the contracts would not impact any third party water rights and that there was sufficient information for the Director to administer those water rights in their new location or new use. **Chairman Burtenshaw** then asked if water right rental outside the state of Idaho was a possibility. **Mr. Patton** explained that with

the exception of the flow augmentation rentals out of the rental pools, which was specifically authorized by the Legislature, this did not happen on a regular basis.

In response to questions from Senator Guthrie, **Mr. Patton** responded his understanding was that the revised rule could not go forward since the House chose not to approve it, but they would continue under the prior set of rules. He added that IWRB will decide if they want to present the revised rules again.

Senator Semmelroth asked if the language for the leasing and contracting of water rights would apply to the proposed Cat Creek Project outside of Anderson Ranch. **Mr. Patton** responded that the Cat Creek Project applied for water rights, and not a rental from the Water Supply Bank, so these rules would not apply to the project as it was currently being proposed.

MOTION: **Chairman Burtenshaw** moved to approve **Docket No. 37-0203-2201**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 37-0304-2201 **Drilling for Geothermal Resources Rules (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule.** **Erik Boe**, Groundwater Protection Section Manager, IDWR, presented **Docket No. 37-0304-2201**, which was a fee rule governing the drilling operation, maintenance, and abandonment of all geothermal wells in the state, and related operations and environmental hazards pertaining to the exploration and development of geothermal resources. He referred the Committee to the final form of this Docket in the Pending Fee Rule Book posted on the Idaho Legislature website starting on Page 25, IDWR's handout of a red lined version of this Docket (Attachment 4), and IDWR's handout showing an overview of changes to this Docket (Attachment 5). He reviewed some of the significant changes made to this Docket, including changes to the definition of an exploratory well in Section 10, changes to bonding requirements in Section 25, the addition of alternative drilling methods in Section 26, the removal of obsolete confidentiality and inspection of records criteria in Section 30, changes to whistle-blower prevention requirements in Section 35, updating and streamlining hearing procedures in Section 60, and updating and streamlining enforcement procedures in Section 65. He stated there were no changes to existing fees.

DISCUSSION: **Chairman Burtenshaw** asked if changes to this Docket changed the context of the subject in any manner. **Mr. Boe** stated no, the substance of the Docket had not changed. **Chairman Burtenshaw** then asked for clarification on the temperature of geothermal resource wells and the casing requirements for water at that temperature. **Mr. Boe** responded geothermal resource wells were groundwater 212 degrees and above, and there was a process for constructing these types of wells to prepare for encountering high pressure and high temperature water. **Senator Guthrie** asked what the decision was in the House on this Docket. **Mr. Boe** responded that this Docket was postponed in the House, but he would present it, along with the Well Driller Licensing Rules, on March 1, 2023.

MOTION: **Senator Schroeder** moved to approve **Docket No. 37-0304-2201**. **Chairman Burtenshaw** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
37-0305-2201**

Mine Tailings Impoundment Structures Rules (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. **Matthew Weaver** stated this was the fee rule governing mine tailings impoundment structures and this rule, and the Safety of Dams rule, were approved by the House last week. He referred the Committee to the final form of this Docket in the Pending Fee Rule Book posted on the Idaho Legislature website starting on Page 36, IDWR's handout of a red lined version of this Docket (Attachment 6), and the memo titled Executive Order 2020-01 Recommendation Memo last revised July 27, 2022 (Attachment 7). He explained that in 2021, IDWR identified an opportunity to combine the mine tailings impoundment structures rules and the safety of dams rules for efficiency and clarification, but ultimately decided against this change. Because they made this decision late in the rulemaking process, there were minimal changes made to this Docket last year. They made two changes to the existing rule to correct an inconsistency between current statutes and the existing rule concerning the inspection intervals in maintaining impoundment structures; they modified the definition for a Certificate of Approval in Section 10.13 and the reference approval period in Section 40. He stated there were no changes to existing fees.

DISCUSSION:

Senator Schroeder shared concerns about regulatory language inside a definition in general and specifically questioned the regulatory language within the definition of Certificate of Approval and the dismissal of the two year recertification schedule. **Mr. Weaver** responded that these issues may be due to the late decision against making changes and the likelihood that these would be revisited in the near future. **Senator Schroeder** then shared concerns about dismissing the two year recertification schedule combined with deferring to an inspection schedule according to the Hazard Classification assigned by IDWR (referring to the criteria for Hazard Classification ordering in **Docket No. 37-0306-2201**), which did not account for the different kinds of mine tailing impoundments that could contain toxic materials which could be released downstream should a dam fail. **Mr. Weaver** responded they inspect, maintain, and implement structures annually, but they changed the Safety of Dams rules from the previous size and risk categorizations to a new hazard categorization, and changed inspection intervals based on the hazard class assigned to existing dams. **John Falk**, Safety of Dams Program Manager, IDWR, responded that although not specifically stated, a mine tailing impoundment structure that contained toxic materials would qualify for a more robust or frequent inspection schedule than one that did not.

TESTIMONY:

Jonathan Oppenheimer representing the Idaho Conservation League, testified against **Docket Nos. 37-0305-2201** and **37-0306-2201**. He opined that these two rules had gone too far in eliminating regulatory language. He shared that these Dockets were combined during rulemaking and then separated late in the process, causing some confusion. He stated both Dockets included significant changes that resulted in increased discretion for IDWR and did not adequately protect communities downstream from potentially toxic sediments and tailings.

Senator Schroeder reviewed his specific concerns about changes to this Docket.

MOTION:

Senator Schroeder moved to reject **Docket No. 37-0305-2201**. **Senator Semmelroth** seconded the motion.

**SUBSTITUTE
MOTION:**

Senator Harris moved to approve **Docket No. 37-0305-2201**. **Senator Guthrie** seconded the motion.

DISCUSSION:

Senator Harris shared that he agreed with the Committee's concerns about this Docket, but he thought the Department of Environmental Quality and IDWR were doing their job and changes were acceptable.

ROLL CALL VOTE: **Vice Chairman Adams** called for a roll call vote on the substitute motion. **Chairman Burtenshaw**, and **Senators Guthrie, Harris, and Okuniewicz** voted aye. **Vice Chairman Adams**, and **Senators Schroeder, Semmelroth, and Taylor** voted nay. Senator Den Hartog was absent. The motion failed.

ROLL CALL VOTE: **Senator Guthrie** called for a roll call vote on the original motion to reject **Docket No. 37-0305-2201**. **Senators Schroeder, Semmelroth, and Taylor** voted aye. **Chairman Burtenshaw, Vice Chairman Adams, and Senators Guthrie, Harris, and Okuniewicz** voted nay. Senator Den Hartog was absent. The motion failed.

MOTION: Due to the possible need for a full Committee, **Senator Guthrie** moved to hold **Docket No. 37-0305-2201** until a time subject to the call of the chair. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 37-0306-2201 **Safety of Dams Rules (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule.** **Mr. Weaver** stated this was the fee rule governing safety of dams. He referred the Committee to the final form of this rule in the Pending Fee Rule Book posted on the Idaho Legislature website starting on Page 48, and IDWR's handout of a red lined version of this Docket (Attachment 8), and their handout showing an overview of changes to this Docket (Attachment 9). He reviewed some of the significant changes, including addition of Section 3, Administrative Appeals, amendment to the size classification in Section 20, amendment to the definitions and regulation of hazard classification in Section 25, changes to design report drawings and specification requirements in Section 35, changes to seismic analysis requirements for new and existing dams in Section 50 and 60, changes to Emergency Action Plan requirements in Section 45, changes to construction requirements for new dams in Rule 50 and 60, and the removal of Section 65, Dams Storing Tailings and Water. He stated these rules had not been modified since 1993 and there were significant changes in engineering and construction practices and in the regulation of the safety and operation of dams since that time. He stated there were no changes to existing fees.

TESTIMONY: **Jonathan Oppenheimer** representing the Idaho Conservation League, testified against **37-0306-2201**. In addition to the statements he made during his prior testimony, he stated IDWR provided no evidence based justification for relaxing the safety of dam rules, and the prospective analysis done for these rules was only 50 percent complete.

DISCUSSION: **Senator Okuniewicz** asked if there was anything in the rule changes, other than providing additional latitude, Mr. Oppenheimer thought increased risk for safety. **Mr. Oppenheimer** responded changes share a common theme of eliminating specific dam inspections, and allowed them to be at the discretion of the department. He added he could share specific language, but was aware the Committee was pressed for time.

MOTION: **Chairman Burtenshaw** moved to approve **Docket No. 37-0306-2201**. **Senator Harris** seconded the motion. The motion carried by **voice vote**. **Senator Semmelroth** requested that she be recorded as voting nay.

DOCKET NO. 37-0310-2201 **Well Driller Licensing Rules (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule.** **Chairman Burtenshaw** stated the meeting had run out of time, so **Docket No. 37-0310-2201** would be considered in a future meeting.

PASSED THE GAVEL: Vice Chairman Adams passed the gavel to Chairman Burtenshaw.

ADJOURNED: There being no further business as this time, **Chairman Burtenshaw** adjourned the meeting at 2:58 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary