

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 22, 2023

TIME: 1:00 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 1:10 p.m.

PRESENTATION: **Acknowledgement of Page - Adam Taylor.** **Mr. Taylor** shared with the Committee some of what he learned as a Senate page. He said he used to come to the Legislature and sit in the gallery and watch the Senators on the floor, but he did not realize all the work that went on behind the scenes, and it was really cool to see and be a part of that work.

DISCUSSION: **Chairman Burtenshaw** asked Mr. Taylor about his future plans. **Mr. Taylor** said he intended to serve a two year mission for his church, and then he wanted to attend the Air Force Academy in Colorado Springs and become a fighter pilot. **Senator Harris** told Mr. Taylor how much he appreciated his work for the Senate, and asked him what his biggest surprise was. **Mr. Taylor** responded his biggest surprise was how nice his secretary was. **Senator Taylor** thanked him for everything he did and said when he became a fighter pilot, he hoped he would come back and take us for a ride. **Senator Schroeder** wished Mr. Taylor well and when he became a fighter pilot he hoped to welcome him to living in Mountain Home.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment of Betty Coppersmith of Eagle, Idaho to the Oil & Gas Conservation Commission** for a term commencing July 1, 2020 and to expire July 1, 2024. **Ms. Coppersmith** shared that for the last four years, she served as the chair of the Idaho Oil and Gas Conservation Commission. She shared that there were some pending revisions to Idaho Code related to the Commission, including a revision that would give the Governor more flexibility in appointing members to the Commission. She explained that currently appointees had to have a degree in geology or petroleum engineering, which was hard to find in Idaho, but that wording was changed so that the Governor could consider industry experience.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Harris** moved to send the Gubernatorial reappointment of Betty Coppersmith of Eagle, Idaho to the Oil & Gas Conservation Commission to the floor with the recommendation that she be confirmed by the Senate. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

HJM 5: **GRIZZLY BEAR - States findings of the Legislature and urges the delisting of grizzly bears in the lower 48 states.** **Senator Herndon** explained this joint memorial was in response to the denial of Idaho's petition to the United States Fish and Wildlife Service (USFWS) and the United States Department of the Interior (DOI) to delist grizzly bears in the lower 48 states. He stated the Endangered Species Act (ESA) was designed to preserve endangered species and at one time, grizzly bears in the state of Idaho were a legitimate endangered species, but they had now recovered so well that they were moving out of their natural habitat and into human habitat. This resolution added the weight of the Idaho Legislature behind the effort to delist grizzly bears, called on Congress to act promptly to delist grizzly bears, called upon the USFWS and DOI to reverse their determination, and acknowledged that continued state and local management was needed to ensure grizzly bear population recovery and conservation.

TESTIMONY: **Darcy Lammers** testified in favor of **HJM 5**. He stated he lived between two grizzly bear recovery zones. He spoke about the increasing risk to public safety imposed by the growing grizzly bear population, and shared that in 2019 his eight year old daughter's lambs were killed by a grizzly bear, most likely while his daughter was in a nearby barn, and in 2020, his wife lost all of her beehives to a grizzly bear just a few hundred yards from their front door. He shared that when conflicts like these occurred on his farm, Idaho Department of Fish and Game (IDFG) responded within a few hours, but USFWS was unable to respond until the following day.

Chyla Wilson, representing the Idaho Farm Bureau Federation, testified in favor of **HJM 5**. She stated the ESA should work as intended and federal protection of endangered animals should be lifted when preservation efforts were successful. She felt that Idaho's state and local agencies were better positioned to manage the grizzly bear population, support conservation efforts, maintain community support, and manage conflicts.

Ms. Worthington, Deputy Director, IDFG, testified in favor of **HJM 5**. She stated **HJM 5** was consistent with IDFG policy and actions regarding grizzly bears in Idaho, and while this joint memorial reflected policy perspectives that were beyond IDFG, it also reflected IDFG's input during the drafting process. She stated Idaho, neighboring states, and federal land management agencies had regulatory mechanisms in place to conserve grizzly bears without the need for additional restrictions under the ESA.

Brad Smith, Idaho Conservation League, testified against **HJM 5**. He shared that although the recovery of the Yellowstone and Northern Continental Divide grizzly bear populations were an ESA success story, Idaho had not achieved recovery goals through the Selkirk, Cabinet-Yaak, and Bitterroot recovery areas. He added that Idaho did not have adequate protections in place of their own, or the staff and resources necessary to manage and sustain fully recovered grizzly populations.

DISCUSSION: **Senator Herndon** agreed that the grizzly bear recovery had been a success story. He stated there were a few hundred bears in the mid-1970s, but now there were 2,000 in Idaho and its neighboring states and 60,000 in the United States and Canada and protections of the ESA were no longer necessary. He believed Idaho was ready to move from grizzly bear preservation to conservation, which was an important move to retain public support for conservation as more bears interact with the public.

MOTION: **Senator Den Hartog** moved to send **HJM 5** to the floor with a **do pass** recommendation. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

HCR 4:

LAVA RIDGE - States findings of the Legislature, expresses concern over the proposed Lava Ridge Project, and supports a no-build option. **Representative Nelsen** shared there is an application pending before the Bureau of Land Management (BLM) to approve the placement of approximately 400 wind turbines on public land in the Magic Valley. He explained **HCR 4** was a concurrent resolution expressing concern over this project, called the Lava Ridge Project, and requesting the Governor and Attorney General take whatever legal actions were available to encourage the BLM to select the no-build option. He shared that nearly everyone in the Magic Valley was against the project and did not believe in development on public lands. He also expressed concern that the process for addressing conflicting proposed uses of public lands was not being followed. **Representative Clow** added that energy produced from this project would go to the highest bidder, which was unlikely to be someone within Idaho.

TESTIMONY:

Luke Papez, LS Power, testified against **HCR 4**. He shared some background on the group that proposed the Lava Ridge Project. He shared that although this was the first proposal for wind turbines on public lands, the strict regulatory application process offered opportunities to negotiate alternatives that avoided, minimized, or mitigated impacts, and they were still in the middle of this process. He addressed some line items in **HCR 4**, including:

- BLM had already scaled back the project as described in this legislation to mitigate impacts.
- The Federal Aviation Administration (FAA) had recently put forth a public notice noting that the safety and efficiency of the airspace could be maintained with the construction of the project.
- The need for domestic clean energy existed in Idaho and across the West, so the energy they generated could serve both within and outside of the state.
- Wind turbines did not use much water, so the need for water was only an issue during road construction.
- Roads were something that could be easily mitigated through guarantees of their company.
- Wind turbines did not take up much space, so maintaining multiple use on these public lands, including grazing, recreation, and hunting, could continue.
- BLM indicated a desire to move the project area back five to ten miles away from Minidoka to reduce the visual intrusion on that site.

He felt this legislation only covered one side of the story, and since they were only midstream in the application process there were still opportunities to meet and consider impacts, and come to a compromise.

DISCUSSION:

Senator Den Hartog asked how LS Power was selected to be the contractor for this project. **Mr. Papez** responded that the Federal Government did not select LS Power, but this was a competitive venture for LS Power and they selected areas that might be appropriate for wind development. In response to further questions from Senator Den Hartog, **Mr. Papez** stated there was no need for eminent domain because the roads needed to access the site already existed, but they would require new roads on public lands.

TESTIMONY:

Jack Johnson, Twin Falls County Commissioner, testified in favor of **HCR 4**. **Mr. Johnson** shared that citizens throughout the five counties near the Lava Ridge project were nearly unanimously opposed. He stated there were windmills in Idaho, but they were all on private land, and these would be the first ones proposed on public lands. He provided some numbers, including that the draft environmental impact statement for this project reflected the need for 486 miles of roads on public lands and up to 395 miles of temporary fencing.

Amy Schute, testified against **HCR 4**. She shared she was a lifelong Magic Valley resident and had been working on this project with Magic Valley Energy since 2019. She shared her belief that this resolution sets a dangerous precedent for Idaho's business community, business economy, and industry development. She stated businesses choose Idaho because of their friendly business environment, and they expect to follow a specific process. She believed the environmental impact statement created for this project was comprehensive, and the alternatives proposed by BLM were thoughtful compromises that would bring economic benefits to Idaho.

Mark Doerr, Owner, Precision Aviation, Inc, testified in favor of **HCR 4**. He provided some history of Magic Valley Energy's applications with the Federal Aviation Administration (FAA) for the proposed project. He referred the Committee to his handout of the FAA's Notice of Preliminary Findings dated May 21, 2021 and the first four pages of Magic Valley Energy's Public Notice dated February 2, 2023 (Attachment 1). He shared that the FAA was not an enforcement agency when it came to the building of turbines, and they could recommend not to build, but once turbines were constructed, all they could do was analyze their impact on airports, aviation safety, and instrument approaches.

Roy Prescott, Prescott Land and Livestock, testified against **HCR 4**. He stated he was a rancher from Jerome. He explained the footprint of this project consisted of three BLM grazing allotments and his was the largest of those allotments. He shared that he attended three public hearings, and he described how the developers of the Lava Ridge project had mitigated his issues related to water, fencing, and the impact of construction on grazing. He considered the tax benefits to the area and disagreed that all of those that lived close to this project were opposed to it.

Brad Mitchell testified against **HCR 4**. He stated he was present with a group of businesspeople who saw the value in the Lava Ridge Project. He did not believe that concerns around this project considered the extensive process projects like this must go through before they were allowed to begin, or the tremendous benefits it would bring to the Southern Idaho economy. He asked Chairman Burtenshaw for permission to have those in the room stand and be acknowledged as supporters of the project, which the Chairman granted.

Logan Dimond testified in favor of **HCR 4**. He stated he was 18 years old and he worked on his dad's farm, which was right next to the BLM land slated for this project. He shared how much he loved his way of life, and he did not want a bunch of big windmills destroying public land that was for recreation and cattle grazing. He thought the project would be devastating to the people, like him, who had to live with it every day.

Pete Richardson, Chair, Idaho Energy Freedom Advisory Council, testified against **HCR 4**. He shared he was a long time energy attorney and had spent many years in energy, regulatory, and independent power development in Idaho. He stated he did not represent the Lava Ridge project, but the mission of the Idaho Energy Idaho Energy Freedom Advisory Council was to educate Idahoans about clean energy options and the benefits of clean and independent energy development. He spoke about the benefit of this project, and clean energy in general, to Idaho's energy portfolio. He shared that Idaho did not generate enough electricity to meet their needs and was required to buy energy from out of state. He shared two letters from additional members of the of the group (Attachment 2).

DISCUSSION:

Senator Den Hartog asked if the project made a commitment to keep a percentage of the power generated available for sale just in Idaho. **Mr. Richardson** responded that all of the energy generated by this project will be used in Idaho, because of a law called Ohm's Law, which dictates that electricity, like water, follows the path of least resistance. **Senator Semmelroth** shared she had toured the proposed Lava Ridge site last summer and was told that the energy produced would be moved to California and would not stay in Idaho, and she requested clarification. **Mr. Richardson** responded that if a project in southern Idaho wanted to sell its electricity to a consumer in California, it would need a physical path, or wires, for that electricity to follow, and on the wires the electricity followed the path of least resistance.

TESTIMONY:

Nicki Kroese testified in favor of **HCR 4**. She shared she did not believe public land should be used for private enterprise. She shared concerns about damage to the Snake River Aquifer from long term blasting using high explosives.

Mike Telford testified in favor of **HCR 4**. He mentioned the Minidoka Japanese-American internment camp, tribes' treaty rights, the effects of the windmills on wildlife and birds, the threats to the aquifer due to blasting, how big and deep the holes had to be to hold a wind tower that had not been invented yet and was 740 feet tall, and the seismic phenomena caused by the vibration of the windmills. He spoke about his history in Idaho and how this project affected his family personally. He shared that he relied heavily on aerial applicators, commonly known as crop dusters, and they may not be able to get to his crops after the Lava Ridge project was completed. He shared concerns about wind turbines causing drift of sprayed chemicals, and about the effects of wind disturbance on his crops.

DISCUSSION:

Mr. Papez addressed some points that were brought up during public testimony. He provided multiple examples of facilities for private enterprise located on public lands. He explained the reason for the two FAA filings and that they were not intended to be elusive. He addressed blasting over the aquifer. He referenced Ohm's Law, and stated he was hopeful the project could serve a need for power within the state, but that power could also be exported out of state. He stated they were aware of other crop dusting operations who currently run their services among wind turbines in Idaho. He stated the BLM was already looking at alternatives to issues such as the placement next to a National Historic Site, the many hundred miles of roads, and the turbine height.

Representative Nelson explained some concerns about the aquifer, and about the small towns near the project having the schools and the infrastructure to absorb 700 temporary employees. He asked Chairman Burtenshaw for permission to have those in the room stand and be acknowledged as opposed to the project, which the Chairman granted.

Senator Semmelroth asked if any state agencies, such as the Idaho Department of Water Resources, were involved in the study or research of this project.

Representative Nelson responded that in the initial statement, the water had been mitigated and bought out of the rental pool. **Senator Taylor** commented that in the 40 years he had lived in Idaho this was the first time he had seen lots of different groups from every end of his district come together to stand against something. In his opinion, some of the information he received was misleading and questions were unanswered, so he would support this resolution.

MOTION:

Senator Harris moved to send **HCR 4** to the floor with a **do pass** recommendation. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business as this time, **Chairman Burtenshaw** adjourned the meeting at 2:23 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary