

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, January 18, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
INTRODUCTION OF PAGE	Hanna Pfeiffer of Rupert	Chairman Vick
<u>RS28222</u>	Relating to Water Districts	Senator Patrick
ADMINISTRATIVE RULES REVIEW	Overview of 2021 Administrative Rules: Where Did Rules Come From (Administrative Procedures Act); Omnibus vs. New; How to View Online	Colby Cameron and Brad Hunt, DFM, Division of Administrative Rules (Zoom)
	OMNIBUS RULES	Vice Chairman Johnson
DOCKET NO. :		
<u>26-0000-2000F</u>	A Fee Rule of the Department of Parks and Recreation Being Imposed Pursuant to Idaho Code § 67-4223 (page 229)	Anna Canning, Management Services Administration, Idaho Department of Parks & Recreation (in-person)
<u>24-3501-2000</u>	Rules of the Outfitters and Guides Licensing Board Under the Jurisdiction of the Department of Occupational and Professional Licenses (page 24)	Dawn Hall, Section Chief, Idaho Division of Occupational and Professional Licenses (in-person)
<u>15-0300-2000F</u>	A Fee Rule Under the Rules of Administrative Procedure of the Idaho Forest Products Commission (page 14)	Jennifer Okerlund, Director, Idaho Forest Products Commission (in-person)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Vick	Sen Guthrie
Vice Chairman Johnson	Sen Burtenshaw
Sen Bair	Sen Stennett
Sen Heider	Sen Rabe
Sen Patrick	

COMMITTEE SECRETARY

Juanita Budell, Assistant
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 18, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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 Vick** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:32 p.m.

WELCOME AND INTRODUCTIONS: **Chairman Vick** welcomed the audience and Committee members to the first Committee meeting of the 2021 Legislative Session. Some of the members are new to the Committee, and because of that, he asked each member to relate a few remarks about themselves.

Page Hana Pfeiffer was also introduced by **Chairman Vick**. Ms. Pfeiffer is a senior at Minico High School and is involved in the student council. She spoke about her involvement in local activities, as well as 4-H activities, which include swine, waterfowl, leadership, and in anticipation of 40,000 honeybees. Ms. Pfeiffer plans to attend the College of Idaho and major in Political Economy.

RS 28222 **Senator Patrick** presented **RS 28222, Relating to Water Districts**. This amendment clarifies that when water is diverted and assessed in one water district but is conveyed and rediverted in a second water district, the second district may levy a fee instead of an assessment for that water. Any authorized fees that are levied are not considered to be a part of a water user's voting credentials in the second water district.

MOTION: **Senator Bair** moved to send **RS 28222** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

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

RULES REVIEW: **Vice Chairman Johnson** introduced Colby Cameron, Bureau Chief for Regulatory and Legislative Affairs, Idaho Division of Financial Management, who, via Zoom, provided an overview of the rules. **Mr. Cameron** explained how to use the Legislature web page to access the administrative rules and the links to specific House and Senate Committees. **Vice Chairman Johnson** thanked Mr. Cameron for the review of the rules.

DOCKET NO. 26-0000-2000F **Notice of Omnibus Rulemaking - Adoption of Pending Fee Rule.** **Anna Canning**, Management Services Administrator, Idaho Department of Parks and Recreation (IDPR), presented **Docket No. 26-0000-2000F**. **Ms. Canning** reviewed the existing rules and stated there was one exception. She said in anticipation of future changes to Idaho Code raising the fee for the Idaho State Parks Passport, IDPR seeks a corresponding raise on the fee cap for the annual motor vehicle entrance fee from \$40 to \$80.

MOTION: **Senator Stennett** moved to approve **Docket No. 26-0000-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**. An inquiry was made as to the House Resources and Conservation vote on this docket and **Ms. Canning** replied the Committee was in favor of it.

DOCKET NO. 24-3501-2000 Notice of Omnibus Rulemaking - Adoption of Pending Rule. **Dawn Hall**, Section Chief, Idaho Division of Occupational and Professional Licenses, presented **Docket No. 24-3501-2000**. **Ms. Hall** stated there are no changes to the pending rule and it is being adopted as originally proposed. These rules are necessary for the agency to carry out its statutory duties and to protect the public health, safety, and welfare and conservation of wildlife and range resources – in the State of Idaho.

TESTIMONY: **Joan Callahan** testified in support of this docket.

MOTION: **Senator Heider** moved to approve **Docket No. 24-3501-2000**. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 15-0300-2000F **Notice of Omnibus Rulemaking - Adoption of Pending Fee Rule**. **Jennifer Okerlund**, Director, Idaho Forest Products Commission, presented **Docket No. 15-0300-2000F**. **Ms. Okerlund** indicated there are no changes to the pending fee rule and it is being adopted as originally proposed.

MOTION: **Senator Guthrie** moved to approve **Docket No. 15-0300-2000F**. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:20 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, January 20, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
RS28208	Provides 10 days notice of time, place, and purpose of IDFG Commissioners' meetings	Senator Heider
RS28223	Amends certain definitions under the Recreational Trespass statutes	Senator Harris
	OMNIBUS RULE	Vice Chairman Johnson
DOCKET NO.: 20-0000-2000F	A Fee Rule of the Idaho Department of Lands Being Imposed Pursuant to Idaho Code § 67-5224 (page 18)	Scott Phillips, Policy & Communication Chief, IDL
	TEMPORARY RULE	
13-0104-2101	In compliance with Idaho Code § 67-5226 to increase the number of general hunt elk tags set aside for outfitters (page 4)	Paul Kline, Deputy Director, IDFG

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Vick

Vice Chairman Johnson

Sen Bair

Sen Heider

Sen Patrick

Sen Guthrie

Sen Burtenshaw

Sen Stennett

Sen Rabe

COMMITTEE SECRETARY

Juanita Budell, Assistant

Room: WW37

Phone: 332-1323

Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 20, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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

RS 28208 **Relating to Fish and Game** which provides ten days' notice of the time, place, and purpose of IDFG Commission's meetings. **Senator Heider** presented **RS 28208** and stated that constituents have told him there is a breakdown of communication regarding the time and place of the Commission's meetings and he said he would like for that issue to be resolved.

MOTION: **Vice Chairman Johnson** moved that **RS 28208** be sent to print. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

RS 28223 **Relating to Liability of Landowners** and amends certain definitions under the Recreational Trespass statutes. **Senator Harris** presented **RS 28223**. He stated that it was brought by the Idaho Water Users Association and proposes to amend Idaho Code § 36-1604 and mainly deals with definitions. It amends definitions to include water facilities, parks, and campgrounds. It also clarifies property held by an owner and clarifies recreational activities to include traveling across land owned by others for the purpose of recreating. **Senator Harris** supported these amendments and recommended the RS be sent to print.

MOTION: **Senator Patrick** moved that **RS 28223** be sent to print. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

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

DOCKET NO: 20-0000-2000F **Notice of Omnibus Rulemaking – Adoption of Pending Fee Rules.** **Scott Phillips**, Policy and Communications Chief, Idaho Department of Lands (IDL), presented **Docket No. 20-0000-2000F**. This is the omnibus reauthorization of existing fee rules, of which there are 16. Fifteen of the rules have been previously reviewed and approved, with only one chapter that was amended. It pertains to mined land reclamation.

Mr. Phillips said that IDL is responsible for providing regulatory oversight of mining activities on state, federal, and private lands. Following publication of the proposed rules, IDL received three oral comments and seven written comments received from stakeholders. Edits were made by IDL to the proposed rule based on the comments. The fees reflect cost recovery for the department's administrative costs associated with the review and approval of new plans and amended existing plans that are reviewed within the required five-year period. **Mr. Phillips** indicated that this rule has been improved due to the extensive and inclusive process and asked for its approval.

DISCUSSION: **Senator Stennett** inquired about the strikeout of "Idaho Department of Environmental Quality" and insertion of "DEQ" on page 2, 04.a of document 1. **Mr. Phillips** responded by saying that within the good spirit of reducing the volume of rules, they attempted to keep things as short as possible.

Vice Chairman Johnson asked for an explanation of the fees and the amount of money involved. **Mr. Phillips** said with the fees authorized by H 141 for reclamation plans, IDL conducted an analysis of Western states that also produced minerals and looked at some of the ranges of fees charged. By comparison to the other Western states, Idaho falls more or less into the middle of the pack, he said.

Vice Chairman Johnson then inquired as to how this rule change affects any current or ongoing mining projects in Idaho. **Mr. Phillips** asked to defer that question to Mick Thomas, Division Administrator, Minerals, Public Trust, Oil and Gas Program at the Idaho Department of Lands. **Mr. Thomas** stated that the rule changes are not retroactive. **Vice Chairman Johnson** then inquired about some proposed changes to the sanitation process. The response was that they would fall under the rule of the new sanitization plan.

TESTIMONY: **Ben Davenport**, Executive Director, Idaho Mining Association, said they are supportive of the rule changes and hope to see them go forward. Regarding the question about sanitation, it is not in this rule, but is one that you will see from DEQ. **Mr. Davenport** said the regulations are much more modern, usable, and more protective of the environment.

MOTION: **Senator Bair** moved to approve **Docket No. 20-0000-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 13-0104-2101 **Rules Governing Licensing.** **Ed Schriever**, Director, Idaho Department of Fish and Game (IDFG), presented **Docket No. 13-0104-2101**. **Mr. Schriever** said the 2020 Legislative Session approved rulemaking that provided the IDFG Commission (Commission) the authority to manage nonresident hunter participation in previously uncapped elk and deer hunts to not less than 10 percent of the total number of hunters based on the most recent five-year average. Acting on that authority, the Commission adopted new guidelines to set nonresident tag limits for all previously uncapped general elk and deer hunts to address hunter congestion and crowding. Remaining balances in the deer and elk outfitter set-aside allowed the Commission to allocate nearly 100 percent of the outfitter reported use for deer to newly limited hunt units but only 59 percent of the high reported use for elk to newly limited hunt zones.

Mr. Schriever stated the temporary rulemaking is appropriate as it provides the Commission flexibility to increase the outfitter tag allocation in previously uncapped elk zones, allowing the Commission to consider allocating additional tags to accommodate 100 percent of reported historical outfitter use for elk. **Director Schriever** said this temporary rule does not impose new fees or charges, and it balances outfitter industry and local economic interests.

Mr. Schriever presented a flow chart listing the number of statewide nonresident elk tag quotas and reviewed the distribution of them. He stated it is one of the more confusing aspects of the fish and game business, as it relates to nonresidents.

DISCUSSION: **Senator Patrick** inquired as to how often a game count is conducted. **Mr. Schriever** responded that the Commission tries to determine a population estimate by zone every five years.

MOTION: **Senator Stennett** moved to approve **Docket No. 13-0104-2101**. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:10 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, January 25, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Forestry Day at the Legislature A Presentation on Mass Timber	Dennis Becker, U of I
	OMNIBUS RULES	
DOCKET NO. 13-0000-2000F	Adopts and republishes the following existing sections within rule chapters: 13.01.02.200 and 201- Rules Governing Mandatory Education and Mentored Hunting; 13.01.04.601- Rules Governing Licensing; 13.01.08.263- Rules Governing the Taking of Big Game Animals; 13.01.10.410- Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife; 13.01.19.102- Rules for Selecting, Operating, Discontinuing, and Suspending Vendors (page 5)	Paul Kline, Deputy Director, IDFG
	PENDING RULES	
DOCKET NO. 13-0104-2002	Rules Governing Licensing (page 4)	Paul Kline
13-0108-2001	Rules Governing the Taking of Big Game Animals (page 10)	Paul Kline
13-0109-2002	Rules Governing the Taking of Game Birds (page 14)	Paul Kline
13-0116-2002	The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals (page 20)	Paul Kline

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell, Assistant
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 25, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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

PRESENTATION: **Chairman Vick** welcomed Dr. Dennis Becker, Ph.D., Dean and Professor of Natural Resource Policy, University of Idaho (U of I). **Dr. Becker** then introduced David New, Chairperson, Chapter of Snake River Society of American Foresters (SAF). **Mr. New** said SAF was founded over 100 years ago and has partnered with Forestry Day at the Legislature for over 20 years. They presented the Committee with items made from wood. **Mr. New** said the presentation will be about the importance of mass timber and mass timber manufacturing and construction to Idaho. He then introduced Heather Strong, Professional Engineer and Senior Director, WoodWorks, who gave a slide presentation.

Ms. Strong said WoodWorks is a nonprofit organization made up of architects and engineers who educate the design and construction community on utilizing wood for commercial and multifamily construction. WoodWorks performs this service free of charge due to their funding partners. Some of the major funding partners are: Softwood Lumber Board, United States Department of Agriculture, Forest Service, Innovation Investment, and other wood manufacturers.

Ms. Strong's presentation was "The Mass Timber Revolution, Modern Products, and Systems." She described each process which included:

- glue-laminated timber;
- cross-laminated timber;
- veneer-based, cross-laminated timber;
- dowel-laminated timber; and
- nail-laminated timber

Ms. Strong showed slides of several buildings constructed with mass timber. As of September 2020, there were 445 built or projects under construction using mass timber. Adding that number of projects to the current number of projects under design, the total is 979. **Ms. Strong** stated that mass timber can help alleviate housing demands caused by Idaho's growing population with urban infill projects. A feasibility study was done on a 12-story tower in Seattle, Washington, and a side-by-side comparison of mass timber versus post-tension concrete. It was found there would be a five-month savings in the schedule of construction.

Mr. Becker continued the presentation showing the progress on the Idaho Central Credit Union Arena at the U of I. The building was made possible by generous contributions of donors, student activity fees, as well as the forest products industry in Idaho. Douglas fir was harvested from the surrounding land, working with student logging crews in Orofino, Idaho, to transport the logs to the Idaho Forest Group's Lewiston Mill and Bennett Lumber Products Inc. in Princeton. The logs were then processed and sent to Salmon and Homedale for lamination. Glue-laminated beams were constructed in British Columbia and assembled on site by Structure Craft and Hoffman Construction employees, many of whom are Idaho residents.

Mr. Becker said the ICCU Arena is an Idaho product made by Idahoans with sustainable, harvested wood by the U of I. He indicated that for every 1 million board feet of timber harvested in Idaho, 24 direct and indirect jobs are created. **Mr. Becker** said the more Idahoans can do to promote mass timber construction, the more it will help Idaho's economy. **Mr. Becker** indicated the College of Natural Resources at the U of I is working with the sustainable forest industry to tell its story and promote the benefits of mass timber.

DISCUSSION: **Senator Bair** inquired as to how wood compares on a cost-per-square-foot basis with metal or concrete. Mr. Becker yielded that inquiry to Ms. Strong. **Ms. Strong** replied that sometimes a construction company doesn't have the extra cost of finishes with wood, depending on the application. **Senator Bair** then asked how fire protection compared with concrete or steel buildings. **Ms. Strong** said there is no extra cost.

Senator Guthrie noted his involvement in building over 45 years and said the industry has made remarkable advancements. He applauded the technology and the commitment to making products better.

Senator Patrick asked about roofs and ceilings, and if other materials are used rather than wood. **Ms. Strong** said WoodWorks encourages businesses using a mass timber product to contact heating, ventilating, air conditioning and plumbing trades early, so if the design leaves the ceiling exposed, it is well thought out.

Senator Patrick inquired about the exterior of roofs. **Ms. Strong** said the wood has to be protected and that is done through waterproofing.

Senator Stennett asked whether manufacturers can keep continuity of a uniformed pattern or if they must deal with what Mother Nature gave them. **Ms. Strong** replied WoodWorks embraces the nature of the wood and also, when choosing a mass timber manufacturer, explores what type of wood the manufacturer has.

John Riling, Chair, Intermountain SAF, said in conclusion, he sees a lot of challenges in the future, but also a lot of opportunities. Projects like those taking place at the U of I demonstrate the benefits of Idahoans working together and utilizing Idaho's resources. Embracing the use of sustainable harvested timber is healthy for Idaho and our planet, **Mr. Riling** said.

**PASSED THE
GAVEL:**

Chairman Vick passed the gavel to Vice Chairman Johnson.

**DOCKET NO.
13-0000-2000F**

Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule. Vice Chairman Johnson called on Paul Kline, Deputy Director, Programs and Policy, Idaho Department of Fish and Game (IDFG), to present this docket.

PRESENTATION: **Mr. Kline** said there are five rule chapters in this omnibus action. Examples of fees charged include fees for hunter, archery, and trapper education classes; and bonding fees for large commercial wildlife facilities. He reminded the Committee that IDFG fees for sport licenses, game tags, and sport permits are set by the Legislature in statute and are not in these rules. Omnibus fee rule language before the Committee is unchanged from language previously reviewed by the Legislature. No changes to text or fee amounts were made.

MOTION: **Senator Guthrie** moved to approve **Docket No. 13-0000-2000F**. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 13-0104-2002 **Rules Governing Licensing.** **Mr. Kline** stated this rulemaking addresses moving controlled hunt tagging application periods for the Landowner Appreciation Program (LAP) to an earlier time in the year (May 15 versus June 15) to provide landowners with adequate notification of draw results for hunts beginning in August. It will also provide the Idaho Fish and Game Commission (Commission) the authority to limit the number of deer and elk tags made available annually to nonresident Disabled Veterans (DAV) at nonresident DAV prices. This rulemaking is an integral part of the Commission's strategy to manage nonresident hunter numbers to address hunter congestion. The Commission adopted temporary language to limit the number of nonresident DAV deer and elk tags to 500 and 300 at its July 23, 2020, meeting.

During the 21-day comment period, the IDFG received 482 responses regarding the proposal to change the application period for the LAP-controlled hunt tags and 1,121 responses regarding the proposal to provide IDFG the authority to limit the number of deer and elk tags made available annually to nonresident DAVs.

DISCUSSION: **Senator Stennett** asked what kinds of constraints and time limitations the landowners are facing that having an additional month would help. **Mr. Kline** responded that staff needed time to verify information on the application. **Senator Stennett** then inquired about the general theme of the comments received. **Mr. Kline** indicated that 87 percent supported the rulemaking, while 13 percent opposed it. Those opposing the rulemaking said they didn't like the LAP for the most part and may not be eligible for the program. **Senator Stennett** asked about the respondents for nonresident DAVs. **Mr. Kline** said over 1,000 responded. Sixty-eight percent supported the rulemaking and 34 percent of DAVs said they opposed it. Of the 1,000 respondents, 764 were residents of Idaho. The nature of the comments concerned overcrowding and hunt congestion.

Senator Patrick said he had written the legislation allowing DAVs to have hunting rights that don't conflict with the code passed a few years ago. **Mr. Kline** deferred the question to **Mr. Schriever**, the IDFG Director. **Mr. Schriever** responded by saying it does nothing to change the previous legislation that was passed but limits the number of tags. Idaho is one of the two Western states that offers discounted deer and elk tags.

TESTIMONY: **Benn Brocksome**, Idaho Sportsmen, said they support **Docket No. 13-0104-2002** and appreciated the time and attention given to them.

MOTION: **Senator Guthrie** moved to approve **Docket No. 13-0104-2002**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

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

DOCKET NO. 13-0108-2001 **Rules Governing the Taking of Big Game Animals.** **Mr. Kline** said this rulemaking establishes a one-year waiting period for controlled pronghorn hunters whose applications are approved to be consistent with current rule language that requires a one-year waiting period for antlered deer and elk controlled hunt applicants.

During the 21-day comment period, the IDFG received 849 responses regarding the proposal via online submission. An in-person comment period was provided at the quarterly meeting of the Commission.

DISCUSSION: **Senator Stennett** asked for an example of a controlled hunt that has an unlimited number of tags. **Mr. Kline** said that in the Proclamation Pamphlet, controlled hunts are listed with 27 hunts with any weapon, 11 that are limited to archery and 8 that are short range, such as muzzleloaders. Of the archery-controlled hunts, four of those are unlimited. **Senator Stennett** inquired as to how many pronghorns an individual can harvest in the unlimited controlled hunt. **Mr. Kline** replied that one tag can allow a hunter to harvest one pronghorn.

Senator Patrick inquired as to why some people cannot get permits to hunt in an archery controlled hunt. **Mr. Kline** said the application was possibly filled out incorrectly, but he would look into it.

MOTION: **Senator Heider** moved to approve **Docket No. 13-0108-2001**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 13-0109-2002 **Rules Governing the Taking of Game Birds.** **Mr. Kline** said this rulemaking establishes consistent requirements for the use of game bird tags authorized by code, and establishes mandatory check and reporting requirements for swan. Game bird tags are currently authorized for turkey, crane, swan, and could encompass grouse or other species if game bird tags are authorized in the future. This rulemaking will authorize the Commission to designate two special waterfowl hunting days for veterans and active military personnel. It will also authorize the Commission to delay the opening date for pheasant season for all nonresident license holders. This was a citizen petition request by residents of Franklin and Oneida Counties.

During the 21-day public comment period, of the 365 responses received regarding the proposal to establish consistent requirements for the use of game bird tags and for the mandatory check requirements for swan, 87 percent supported that particular rulemaking. There were 485 responses regarding the proposal to designate the special two-day waterfowl hunting opportunity for veterans and active military personnel. Eighty-one percent of respondents supported that rule. Responses numbered 480 regarding the proposal to delay the opening date for pheasant season for all nonresident license holders, and 440 respondents weighed in regarding the proposal to simplify the IDFG game tag framework for hunting turkey.

DISCUSSION: **Chairman Vick** asked how many of the respondents who commented on the delaying of the opening date of pheasant season were Idaho residents. **Mr. Kline** reported that the majority were Idaho residents. **Chairman Vick** then asked if there were other staggered opening dates besides the ones for pheasant hunting. **Mr. Kline** said he did not think there were any others.

Senator Heider inquired as to how long IDFG has been having special waterfowl hunting days for military members and veterans. **Mr. Kline** said this is the first implementation of this program but the IDFG has held such special hunting for many years for youth hunters.

MOTION: **Senator Heider** moved to approve **Docket No. 13-0109-2002**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
13-0116-2002**

The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. **Mr. Kline** said this rulemaking will establish additional restrictions on the use of body-grip traps. It will also simplify language associated with the use of bait for trapping furbearing, predatory, and unprotected animals, and make allowances for wolf trapping consistent. Proposed rulemaking language acknowledges statutory restrictions related to the use of game parts for trapping furbearing animals.

During the 21-day comment period, the IDFG received via online submission 539 responses regarding the proposal to establish additional restrictions on use of body-grip traps, and 393 responses regarding the proposal to simplify rules associated with use of bait for trapping furbearing predatory and unprotected animals.

DISCUSSION:

Senator Stennett asked how a body-grip trap that is only 7 inches wide actually works and if that is prohibited now or just specifies a size of gap in the trap. **Mr. Kline** said traps with larger openings trap larger animals, such as wolves, and traps with smaller openings trap smaller furbearing animals.

Senator Stennett said no bait or lures are to be placed within 30 feet of a trap and inquired if there were any changes to related rules. **Mr. Kline** indicated that the trapping language will be reviewed and perhaps consolidated for consistency purposes.

Chairman Vick announced that due to time constraints, the discussion of **Docket No. 13-0116-2002** will continue at the next meeting.

ADJOURN:

There being no further business at this time, **Chairman Vick** adjourned the meeting at 3 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AMENDED AGENDA #1
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, January 27, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment Hearing	Mr. Don Ebert of Weippe, Idaho was appointed to the Idaho Fish and Game Commission by the Governor and awaiting confirmation by the Senate to serve a term commencing June 30, 2020 and will expire June 30, 2023.	Don Ebert
Gubernatorial Appointment Hearing	Mr. Gregory Cameron of Rupert, Idaho was appointed to the Idaho Fish and Game Commission by the Governor and awaiting confirmation by the Senate to serve a term commencing June 30, 2020 and will expire June 30, 2024.	Gregory Cameron
Gubernatorial Appointment Hearing	Mr. Ronald Davies of Clayton, Idaho was appointed to the Idaho Fish and Game Commission by the Governor and awaiting confirmation by the Senate to serve a term commencing October 23, 2020 and will expire June 30, 2024.	Ronald Davies
	Continuation of Pending Rule:	
<u>DOCKET NO. 13-0116-2002</u>	The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals (page 20)	Paul Kline, Deputy Director, IDFG

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Vick	Sen Guthrie
Vice Chairman Johnson	Sen Burtenshaw
Sen Bair	Sen Stennett
Sen Heider	Sen Rabe
Sen Patrick	

COMMITTEE SECRETARY

Juanita Budell, Assistant
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 27, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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

GUBERNATORIAL APPOINTMENTS: **Chairman Vick** welcomed the three gubernatorial appointees to the Idaho Fish and Game (IDFG) Commission and asked that they respond as to why they would like to become a Commissioner.

First to speak was Don Ebert of Weippe, Idaho. **Mr. Ebert** said he has lived in Clearwater County for 59 years and has dedicated much of his life to public service. Mr. Ebert served for 16 years as a County Commissioner, for 10 years as a Joint School District 171 Trustee member, Weippe City Councilman, a member of the Clearwater County Free Library District, and the Clearwater Basin Collaborative. He attended Lewis-Clark State College and graduated with a business administration degree.

Mr. Ebert stated that he grew up hunting, not for trophies, but for food and with that background, he feels he can contribute his experiences and knowledge for the benefit of the Commission.

Vice Chairman Johnson said he has known Mr. Ebert for several years and has had the opportunity to work with him on different issues. He is a committed individual and has served the residents of his part of the state faithfully the Senator said. **Vice Chairman Johnson** indicated that Mr. Ebert would make a positive contribution to the Commission and appreciates that he has stepped forward.

Senator Heider inquired about the game in the Clearwater area and the sportsmen. **Mr. Ebert** replied the elk seem plentiful, living in the wheat fields. As for the sportsmen, they seem to view the IDFG favorably; however, there are some who receive misinformation. **Mr. Ebert** sees his role as a listener who should take their concerns seriously.

Senator Patrick asked about depredation and wanted to know Mr. Ebert's opinion regarding it. **Mr. Ebert** said depredation is a big challenge and sometimes the elk are in the wrong place and a lot of claims have been paid. He wants to hear reports from the IDFG as to how well the program is working and measure its effectiveness.

Chairman Vick said he noted that Mr. Ebert did not belong to any sportsmen's groups. **Mr. Ebert** said he hadn't felt the need to join as he hunts on his own property. However, he does support them and their causes. **Chairman Vick** then asked about his favorite sportsman activity. **Mr. Ebert** replied that he enjoys sitting and watching wildlife in their natural surroundings and wishes everyone could have that experience.

Chairman Vick called on Gregory Cameron of Rupert, Idaho, to tell the Committee why he would like to be reappointed to the position of Commissioner. **Mr. Cameron** said he has enjoyed serving as a Commissioner the past four years and would like to continue. His father and grandfathers introduced him to archery hunting and fly-fishing, and he has passed that on to his children and grandchildren. **Mr. Cameron** stated that his goal is to keep Idaho like it has been so that future generations can enjoy it.

Senator Heider posed two questions to Mr. Cameron. 1) How often does he communicate with the sportsmen in his area as to what the Commission is doing and 2) What is going on relative to the hunting and fishing opportunities in Southern Idaho. **Mr. Cameron** said he talks to anyone that calls him and he tries to help them with their concerns. Also, he attends public meetings, IDFG meetings, and landowner meetings.

Senator Stennett commended Mr. Cameron for the great job he is doing in her district and said she appreciates his availability. She then discussed trapping and the need for more education regarding it. With places like the Boise Foothills, Sun Valley, and McCall experiencing massive multiuse development growth, Senator Stennett is afraid someone will get hurt and there will be lawsuits which the state or the IDFG Commission does not need.

Senator Stennett related an incident regarding her dog being caught in a trap next to a trail on which they were walking. The trap was anchored in the frozen ground and there were no markings or identification as to whom the trap belonged. After several hours of agony, two men helped retrieve the dog from the trap. **Senator Stennett** provided the Committee with a detailed report of the incident, saying she hoped that it would bring attention to what can happen when traps are not the proper size or properly placed.

Mr. Cameron agreed that the IDFG Commission could do a better job of educating the public. The Committee discussed signage, as well as consequences for trappers not obeying the law.

Senator Burtenshaw asked for an explanation of being a Commissioner as a "dream job." **Mr. Cameron** said he has a passion for wildlife and sportsmen activities. There is nothing else he would rather do than to work with the public regarding hunting and fishing, Mr. Cameron said.

Chairman Vick addressed the depredation problem and inquired as to how it could be improved. **Mr. Cameron** said the Commission works on depredation problems continually and every depredation issue is different. A lot of money has been put into the program and it can always be improved, he said. Several years ago, there was a big problem in the Bellevue area and fences were installed around the haystacks. When the elk couldn't get to the hay, they moved on and spent the winter elsewhere.

Chairman Vick called on Ron Davies of Clayton, Idaho, to tell the Committee why he wants to serve on the IDFG Commission. **Mr. Davies** said he served as the Pocatello Fire Department Battalion Chief and was president of the Professional Fire Fighters of Idaho. He has a successful track record of leading different organizations for getting people to work together as a team and focus on a common goal. **Mr. Davies** indicated in his biography that he is poised and confident under pressure and able to make good decisions in adverse conditions.

Senator Stennett said she wanted to thank Mr. Davies as a first responder for all the good work he has done. She is pleased that he has a passion for wanting to live in Clayton.

Senator Patrick asked if there are better ways to control depredation than what has been done (shooting the game). He also asked Mr. Davies about trapping. **Mr. Davies** responded by saying he is trying to become educated with all the tools that IDFG uses in the depredation problem. There is a fine line between keeping the amount of game that all the sportsmen want and the needs of the agricultural community, Mr. Davies said. Mr. Davies said knowledge of trapping is his biggest weakness.

Senator Guthrie said, in the spirit of disclosure, he has known Mr. Davies and his wife for a good number of years, and her family for his whole life. He then asked Mr. Davies if there was an aha moment that made him want to seek the appointment.

Mr. Davies said that after being a public servant for 26 years, he missed the interaction with the people. He also has a passion for hunting and fishing.

Senator Guthrie then asked what skill set he might bring to the Commission.

Mr. Davies replied that the tools he would bring to the Commission would be leadership skills.

Senator Stennett inquired as to how the public can be educated about the diverse ways to use the landscape. **Mr. Davies** agreed that education is needed, especially regarding traps. As to the increase in use by the public, he feels the covid -19 pandemic has had an effect on it.

Senator Heider said the main responsibility of a Commissioner is to communicate with the constituents they represent, and with the background that Mr. Davies has, he thinks Mr. Davies will make a good Commissioner.

Chairman Vick thanked the three gubernatorial appointees for appearing before the Committee and said he is impressed with the caliber of the gentlemen and that voting will take place at the next meeting.

**PASSED THE
GAVEL:**

Chairman Vick passed the gavel to Vice Chairman Johnson.

**DOCKET NO.
13-0116-2002**

The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. **Vice Chairman Johnson** asked Paul Kline, Deputy Director, IDFG, to briefly provide a summary regarding the discussion of **Docket No 13-0116-2002** that was held on January 25, 2021. **Mr. Kline** said the first part of the rulemaking was establishing restrictions on the use of body-grip traps, which was brought to the IDFG Commission by petition from the Idaho Trappers Association. Part two simplifies language associated with the use of bait for trapping furbearing predatory and unprotected wildlife. That was also brought to the Commission by petition from the Idaho Trappers Association.

Vice Chairman Johnson also asked for a review of the discussion relating to body-grip traps. **Mr. Kline** said trappers want to restrict the size of the diameter in traps. The purpose is to restrict the possibility of unintentional catches of larger animals. Part of the rule that was questioned was the size of the trap's diameter. A recommendation was made that the diameter be less than 7 inches.

TESTIMONY:

Jonathan Oppenheimer, External Relations Director, Idaho Conservation League (ICL), testified via Zoom. He said the ICL has been involved with the development of these rules. In 2019, ICL supported the change that expanded the set back from maintained, unpaved public trails from 5 to 10 feet. ICL had some concerns with that and the discussion today really drives home those continued areas of conflict with regards to traffic along recreational trails. There is not a set back from roads, just a set back from the maintained traveled portion of the roadway and the shoulders. **Mr. Oppenheimer** said he sees opportunities to try to address some of the concerns and ongoing conflicts and looks forward to working with IDFG and other interested stakeholders over the interim to see if improvements can be made both for protection of trappers as well as for the recreational public.

MOTION:

Senator Guthrie moved to approve **Docket No. 13-0116-2002**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Vice Chairman Johnson passed the gavel to Chairman Vick.

ADJOURN:

There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:35 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, February 01, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
APPROVAL OF MINUTES:	Minutes of January 18, 2021	Senator Guthrie Senator Rabe
APPROVAL OF MINUTES:	Minutes of January 20, 2021	Senator Heider Senator Burtenshaw
GUBERNATORIAL APPOINTMENT:	Committee consideration of the Gubernatorial appointment of Mr. Don Ebert to the Idaho Fish and Game Commission for a term commencing June 30, 2020 and will expire June 30, 2023.	
GUBERNATORIAL APPOINTMENT:	Committee consideration of the Gubernatorial appointment of Mr. Gregory Cameron to the Idaho Fish and Game Commission for a term commencing June 30, 2020 and will expire June 30, 2024.	
GUBERNATORIAL APPOINTMENT:	Committee consideration of the Gubernatorial appointment of Mr. Ronald Davies to the Idaho Fish and Game Commission for a term commencing October 23, 2020 and will expire June 30, 2024.	
S 1005	Water districts, fees Notice of Omnibus Rulemaking - Adoption of Pending Fee Rule	Senator Patrick
DOCKET NO.: 58-0000-2000F	Promulgation of IDAPA 58 fee rule chapters adopted by the Board as temporary fee rules in February 2020 and proposed revisions (Pages 475-951)	Jess Byrne, DEQ Director; Tiffany Floyd, Air Quality Division Administrator; Michael McCurdy, Waste Management & Remediation Division Administrator; Mary Anne Nelson, Surface and Wastewater Division Administrator; Jerri Henry, Drinking Water Protection and Finance Division Administrator

PENDING RULES

58-0104-1901	Rules for Administration of Wastewater Treatment Facility Grants (Pages 79-80)	Jerri Henry
58-0122-1901	Rules for Administration of Planning Grants for Drinking Water Facilities (Pages 81-96)	Jerri Henry
58-0102-2001	Rules for Water Quality Standards (Pages 57-62)	Mary Anne Nelson
58-0103-1901	Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks (Pages 63-78)	Mary Anne Nelson

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Vick

Vice Chairman Johnson

Sen Bair

Sen Heider

Sen Patrick

Sen Guthrie

Sen Burtenshaw

Sen Stennett

Sen Rabe

COMMITTEE SECRETARY

Juanita Budell

Room: WW37

Phone: 332-1323

Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 01, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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.

CALL TO ORDER: **Chairman Vick** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Guthrie** moved to approve the Minutes of January 18, 2021. **Senator Rabe** seconded the motion. The motion carried by **voice vote**.

Senator Heider moved to approve the Minutes of January 20, 2021. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENTS: **Vice Chairman Johnson** moved to send the Gubernatorial appointment of Don Ebert to the Idaho Fish and Game Commission (Commission) to the floor with recommendation that he be confirmed by the Senate. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. Vice Chairman Johnson will be the floor sponsor.

Senator Stennett moved to send the Gubernatorial appointment of Gregory Cameron to the Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Bair** seconded the motion. The motion carried by **voice vote**. Senator Anthon will be the floor sponsor.

Senator Guthrie moved to send the Gubernatorial appointment of Ron Davies to the Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will be the floor sponsor.

S 1005 **Water District Fees.** **Senator Patrick** presented **S 1005** and said when water is diverted and assessed on one water district but is conveyed and rediverted within a second water district, the second district may levy a fee instead of an assessment for the water that is rediverted. Any authorized fees that are levied are not considered assessments and are not part of a water user's credentials for voting within the second water district.

Paul Arrington, Executive Director, Idaho Water Users Association, said the Idaho statute allows the Idaho Department of Water Resources to divide the state up into water districts. Each water district is then charged with the management and administration of water within its geographic boundaries. These actions include monitoring water; measuring water; administering it into priority; maintaining the system; keeping records; managing employee compensation; and, in some districts, cloud seeding.

Mr. Arrington said each year the district prepares a budget of the various costs, divides them among the water users, and that forms the assessment that the water district is going to charge. This bill is seeking to answer who shares the cost if water is put into one district, goes into a river, then is put into a second district. **S 1005** allows the second water district to charge a fee instead of an assessment.

Mr. Arrington said if a fee, rather than an assessment is paid, the water users do not have voting rights in that district. Water users only pay for the benefits they receive, and if water is passed through one water district to get to another, those members do not pay an assessment.

Alan Hansten, General Manager, North Side Canal Company, said they support **S 1005**. He provided a map, which was projected on a screen, showing rivers and canals distributing water to different water districts and water users. Within District 37, North Side Canal Company has three water rights – two stock water rights and one irrigation water right – and also oversees water through ten miles of the Big Wood River. It has been assessed about \$60,000 for administration costs and also for cloud seeding, for which they have received no benefit.

Mr. Hansten said there was an issue about 100 years ago between North Side Canal Company and District 37 that got dropped and hadn't been brought up until two years ago. It was an unfair situation for North Side Canal Company which paid more than its fair share, but had greater voting power, according to Mr. Hansten. This legislation would provide opportunities to ensure water users are not double-charged for the same water.

DISCUSSION:

Senator Stennett asked for more clarification regarding the inequity of North Side Canal Company. **Mr. Hansten** stated that this amendment would correct the inflated voice that North Side Canal Company was granted in voting rights concerning issues that only pertain to Water District 37 and paying for administration matters that only concern water rights in District 37.

Vice Chairman Johnson inquired as to what amount the fee should be, if not \$60,000. **Mr. Hansten** replied the North Side Canal Company is trying to set laws in place that are fair. **Senator Burtenshaw** also questioned the \$60,000 fee. **Mr. Hansten** indicated he had talked with District 37 Water Master Kevin Lakey, and between them it was assumed the fee would be between \$10,000 and \$20,000.

TESTIMONY:

Monica McKinley, representing herself, testified in opposition to **S 1005**. **Ms. McKinley** stated she lives in Meridian and is the water master for the lateral in her neighborhood. She explained that ditch riders are not paid and are expected to maintain the main ditches and adjust the water flow. As for cloud seeding in Blaine County, **Ms. McKinley** said the ski resort in Sun Valley should bear the burden of the cost instead of the water users. She asked the Committee to carefully consider if the fees are reasonable and if they are necessary. **Ms. McKinley** also stated this is a Blaine County issue and it could affect the rest of the state.

DISCUSSION:

Vice Chairman Johnson asked Senator Patrick to respond to Ms. McKinley's remark about the issue affecting other areas in the state, not just District 37. Senator Patrick deferred the question to Mr. Arrington. **Mr. Arrington** said this bill mandates that water users in a district can vote to follow a negotiated process. Next, a resolution is passed, as well as a budget, and from that, they will know what the end result will be.

Senator Stennett said she is involved with Water District 37 and inquired as to the concerns. **Mr. Arrington** said the concern is the possibility of rising costs.

MOTION: **Senator Bair** moved to send **S 1005** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. **Senator Guthrie** said he would support the bill but with some concerns, such as getting the water shrink-free and not hearing a lot of opposition from the affected parties. **Senator Stennett** indicated that she had not been notified about significant opposition and will support the bill. The motion carried by **voice vote**. Senator Patrick will be the floor sponsor.

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

INTRODUCTION: **Vice Chairman Johnson** welcomed Jess Byrne, Director, Department of Environmental Quality (DEQ).

DOCKET NO. 58-0000-2000F **Notice of Omnibus Rulemaking - Adoption of Pending Fee Rule. Mr. Byrne** said there are 12 chapters, each of which is an existing rule that was previously reviewed by the Legislature. He said DEQ's approach was in line with the Red Tape Reduction Act from Governor Little.

Mr. Byrne stated that during summer 2019, DEQ specifically reviewed the rules to identify and eliminate ones that were obsolete. DEQ will continue that review as part of a zero-based regulatory executive order, he said. Included in the Omnibus Rule Docket are six fee rule chapters that do not have any revisions. They are:

- IDAPA 58.01.07 Rules Regulating Underground Storage Tank Systems
- IDAPA 58.01.08 Idaho Rules for Public Drinking Water Systems
- IDAPA 58.01.09 Rules Regulating Swine Facilities
- IDAPA 58.01.11 Ground Water Quality Rule
- IDAPA 58.01.14 Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services
- IDAPA 58.01.18 Idaho Land Remediation Rules

Tiffany Floyd, Air Quality Division Administrator, DEQ, presented an overview of incorporation by reference for IDAPA 58.01.01 Rules for the Control of Air Pollution in Idaho. A public notice appeared in the September 16, 2020, Administrative Bulletin and a public hearing was held on October 7, 2020. No oral or written comments were received. This rule docket was approved by the Board of DEQ on November 5, 2020.

Michael McCurdy, Waste Management and Remediation Division Administrator, DEQ, said there are two new rules since the last annual incorporation by reference. The first one added aerosol cans to the universal waste regulations. Aerosol cans typically have flammable propellant and can contain other constituents that characterize them as hazardous waste. With this new rule, businesses can manage their waste aerosol cans under the streamlined universal waste regulations instead of the full hazardous waste regulations. The second rule is management standards for hazardous waste pharmaceuticals and an amendment to the PO75 listing for nicotine. This rule is a tailored set of management standards specifically designed to reduce the complexity of hazardous waste regulations for industrial companies that manage pharmaceutical and retail waste. It applies only to hazardous waste pharmaceuticals and the entities that generate them. These standards clarify generator size, accumulation limits, training requirements, and disposal options for pharmacies and retailers. **Mr. McCurdy** stated the rule is neither broader in scope nor more stringent than federal regulations and does not enact an activity that is not required by the federal government.

Mr. McCurdy discussed IDAPA 58.01.06 Solid Waste Management Rules. This was initiated in response to the Red Tape Reduction Act to remove language as well as evaluate and modify restrictive word usage without changing the meaning or the content of that law. Various sections throughout the solid waste management rules were identified for deletion, simplification, or consolidation with other sections. A public hearing was held October 7, 2020, and no comments were received.

Mr. McCurdy said there were four areas that essentially repeated the exact same wording and it was condensed into one section. Those changes resulted in the reduction of 1,547 words, including 44 restricted words, and eliminated 4 pages of rules. The rulemaking was administrative in nature.

**PASSED THE
GAVEL:**

Vice Chairman Johnson passed the gavel to Chairman Vick.

ADJOURNED:

There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:51 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, February 03, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Budget and Policy	Rob Sepich, Senior Budget & Policy Analyst, LSO
	Ominbus Pending Fee Rules	
Docket No. 37-0000-2000F	Idaho Department of Water Resources and Idaho Water Resource Board - Notice of Omnibus Rulemaking - Adoption of Pending Fee Rule (Page 266-474)	Mat Weaver, Deputy Director, Idaho Department of Water Resources

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Vick

Vice Chairman Johnson

Sen Bair

Sen Heider

Sen Patrick

Sen Guthrie

Sen Burtenshaw

Sen Stennett

Sen Rabe

COMMITTEE SECRETARY

Juanita Budell

Room: WW37

Phone: 332-1323

Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 03, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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 Vick** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:33 p.m.

INTRODUCTION: **Chairman Vick** welcomed Rob Sepich, who was set to provide a presentation regarding budget and policy to the Committee.

PRESENTATION: **Rob Sepich**, Senior Budget and Policy Analyst, LSO, said his presentation would cover supplemental budget requests for fiscal years 2021 - 2022. **Mr. Sepich** introduced Matthew Reiber, Division of Financial Management, Office of the Governor, to assist in answering questions if needed.

Mr. Sepich addressed the requests from the Department of Environmental Quality (DEQ). One request was for \$311,300 from the Idaho Pollutant Discharge Elimination System Program (IPDES) to replace a portion of the 5 percent General Fund holdback. These one-time funds would pay salaries for a beneficial use recognizance coordinator from Lewiston, an analyst from Coeur d'Alene, and a record specialist from Twin Falls.

The next request was for a budget realignment. There is a 10 percent cap when transferring money from one fund to another. This request was to move some appropriation from the water quality program to the administrative program.

The final request from DEQ was regarding Governor Brad Little's "Building Idaho's Future" plan. The Governor recommended two one-time General Fund cash transfers of \$8,181,700 to the Water Pollution Control Fund (WPCF) and \$1 million to the Agricultural Best Management Practices Fund (Ag BMP Fund). The funding transferred to the WPCF would support 18 proposed public drinking water and wastewater systems in communities that serve fewer than 5,500 people. The funding for the Ag BMP Fund would focus on nonpoint source projects to improve water quality in bodies of water across the state. The Governor provided an updated revised recommendation of \$2 million appropriated from WPCF in order to do some nonpoint source work in the Coeur d'Alene area.

Mr. Sepich said the Governor is recommending some "dedicated fund appropriation" (or "spending authority", as it is called in some agencies) in order to expend those dollars. **Mr. Sepich** said a few years ago, the Legislature put \$500,000 of General Funds into the Ag BMP Fund in order to do voluntary nonpoint source projects across the state. Over time, they have seen that doesn't work very well. This year, new legislation will be brought forth to create a fund so they can have that dedicated spending capacity.

DISCUSSION: **Senator Stennett** inquired about the public drinking water and wastewater systems of existing systems. She also requested more information about monies from DEQ and the Environmental Protection Agency (EPA) to help communities clean up their water systems. **Mr. Sepich** said he would get that information for her.

Senator Stennett then asked about the voluntary nonpoint source project for the Ag BMP Fund and whether it is intended to help clean up nitrates and fertilizers. **Mr. Sepich** said this is a popular program that helps clean up nitrates. There is a time lag due to a three-year grant cycle, so that is why DEQ is asking to create a dedicated fund.

Vice Chairman Johnson inquired if there will be a limit on the Ag BMP Fund projects. **Mr. Sepich** replied that he has not seen a cap. The largest expenditure is \$250,000 for some work in the Treasure Valley area. These projects are generally on a 60/40 split with the Idaho Soil and Water Conservation Commission.

The next item to be discussed was the Department of Lands (IDL) fire suppression transfer. **Mr. Sepich** said the Governor recommended \$20 million of the General Fund be deposited into the wild fire suppression fund. There is about \$34 million in the fund at this time, but IDL expects to pay some additional costs from previous years and also anticipates additional costs for the coming year. **Mr. Sepich** said generally, there is about \$21 to \$23 million expended each year on battling fires in Idaho.

Mr. Sepich then addressed the request for the Idaho Department of Parks and Recreation (IDPR). The Governor requested a transfer of \$3 million from the General Fund to the dedicated IDPR fund. The recommended appropriation is to be used for projects including but not limited to the Sheridan Property Acquisition at Castle Rocks State Park, the Idaho Centennial Trail improvements, Land of Yankee Fork rehabilitation at Bayhorse, replacement of the Bruneau Dunes Observatory, and septic repairs at Massacre Rocks State Park.

Mr. Sepich said the Governor recommended a \$50 million transfer from the General Fund to the continuously appropriated Water Management Fund. The Idaho Department Water Resource (IDWR) Board has been working on projects including the raising of the Anderson Ranch reservoir enlargement project, the water supply for the Mountain Home Air Force Base, and the recharge projects in the Upper Snake River Valley. **Mr. Sepich** said the State has until December to start construction on the Anderson Ranch project so that they won't lose out on the federal funding that was appropriated by Congress.

Senator Stennett inquired about the water for the Mountain Home Air Force Base and the recharge for the Upper Valley. **Mr. Sepich** deferred to Mathew Weaver, Deputy Director, IDWR. **Mr. Weaver** responded by saying there are a number of projects being looked at above the American Falls Reservoir for the Upper Valley. One is referred to as the Roberts Pipeline and it would divert water out of the Snake River and pipe it up toward the Mud Lake area.

Senator Guthrie inquired about the time frame of the recommended projects. **Mr. Weaver** said two of the projects, Anderson Ranch and Mountain Home Air Force Base, costs tens of millions of dollars, and \$50 million as recommended by the Governor – would be a good start for one of the projects. **Senator Guthrie** then inquired about the distribution of funds. **Mr. Weaver** stated that the money is overseen by the IDWR Board.

Mr. Sepich presented the request for the Governor's Office of Energy and Mineral Resources, which was \$157,600. Of this request, \$60,600 is from the Indirect Cost Recovery Fund and \$97,000 from federal funds. The Office is requesting the ability to be able to expend those funds. The Energy Program does auditing and makes projections for energy reliance across the State such as weatherization of schools and fire department buildings.

Chairman Vick asked Mr. Sepich to share comparative agency summaries that he prepared for the meeting. **Mr. Sepich** said the synopsis compares what a department originally requested to what the Governor recommended. **Mr. Sepich** provided copies of the comparative summaries for DEQ, IDFG, IDL, IDPR, IDWR, and the Office of Energy and Mineral Resources. Of the six summaries, only three were discussed. **Chairman Vick** asked Mr. Sepich if he could return another day and present the remaining three. **Mr. Sepich** indicated he could.

**PASSED THE
GAVEL:**

Chairman Vick passed the gavel to Vice Chairman Johnson.

WELCOME:

Vice Chairman Johnson welcomed Mr. Weaver to present **Docket No. 37-0000-2000F**.

**DOCKET NO.
37-0000-2000F**

Idaho Department of Water Resources and Idaho Water Resource Board - Notice of Omnibus Rulemaking - Adoption of Pending Fee Rule. **Mr. Weaver** said he is not only the Deputy Director of IDWR but also the agency's Rules and Regulation Officer. This docket is the omnibus rulemaking to reauthorize fee rules for the IDWR Board. There are 12 fee rule chapters. **Mr. Weaver** said the rules were reviewed to identify and eliminate rules that were obsolete, or contrary to existing law. Categories included administrative appeals, filing fees, water supply bank lease and rental fees, adjudication application fees, water right licensing examine fees, injection and geothermal well permit fees, design review fees for mine tailing and empowerment structures and some select dams, stream channel alteration permit fees, water right application fees, advertisement and mailing fees, well drilling permit fees, and application licensing fees for well drillers. No fee amounts were changed in any of the rules.

Mr. Weaver stated the review involved staff from all IDWR bureaus who are experts in these programs. They eliminated 1 chapter, 21 percent of the rules, and about 21 percent of the restrictive words. They made miscellaneous edits to clean up spelling, grammar, and acronyms, which resulted in improved clarity and word reduction. Staff was also careful not to change the meaning of any rules where restrictions were required.

Mr. Weaver said when the rules were presented last year, there were some concerns from several recreational dredge miners regarding stream channel alteration rules. In response to those concerns, IDWR and IDL met several times with Legislators to discuss Rule 61.01 (Standards for Suction Dredges) and Rule 61.03 (Mechanized Equipment Prohibited Below High Water Mark). IDWR Director Gary Spackman led negotiated rulemaking regarding these rules as part of the Governor's "Zero-Based Regulation" memo directing staff to initiate that negotiated rulemaking. Consistent with instructions in the memo, IDWR is scheduled to publicize the notice of intent of negotiated rulemaking of stream channel rulemaking in April.

Mr. Weaver stated IDWR plans to renegotiate a rulemaking in May and June with the objective of presenting a pending rule on this matter to the Legislature next year. Throughout the reauthorization process, IDWR and the Board coordinated rulemaking with the Idaho Water Users Association through its many committee meetings that were held during the past two years.

Vice Chairman Johnson asked about the stream channel alteration discussion that is to be held in April. **Mr. Weaver** said it will be a contentious route as there are strong opinions on both sides of that rule. There is some concern about the limitations regarding the nozzle diameter of a recreational dredge mine and the horsepower on the motor that can be in the river.

MOTION: **Senator Guthrie** moved to approve **Docket No. 37-0000-2000F**. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

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

ADJOURN: There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:40 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, February 08, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	Approval of Minutes January 25, 2021	Senator Bair Senator Patrick
Minutes Approval	Approval of Minutes January 27, 2021	Senator Johnson Senator Stennett
RS28405	Supports changes in the winter flood control rule of the Ririe Reservoir Project to more properly balance the Ririe Reservoir water supply.	Senator Bair
RS28254	Allow irrigation districts to fill irrigation district board vacancies with members living within their irrigation district.	Paul Arrington, IWUA Senator Anthon
RS28255	Clarifies protection of water delivery facilities from claims of adverse possession extend to properties owned by water delivery entities.	Paul Arrington, IWUA Senator Anthon
RS28390	Amendments delete Section 42-1101 which do not apply in Idaho. These amendments also change other statutes in response to court decisions.	Paul Arrington, IWUA
S 1020	Landowners, recreation	Senator Harris

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Vick	Sen Guthrie
Vice Chairman Johnson	Sen Burtenshaw
Sen Bair	Sen Stennett
Sen Heider	Sen Rabe
Sen Patrick	

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 08, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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

MINUTES APPROVAL: **Senator Bair** moved to approve the Minutes of January 25, 2021. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Johnson moved to approve the Minutes of January 27, 2021. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 28405 **Supports changes in the winter flood control rule of the Ririe Reservoir Project to more properly balance the Ririe Reservoir water supply.** **Senator Bair** said **RS 28405** is a concurrent resolution that deals with flood control releases with the Ririe Dam. It is a multipurpose reservoir that is northwest of Idaho Falls and is primarily used for flood control. The RS addresses questions and issues dealing with what are called "flood control rule curves." Every dam has a curve that helps the dam operator determine how water is released based on snow pack, rainfall, temperature, and climate in order to prevent floods.

MOTION: **Senator Burtenshaw** moved to send **RS 28405** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 28254 **Allows irrigation districts to fill irrigation district board vacancies with members living within their irrigation district.** **Senator Anthon** presented **RS 28254**. He said it allows districts to fill irrigation district board vacancies with members living in their district. **Senator Heider** said he thought this vacancy filling was being done without legislation. **Senator Anthon** indicated there was a glitch in the Idaho Code that needed to be fixed, so this RS will make sure the vacancies are filled correctly.

MOTION: **Senator Guthrie** moved to send **RS 28254** to print. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

RS 28255 **Clarifies protection of water delivery facilities from claims of adverse possession extend to properties owned by water delivery entities.** **Senator Anthon** presented **RS 28255**. He stated this RS has to do with adverse possession of infrastructure with irrigation systems. In Idaho Code, there is currently protection against those bits of infrastructure that are in easements. Something that is not protected is the possible adverse connection claims against canals, other infrastructure, and irrigation systems that are on private property. **Senator Anthon** said a related problem exists in his district and this RS makes it clear that ownership cannot be claimed by adverse possession.

MOTION: **Vice Chairman Johnson** moved to send **RS 28255** to print. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

RS 28390 **Amendments delete Section 42-1101 which do not apply in Idaho. These amendments also change other statutes in response to court decisions. Paul Arrington**, Executive Director, Idaho Water Users Association (IWUA), presented **RS 28390**. He said it seeks to address some concerns that have plagued ditch owners and operators for a number of years. There has been an increase in litigation involving the rights and responsibilities associated with ditch and canal easements. Last year, there were two pieces of litigation that was cause for concern. One was litigation as to the ability to access canals and the other required 10 days written notice to do work on canals. Both are infeasible for the work that has to be done on canals, he said.

DISCUSSION: **Senator Patrick** inquired if this will apply to irrigation companies as well as districts. **Mr. Arrington** said it applies to all ditches and canals, regardless of who owns or operates them. **Senator Patrick** stated that pipelines go through some of his property and housing developments have been built on top of them and asked that he is kept informed. **Mr. Arrington** said they were mindful of the reality that these ditches are on other people's properties as they work through the process.

MOTION: **Senator Guthrie** moved to send **RS 28390** to print. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

S 1020 **Landowners, recreation. Senator Harris** said the Idaho Water Users Association (IWUA) helped prompt **S 1020**. It amends Idaho Code and mainly deals with definitions that includes water facilities, camps, park grounds, and property held by an owner. It clarifies recreational activity including traveling across land owned by others for the purpose of recreating.

Senator Harris stated the bill accomplishes four objectives: 1.) It amends the definition of land to include items that are used for recreation; 2.) It amends the definition of owners and interests associated with land; 3.) It defines the term "recreational purpose"; and 4.) It adds additional activities such as shooting, trapping, and use of off-highway vehicles.

TESTIMONY: **Paul Kline**, Deputy Director, Idaho Department of Fish and Game, testified in support of **S 1020**. He said the proposed amendments to Idaho Code § 36-1604 will help support continued or increased recreational access. **Mr. Kline** said the bill would clarify and expand limitations on liability for landowners allowing recreational opportunity without charge to the public.

Mr. Arrington thanked Senator Harris for sponsoring **S 1020** for IWUA. The recreational trespass statute is providing an incentive to open up property to the public for recreational opportunities. Water users are regularly asked to open up facilities for recreational purposes, whether it be trails along canals, and that sparks liability concerns. **Mr. Arrington** said the statute speaks to water but doesn't speak to the canals, laterals, and ponds that are used regularly. For clarity purposes, the term "premises" was replaced with the word "land", **Mr. Arrington** added.

DISCUSSION: **Senator Stennett** asked what kinds of activities would be allowed along canals besides duck hunting. **Mr. Arrington** said generally the requests IWUA receive are to use recreational trails or walking paths. Hunting requests are usually made for ponds. **Senator Stennett** asked if, by granting an exception from liability, there would not be indirect permission to trespass or access the property. **Mr. Arrington** responded by saying the exception only applies to a specific part of the land, in this case, canal roads.

Senator Bair asked for clarification regarding implied permission. **Mr. Arrington** said nothing requires or is implied that the land is open. The landowner or operator must make that decision.

TESTIMONY: **Benn Brocksome**, Founder, Idaho Sportsmen, said that as more people move to Idaho and enjoy recreating, **S 1020** facilitates such activities by allowing private landowners the protections they need to feel comfortable opening up their property. **Mr. Brocksome** said they are grateful for the sponsor and the other organizations that worked in drafting this legislation.

Senator Stennett asked Mr. Brocksome if a person would be responsible for the care of their injuries if they sustained them on a landowner's property after receiving permission to use it. **Mr. Brocksome** replied that was correct.

Senator Harris closed the discussion by saying **S 1020** is a good bill that reflects a lot of work done by IWUA and others. He respectfully asked that it be sent to the floor with a **do pass** recommendation.

MOTION: **Senator Bair** moved to send **S 1020** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**. Senator Harris will be the floor sponsor.

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:00 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AMENDED AGENDA #1
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, February 10, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL: RS28326C1	Approval of Minutes - February 1, 2021 Removes the responsibility of the Office of the Attorney General to provide legal representation to the Idaho Department of Lands (IDL) and allows IDL to hire or contract its own legal counsel.	Senator Guthrie Senator Rabe Senator Harris
Gubernatorial Appointment	Ms. Tammy Overacker was appointed to the Outfitters and Guides Licensing Board by the Governor and awaiting confirmation by the Senate to serve a term commencing August 31, 2020 and will expire April 20, 2023.	Tammy Overacker
	Continuation of DEQ Rules - Notice of Omnibus Rulemaking - Adoption of Pending Fee Rule	
DOCKET NO.: 58-0000-2000F	Promulgation of IDAPA 58 fee rule chapters adopted by the Board as temporary fee rules in February 2020 and proposed revisions (Pages 475-951)	Jess Byrne, DEQ Director; Mary Anne Nelson, Surface and Wastewater Division Administrator; Jerri Henry, Drinking Water Protection and Finance Division Administrator
	Pending Rules	
58-0104-1901	Rules for Administration of Wastewater Treatment Facility Grants (Pages 79-80)	Jerri Henry
58-0122-1901	Rules for Administration of Planning Grants for Drinking Water Facilities (Pages 81-96)	Jerri Henry
58-0102-2001	Rules for Water Quality Standards (Pages 57-62)	Mary Anne Nelson
58-0103-1901	Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks (Pages 63-78)	Mary Anne Nelson

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 10, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Burtenshaw, Stennett, and Rabe

ABSENT/ EXCUSED: Senator Guthrie

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 1:30 p.m.

MINUTES APPROVAL: **Senator Rabe** moved to approve the Minutes of February 1, 2021. **Vice Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

RS 28326C1 **Removes responsibility of the Office of the Attorney General. Senator Harris** presented **RS 28326C1**. **Senator Harris** said this legislation removes the responsibility of the Office of the Attorney General to provide legal representation to the Idaho Department of Lands (IDL) and allows IDL to hire or contract its own legal counsel. **Senator Harris** stated that having the Attorney General's Office represent IDL is a conflict of interest because the Attorney General is a member of the State Board of Land Commissioners.

DISCUSSION: **Senator Stennett** inquired as to what precipitated the reason for this RS. **Senator Harris** said it was because there is an appearance of a conflict of interest. **Senator Harris** also said that he has heard from some constituents who are unhappy and view the legal representation as a problem.

MOTION: **Senator Heider** moved to send **RS 28326C1** to print. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Vick** welcomed Ms. Tammy Overacker of Salmon, Idaho, who was appointed to the Outfitters and Guides Licensing Board (OGLB) for a term commencing August 31, 2020, and expiring April 20, 2023. He asked her to tell the Committee why she would like to fill this seat.

Ms. Overacker stated she has worked in the outfitting industry in Salmon for 28 years. She said she started in bookkeeping and worked her way up through the ranks. She is currently the general manager of Flying Resort Ranches and also owns two properties in the wilderness area, including the Frank Church River of No Return Wilderness. **Ms. Overacker** said duties include dealing with recreational activities, river floaters, the private pilot sector, rental cabins, and fall hunting.

Ms. Overacker said she has "hands-on" experiences with the industry including the Idaho Department of Fish and Game (IDFG) and governmental affairs. Ms. Overacker indicated that she will be able to help with issues that might involve OGLB.

Senator Heider inquired how Ms. Overacker felt about the process of issuance of hunting tags to outfitters. **Ms. Overacker** indicated that she would like to see reductions come from the nonresident and nonguided issuance of tags rather than from residents. Because of lower game counts in some areas, there needs to be reductions in the number of hunters, she said.

Ms. Overacker said her company employs 28 people, with a payroll of a half million dollars each year, and she feels they are significant to the local economy.

Senator Heider asked Ms. Overacker if she can work with IDFG in an objective manner and understand their perspective when making decisions. **Ms. Overacker** responded by saying she has worked closely with IDFG for several years and has a very good relationship with them.

**PASSED THE
GAVEL:**

Chairman Vick passed the gavel to Vice Chairman Johnson.

WELCOME:

Vice Chairman Johnson welcomed Jess Byrne, Director, Department of Environmental Quality (DEQ) and asked him to summarize the discussion of this docket, which was held February 1.

**DOCKET NO:
58-0000-2000F**

Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule. Mr. Byrne reminded the Committee there were 12 rule chapters in **Docket 58-0000-2000F**. Six of the fee rule chapters had no changes and six chapters did. At the previous meeting, three chapters were discussed, and today the remaining three chapters were due to be presented. He introduced Michael McCurdy, Waste Management and Remediation Division Administrator, DEQ, who was tasked to review them for the Committee.

Mr. McCurdy said the rules for processing by cyanidation were negotiated and are included in the omnibus rule docket. These rules established the procedures and requirements for the issuance and maintenance of a permit to construct and operate enclosed cyanidation facilities. Such facilities are intended to contain, treat, or dispose of processed water or processed contaminated water containing cyanide processes, utilizing cyanide to extract various metals such as gold, silver, and copper from ores.

Mr. McCurdy said to move away from the prescriptive design and construction requirements in the current rule, DEQ held 10 negotiated rulemaking meetings between May 3, 2019, and June 10, 2020. DEQ received and discussed comments during the rulemaking meetings. DEQ's rules are broader in scope and more stringent than federal regulations, Mr. McCurdy said. The federal government does not regulate cyanidation facilities. A major change in the rule was making the preliminary design report mandatory as opposed to letting it being optional in the current rule. Approval of the preliminary design report does not authorize construction operation or modification of a cyanidation facility. Also, the report is not part of the 180-day period for issuing a notice of rejection or approval of a permit.

Next, **Mr. McCurdy** discussed fees in the cost recovery rule for processing permit applications. The current rule from 2006 requires applicants to submit a fee ranging from \$5,000 to \$20,000, depending on the tons of ore processed during the life of the facility. The current rule also includes an option for the applicant to enter into an agreement with DEQ for actual costs incurred to process an application and issue a final permit in lieu of paying a fee. The cost recovery approach is necessary to provide the flexibility required to assess reasonable fees on applicants proposing facilities that can vary substantially in complexity, size, and size-specific conditions. The approach is also necessary to accommodate the option for an applicant to propose alternatives to the design requirements.

Mr. McCurdy said the changes in the next section move away from what essentially amounted to a one-size-fits-all double liner with leak detection requirements for all cyanidation facilities. These changes were rewritten from the 2006 rule to clarify common cyanidation, facility design criteria, and liner system design criteria that would be applicable to all cyanidation facilities. The Department of Environmental Quality (DEQ) revised the next section which covers financial assurance in the pending federal review book, to account for the change during the 2020 Legislative Session. This change was necessary to address the timeline conflict between the Department of Lands processes for approval of the permanent closure plan and approval of financial assurance. The due process is related to cyanidation permit issuance. DEQ held a public hearing on October 7, 2020 according to Mr. McCurdy and received no comments. However, DEQ did receive written comments from the Idaho Mining Association and the Idaho Conservation League. DEQ made a few revisions, including some grammatical corrections, to the rule as a result of those comments.

DISCUSSION: **Vice Chairman Johnson** said he inquired about cyanidation requirements at a previous meeting and wondered if this rule was about the Stibnite Gold Project. **Mr. McCurdy** said yes and it was what Midas Gold is waiting on to move forward with its permit application.

PRESENTATION: **Dr. Mary Anne Nelson**, Surface and Wastewater Division Administrator, DEQ, presented portions of **Docket No. 58-0000-2000F** regarding the rules regulating the Idaho Pollution Discharge Elimination program (IPDES). The Environmental Agency dedicated authority to DEQ for IPDES in June, 2018 and DEQ is working under a phased implementation schedule to take full authority of this program.

Dr. Nelson said DEQ will have full authority from EPA in July 2021. As part of this delegated authority, DEQ is required to keep the rules regulating the program up-to-date and has up to two years to ensure that changes to the federal rules are reflected in the State's program.

DEQ updated the rules so they would be consistent with federal regulations. DEQ took public comment through October 16, and held a public hearing on October 7. DEQ received no comments on this proposed rule. DEQ does not anticipate any additional cost to the regulated entities, and based on this action, no controversial issues were raised during the public comment period.

Dr. Nelson stated some concerns were brought forward about the strain on state resources by not including a fee for small-scale suction dredging. DEQ decided to table that discussion for the specific fee schedule evaluation.

DEQ made small changes to the chapter, such as minor grammatical and typographical corrections. Specific changes included the definition of waters of the United States. DEQ updated this particular definition to ensure compliance with the Navigable Waters Protection Rule, which EPA passed in April, 2020.

Dr. Nelson said DEQ updated the definition of "equivalent dwelling unit" to clarify who will be charged fees under the municipal rate, which involves publicly and privately owned treatment works and how those fees will be calculated. This applies to systems treating domestic sewage. The revised chapter clarifies the term "average household size" as that used by the US Census Bureau. DEQ added the definition of "proposed settlement" of a state enforcement agreement action, clarifying that particular item.

DEQ added definitions for "pesticide residues" and "pesticide discharges", and removed some unnecessary requirements for pesticide applicators filling out forms. DEQ outlined requirements needed on an application for nondomestic individual discharges. If a facility has collected and analyzed data less than four and one half years old, then that data is considered good and can be submitted.

DEQ also made another change if an applicant is operating or requesting to operate under a variance. Now, that form is to be included with the application. Regarding treatment works, data must be submitted to the agency within 24 months of commencing discharge. The applicant is required to report the number of significant industrial users and nonsignificant categorical industrial users discharging to the collection system.

Dr. Nelson stated DEQ updated public notification. It now reads that in lieu of notification in a newspaper, notices of draft permits may be published on the DEQ website. Also, DEQ adjusted the fee schedule to exclude small-scale suction dredges from IPDES fees. Currently, individuals operating small-scale suction dredges that are covered under the general permit do not have a fee associated with their permit. If an individual who cannot be covered under the general permit were to apply for an individual permit, they would be subject to a fee of either \$4,000 or \$13,000 annually. During the rulemaking process, a DEQ board member suggested that the fee might be a little high for some. DEQ then clarified that if an individual permit was given, there would not be a fee associated with that permit.

Regarding contested permit conditions, DEQ removed a reference to judicial review since it would not be applicable at that stage of a contested permit. The last item Dr. Nelson covered was the requirement of committees to report specific information for noncompliance scheduled events related to combined sewer overflows, sanitary overflows, or bypass. This change corrected an oversight, Dr. Nelson said.

Jerri Henry, Drinking Water Protection and Finance Division Administrator, DEQ, said she would cover the rules for what DEQ uses to provide low-interest loans for design and construction of both drinking water and wastewater facilities. DEQ determined that the rules could be simplified and consolidated. DEQ published the notice of negotiated rulemaking on August 12, 2019, in the Administrative Bulletin, and a meeting was held August 27, 2019, in person and by video conference in the five DEQ regional offices. The notice of proposed rulemaking was published November 2019, and DEQ invited public comment from November 6 through December 4, 2019. DEQ didn't receive any public comments. **Ms. Henry** stated DEQ removed about 8,000 words and deleted approximately 19 pages of rules by combining these rule chapters.

TESTIMONY:

Johanna Bell, Policy Analyst, Association of Idaho Cities (AIC), submitted written testimony in support of **Docket No 58-0000-2000F**. Ms. Bell stated that AIC worked with DEQ over the past year through their negotiated rulemaking process, provided input, and are now expressing their support for the promulgation of these rules.

MOTION:

Senator Burtenshaw moved to approve **Docket 58-0000-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
58-0104-1901
AND
58-0122-1901**

Rules for Administration of Wastewater Treatment Facility Grants. Ms. Henry presented **Docket No. 58-0104-1901** and a companion docket, **Rules for Administration of Planning Grants for Drinking Water Facilities, 58-0122-1901**. She stated these rules are what DEQ used to administer a grant program that provides drinking water and wastewater facilities, funding assistance to prepare engineering, planning documents for infrastructure and design, and construction. This is usually the grant program that feeds into the loan program, Ms. Henry said. This rulemaking was intended to meet the Governor's Red Tape Reduction Act. DEQ simplified the drinking water and wastewater grant rural chapters and consolidated them into a single rural chapter. DEQ held negotiated rulemaking and didn't receive any public comments. The DEQ Board adopted the rule dockets on May 14, 2020, as pending rules. DEQ didn't find any

controversial issues related to this rulemaking nor any additional costs to the regulator, community, or agency. DEQ removed approximately 50,500 words and roughly 14 pages in this rulemaking effort.

MOTION: **Senator Heider** moved to approve **Docket 58-0104-1901**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Heider** moved to approve **Docket 58-0122-1901**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0102-2001 **Water Quality Standards**. **Dr. Nelson** said this docket covers water quality standards for recreational use. This rulemaking was initiated to revise water quality criteria associated with the recreational use of Idaho's surface waters and to remove obsolete language concerning specific pollutant variances disapproved by EPA. During the 2019 legislative review, stakeholders raised concerns regarding the implementation of criteria for bacteria. This pending rule seeks to revise Idaho water quality standards to address those unresolved concerns.

DEQ proposed new and revised criteria for pathogens including E. coli and enterococci. Prior to 2018, Idaho water quality standards used E. coli as the sole indicator of bacteria. When DEQ revised the rules in 2018, it added enterococci as an additional indicator of unsafe levels of pathogens that could lead to gastrointestinal illness.

DISCUSSION: **Chairman Vick** inquired if other states count enterococci in their samples to know if the water is safe. **Dr. Nelson** replied that EPA put forward recommended criteria and states have a certain time frame in which they either adopt the recommended criteria or find recommendations that are equally protective. Other states use enterococci in their criteria.

MOTION: **Senator Stennett** moved to approve **Docket 58-0102-2001**. **Senator Rabe** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0103-1901 **Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks**. **Dr. Nelson** provided the Committee with a brief orientation and background on septic systems in general. She stated that individual septic systems are a useful tool for treating and disposing human waste when access to a centralized treatment system is not available. Wastewater treatment in a basic system is accomplished by the separation of solids, fats, oils, grease, and water in a septic tank, and then by bacteria in the soil around and below the effluent absorption system, which is also called a "drain field". **Dr. Nelson** said this bacterial action reduces the level of pathogens in the effluent discharge from the waste system into the soil. She provided a handout depicting different types of systems. **Dr. Nelson** said these rules provide procedures for permitting systems, for providing installers with credentials to install systems, design criteria for basic septic tanks and drain fields, and requirements for designing, installing, and maintaining the alternative systems.

Dr. Nelson said the Septic Technical Guidance Committee, which is composed of three environmental health specialists from Idaho health districts, has been in place for several decades and holds quarterly meetings that are open to the public. Its responsibility is to maintain the technical guidance manual, which outlines requirements and processes for manufacturers, installers, and homeowners with subsurface sewage disposal systems. This Committee is also responsible for providing recommendations to the DEQ director for approval of different types of proprietary and extended treatment systems. There was a six-fold increase in the total number of systems permitted since 2012 and a seven-fold increase in the number of complex system permits issued during that time. .

Dr. Nelson said DEQ held a total of four negotiated rulemaking meetings in 2019 and 2020 to discuss the proposed changes associated with the alternative systems. In attendance at these meetings were representatives from Idaho Realtors Association, Idaho Groundwater Appropriators, and Idaho Rural Water Association, along with numerous representatives of individual manufacturers, installers, and pumping services. She said there are no known outstanding issues with the proposed rule language. **Dr. Nelson** said the federal government does not specifically regulate septic systems, but it prohibits the pollution of surface water, ground water or drinking water used because failed septic systems are a significant source of water pollution.

MOTION: **Senator Heider** moved to approve **Docket 58-0103-1901**. **Senator Stennett** seconded the motion.

SUBSTITUTE MOTION: **Senator Patrick** said there are some of the proposed changes he is quite uncomfortable with and would be happy if he knew more about them. **Senator Patrick** moved to hold **Docket No. 58-0103-1901** for further study and for the call of the Chair. **Chairman Vick** seconded the motion. The motion carried by **voice vote**, with Senator Stennett voting nay.

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

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 3:02 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AMENDED AGENDA #1
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, February 15, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT:	Committee consideration of the Gubernatorial appointment of Tammy Overacker to the Outfitters and Guides Licensing Board for a term commencing August 31, 2020 and will expire April 20, 2023.	
RS28105	Removes defunct Idaho OnePlan conservation planner from statute and standardizes references to districts and commission.	Colby Cameron, Bureau Chief for Regulatory & Legislative Affairs, Division of Financial Management
RS28097	This proposal would convert Lava Hot Springs Foundation to a continuously appropriated account	Colby Cameron
S 1072	Irrigation districts, vacancies	Senator Anthon
S 1073	Real property, adverse possession	Senator Anthon
SCR 104	Ririe Reservoir	Senator Bair
S 1074	Irrigation, right-of-way	Paul Arrington, Executive Director, Idaho Water Users Association

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 15, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Siddoway (Burtenshaw), Stennett, and Rabe

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

GUBERNATORIAL APPOINTMENT: **Chairman Vick** said the first order of business was the consideration of the appointment of Tammy Overacker to the Outfitters and Guides Licensing Board.

MOTION: **Senator Stennett** moved to send the Gubernatorial Appointment of Tammy Overacker to the Outfitters and Guides Licensing Board to the floor with recommendation that she be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Thayne will be the floor sponsor.

RS 28105 **Removes Defunct Idaho OnePlan Conservation Planner From Statute and Standardizes References to Districts and Commission.** **Chairman Vick** said as a favor to the Senate Agriculture Committee, he agreed to have this RS printed and with the understanding that this legislation would be returned to that Committee for the hearing. **Colby Cameron**, Bureau Chief for Regulatory and Legislative Affairs, Division of Financial Management, represented the Senate Agriculture Committee for this RS.

MOTION: **Vice Chairman Johnson** moved to send **RS 28105** to print. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

RS 28097 **Converts Lava Hot Springs Foundation to a Continuously Appropriated Account.** **Colby Cameron** said **RS 28097** deals with the Lava Hot Springs Foundation. Currently, the foundation has to request its dedicated funds to be appropriated each year by the Legislature. **Senator Stennett** said she read on the fiscal note that it would save about \$1,000 in travel expenses each year, and this year the foundation was able to present their budget via Zoom. **Mr. Cameron** said appearing on Zoom was correct and he is assuming that procedure will continue in the future.

MOTION: **Senator Bair** moved to send **RS 28097** to print. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

Chairman Vick announced that **S 1074** would be heard next, instead of **S 1072**, due to a scheduling conflict.

S 1074 **Relating to Irrigation, Right-of-Way.** **Paul Arrington**, Executive Director, Idaho Water Users Association (IWUA), presented **S 1074**. **Mr. Arrington** said this legislation seeks to repeal Idaho Code § 42-1101, and amend some of the language and provisions in Idaho Code § 42-1102 and 42-1204 to clarify the nature and scope of ditch rights in Idaho.

Idaho Code § 42-1101 was enacted when Idaho was a territory to recognize the "riparian rights" doctrine under which riparian land ownership is sufficient to establish a water right to an adjoining stream. However, Idaho courts long ago rejected this doctrine; prior appropriation is the law that governs the State. **Mr. Arrington** said the Idaho Constitution states that the right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied.

Mr. Arrington said there has been an increase in litigation involving the rights, duties, and responsibilities of ditch owners. Idaho law provides ditch owners the ability to cross a neighbor's property to get water to the ditch owner's property. That ditch easement includes the ability to operate, maintain, and access the ditch. It also includes the ability to remove debris from the ditch. The addition of embankments is necessary for access when maintaining a ditch.

Mr. Arrington stated that this bill confirms the right to remove spoils from the ditch, as well as the right to leave those spoils on the bank or to use them for maintenance needs. This is consistent with historical practice. Finally, this legislation confirms the right to access the right-a-way year-round.

DISCUSSION: **Senator Stennett** inquired if this legislation seeks to avoid any conflicting interpretation and litigation. **Mr. Arrington** said that was correct. **Senator Stennett** then asked if any other part of the private property, beyond the easement, if permission would be needed from the landowner. **Mr. Arrington** replied it would be needed. He said the easements are specific to the ditches and the amount of space needed to maintain them.

TESTIMONY: **Paul Poorman**, from Cambridge, Idaho, representing himself, testified in opposition to **S 1074**. (Attachment 1). He recommended to not adopt the proposed changes, but if that is not possible, he suggested six changes: 1.) Retain section 1101; 2.) Define embankment; 3.) Define "reasonable" access; 4.) Prohibit the removal of material from the landowner's property; 5.) Prevent the ditch owner from cutting off access to the landowner's property by removing or preventing ditch crossings; and 6.) Specifically allow fences that cross the ditches at property boundaries, as long as gates are provided.

DISCUSSION: **Senator Stennett** said she had previously inquired of the Attorney General what is considered "reasonable" access. The Attorney General determined that it would be up to the ditch owner to make an initial determination of necessity, but the question should then be reviewed by a court. **Senator Stennett** asked Mr. Poorman if he thought the landowner would have any say. **Mr. Poorman** replied it looks like they are recommending a dead zone. **Senator Stennett** then asked Mr. Poorman, as a landowner, if he would be able to be part of that process. **Mr. Poorman** indicated that his proposal would be to scale it down or go to a binding arbitration.

Senator Stennett's next concern was regarding the term "embankment". She said it was determined that it is an artificial barrier, which means any structure constructed to impede or obstruct the flow of water, and asked Mr. Poorman if that was a sufficient definition. **Mr. Poorman** suggested that there needs to be a certain distance based on the amount of flow that is in the ditch. **Senator Stennett** stated she had one last question, regarding the right to occupy the right-of-way during any season of the year. **Mr. Poorman** said because in the winter there is snow, and in the spring there is mud, that proposal is problematic.

Senator Patrick wanted to know who would be responsible if property was flooded due to poor ditch maintenance. **Mr. Poorman** replied that ditch owners need to maintain their ditches, but it needs to be done in conjunction with the landowners, as well as with local experts.

Gayle Buhrer-Poorman from Cambridge, Idaho, representing herself, testified in opposition to **S 1074**. (Attachment 2). She stated this legislation constitutes a "taking" of private land and needs amendments to better protect rights of landowners. The proposed amendments do not distinctly define an embankment nor does it distinctly apply these regulations to all canals and ditches throughout the state of Idaho. **Ms. Buhrer-Poorman** said small ditches need to be maintained and treated much differently than large canals and the poor maintenance is what is causing much of the problems regarding their property.

Chairman Vick asked Ms. Buhrer-Poorman if a court previously ruled on their litigation. **Ms. Buhrer-Poorman** replied that a court had and its decision very much favored them as far as the amount of right-of-way that this ditch owner could have. The ruling also defined the ditch owner's access because the ditch owner was coming in at all times of the day and night, using the Poormans' driveway instead of the right-of-way access to the ditch.

Mr. Arrington closed the discussion by saying **S 1074** applies to the Poormans' ditch just as much as it applies to large water facilities. What this legislation does is codify water managers' practices and work for over a century in Idaho. The Code currently allows for the removal of vegetation from the right-of-way, and nothing in this amendment adds to or takes away from that ability. The Code currently obligates ditch owners to maintain embankments and nothing in this amendment changes that. **Mr. Arrington** said this amendment does not resolve every issue that can arise relating to a ditch. Most of the problems addressed by the Poormans today are not resolved through this legislation. Disputes will continue with landowners and ditch owners and will have to be settled in court. These easements are subject to a rule of reasonableness.

Senator Stennett asked if the amendment could be more clear. **Mr. Arrington** said IWUA have not been able to articulate language that adequately works for the small ditches and still works for the big facilities that carry a lot of water. **Mr. Arrington** expressed the importance of local agreements and urged landowners to document them so there is a written document to confirm what the rights and duties are specific to a given ditch.

Senator Rabe wanted to know more about not extending notices to owners or occupants of the land. **Mr. Arrington** said that notices may work for small ditches, but they don't work for large facilities. If there is an emergency, large facilities cannot wait 10 days to give notice to landowners. **Senator Rabe** then inquired if notice requirements could be implemented for smaller waterways and not for larger ones. **Mr. Arrington** said that change could create as much litigation as it was trying to solve.

Vice Chairman Johnson asked why the term "absolutely necessary" was changed to "reasonably necessary." **Mr. Arrington** said the courts have held the ditch owners to the rule of reasonableness and by changing the term, the Code will be aligned with the case law.

Senator Guthrie said that when talking about the topic of reasonableness, a small ditch with a 200-foot easement, would not be reasonable. In terms of mining, taking rocks, taking firewood, and mining the dirt, that is totally inappropriate, and he hopes there is some kind of protection in the bill.

MOTION:

Senator Guthrie moved to send **S 1074** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. Senator Bair will be the floor sponsor.

S 1072 **Relating to Irrigation Districts, Vacancies.** **Senator Anthon** said this legislation is an amendment that aligns two provisions of code, Idaho Code § 43-209 and Idaho Code § 43-201(3), and allows the filling of a vacant seat to take place in the same way as filling an elected seat. **Senator Siddoway** inquired if this would allow board members to determine how few people are on their board. **Senator Anthon** responded by saying no, this bill just determines who would qualify for geographical divisions to represent them as a seated member on the board.

MOTION: **Senator Siddoway** moved to send **S 1072** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Anthon will be the floor sponsor.

S 1073 **Relating to Real Property, Adverse Possession.** **Senator Anthon** presented **S 1073** and said it would clarify that the statutory protection of water delivery facilities from claims of "adverse possession" extend to properties owned by water delivery entities. **Senator Anthon** said adverse possession is a legal theory allowing someone who doesn't actually have a title to land to gain one by acting like they own it. **Senator Anthon** said this legislation says that if an irrigation district owns the ditch, they don't have an easement.

DISCUSSION: **Senator Stennett** asked if someone taking over property and not paying taxes, qualifies as "squatting." **Senator Anthon** replied that it was, as one of the key elements of adverse possession is the payment of taxes.

MOTION: **Vice Chairman Johnson** moved to send **S 1073** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. Senator Anthon will be the floor sponsor.

SCR 104 **Relating to the Ririe Reservoir.** **Senator Bair** presented **SCR 104** and said dams have multiple purposes: flood control: irrigation: and recreation, such as fishing and boating. With each dam that is built for flood control, there is a flood rule curve. **Senator Bair** said federal flood rule curves dictate how a dam is operated, and neither the Bureau of Reclamation (Bureau) nor the dam operator has to deviate from those curves. There has to be multiple studies done to make changes and presently, the second phase of studies is being done.

Senator Bair said this legislation encourages the Idaho Water Resource Board (IWRB) to help fund the last phase of the studies required to motivate the Bureau toward changing and updating the flood rule curve.

DISCUSSION: **Senator Guthrie** stated that **SCR 104** is good legislation but inquired if the Bureau is obligated to yield to the findings of the report. **Senator Bair** deferred the question to Brian Patton, Executive Officer, Idaho Department of Water Resources and Idaho Water Resource Board.

Mr. Patton clarified that the water stored in Ririe is used by almost every canal company and irrigation district in Eastern Idaho upstream of American Falls Reservoir. Some years ago, those water users, canal companies, and irrigation districts met with the Bureau and the U.S. Corps of Engineers (Corps) and started this process when Congress passed the Wynne Act, (the water infrastructure investments for the nation in 2016 that gave the authorization to start these studies). It created a window to look at these flood rule curves and to try to operate reservoirs more optimally to achieve multiple purposes.

Mr. Patton stated the operation at Ririe Dam is very heavily weighted toward flood control, to the expense of filling the reservoir. Those water users started the process and spent several hundred thousand dollars in phase one of the investigation. That basically gave the green light to go to phase two of the investigation. **Mr. Patton** said this resolution would throw the state's weight behind this process as well as encourage the IWRB to get involved and start working directly with the Corps and the Bureau to move the process forward.

Mr. Patton said the Corps is not bound by the results of the study, but if the study shows that the reservoir can be operated for more optimum or multiple purposes without impacting flood protection, then the Corps and the Bureau will be more likely to move in that direction.

MOTION: **Senator Siddoway** moved to send **SCR 104** to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Bair will be the floor sponsor.

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:47 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

Idaho Legislature Title 42 Changes- Senate Bill 1074 - Testimony of Paul Poorman

1. Mr. Chairman, members of the Resources & Environment Committee: Before you is Senate Bill 1074. In general it would make the following changes to Title 42:
 - a. It would repeal section 1101 which ensures that property owners can utilize water from streams/creeks/rivers that flow through their property
 - b. It adds the extent of ditch embankments to the ditch Right of Way that the ditch owner is obligated to maintain, without defining embankments or stipulating limits on the extent of the embankments that naturally occur due to ditch size of slope of underlying land.
 - c. It gives the ditch owner the right to utilize the material removed from the ditch within the RoW or to take the material off of the underlying landowner's property.
 - d. It gives the ditch owner the right to occupy the RoW during any season of the year without notification or permission from the landowner, regardless of land conditions (snow, mud, etc.)
 - e. The proposal gives sole discretion on maintenance activities to the ditch owner, even though the RoW is a *Non-Exclusive* property right.
2. The proposed changes seem innocuous, but they could lead to even greater abuse of private property rights than what is already occurring.
 - a. Imagine that you own a parcel of land that has a creek running through it and a foot-wide ditch carrying at most, 3CFS, to a downstream water user. Then imagine that the water user finds it "reasonable"
 - i. to scrub vegetation from a 600' long by 200' wide swath.
 - ii. to remove culverts that provide access to 200 acres of your property.
 - iii. to come onto your property every day in the summer and numerous times in the winter when the ditch is covered in snow or deep in mud, far in excess of what is needed to maintain a 3CFS summertime water right (0.03CFS wintertime stockwater right).
 - iv. to remove fences across the ditch allowing cattle to roam freely throughout your property.
 - v. to rip up the surface layer of the ditch and allow 500,000 gallons a day to flood your land below his ditch.
 - b. Sounds preposterous, right? Well, this is precisely what happened to us on our property just north of Cambridge!
 - i. Water deliveries through our property have worked fine for well over a hundred years.
 - ii. A new owner of a downstream water right engaged in each of the activities above, and used Title 42 to justify his actions.
 - iii. Not only did we find these activities totally unreasonable, but so did the 3rd District Idaho Court in civil case CV44-19-0565.
3. The proposed changes, which appear to partially stem from this litigation, would give broader latitude for the ditch owner to:

- a. “remove from the ditch, canal, conduit, embankments, and irrigation structures the debris, soil, vegetation, and other material the ditch, canal, or conduit owner or operator reasonably deems necessary to properly access, inspect, operate, clean, maintain, and repair...”. *The proposed changes leave it to the “owner or operator” to define what he or she “reasonably deems necessary,” without regard for the private-property rights of the underlying land owner.*
 - b. “The owner or operator has the right and discretion to transport the material from the right-of-way, to utilize the material for reconstruction, repair, or maintenance of the ditch, canal, conduit, embankments, irrigation structures, and related roads and access areas, and to deposit and leave the material within the right-of-way, provided that the deposits occupy no greater width of land along the ditch, canal, conduit, and embankments than is reasonably necessary.” *Again, “reasonably necessary” gives broad latitude to the water user and, as we have seen, can vastly impinge on the rights of other private property owners..*
 - c. In short, the proposed changes amount to a major "taking of private property rights" from the land owner to the ditch owner.
4. I agree that irrigators need access to irrigation ditches, conduits, structures, etc to maintain infrastructure, but terms like “embankment” and “reasonably necessary” are open to interpretation and will likely lead to unreasonable impacts on the private property of underlying landowners.
- a. We respectfully request that you vote no on the proposed changes to Title 42, or at the very minimum, seek to include the following changes:
 - i. Section 1101, which protects the rights of landowners to utilize water from streams that flow through their property needs to be retained.
 - ii. The term "embankment" needs to be defined. It also needs to have a physical limit on how wide it can be so that differences in ditch flow, slope of underlying ground, and pad width can be accommodated.
 - iii. Vegetation can be removed from the ditch channel and pad, but removal of vegetation from embankment needs to have permission of underlying landowner. Removal of dirt, brush, vegetation, rocks, etc. from landowner's property should not be allowed.
 - iv. Define "reasonable" and "reasonably". What is reasonable for one person may be totally unacceptable for another.
 - v. Add language that keeps the ditch owner from using his/her ditch to block landowner's access to their own property.
 - vi. Add language that allows fences at property lines, as long as a gate is provided.
5. In an ideal world, neighbors work things out in situations like this of joint ownership. Landowners and water-right holders have done this in our drainage for decades. However, the proposed changes before you appear to have grown out of this recent litigation, and, while they sound “reasonable,” they could give a

water-right holder far more latitude to abuse the private property rights of the underlying landowner.

Summary:

- a. Recommend not adopting the proposed changes.
- b. If that's not possible, the following changes are requested:
 - i. Retain section 1101.
 - ii. Define embankment
 - iii. Define "reasonable" access
 - iv. No removal of material from landowner's property.
 - v. Prevent ditch owner from cutting off access to landowner's property by removing or preventing ditch crossings.
 - vi. Specifically allow fences that cross the ditches at property boundaries, as long as gates are provided.
- c. Doing so would better balance the rights of water users with those of underlying private-property owners.
- d. Not doing so will make private property owners vulnerable to unreasonable water users and expensive litigation. This, we have unfortunately learned from personal experience.

Attachment #2
2/15/21

Private Property Takings

Senate Bill 1074 would substantially expand the rights that irrigation ditch owners have when their ditches run cross another's property. The proposed legislation would allow ditch owners to do whatever they wish to "maintain" a ditch "embankment" without input or permission from the landowner. There is no distinction between small ditches like the ones in rural areas that may transport, say, 3 cfs, versus very large ditches near the cities that may transport 300 cfs. There is no definition, nor quantification of the ditch "embankment". In fact, many ditches in our rural area run along the contours of a hillside, and have no discernable embankment. Would the bill allow the ditch owner to "take over" private property from the ridge top of the hill down to where the hill bottoms out? In addition, the proposed bill gives the ditch owner explicit rights to enter the landowner's property during any season, regardless of ground conditions (snow, mud, etc.,) even if there is no water in the ditch. Furthermore, under the proposed bill, the ditch owner would have the right to remove materials from the landowner's property without prior permission. This could render the ditch embankment a source of firewood, fill dirt, or landscaping rock for the ditch owner to remove, while the landowner would have no recourse. Additionally, Bill 1074 removes a section of Title 42 that ensures landowners may use water from streams on their own property. This bill constitutes a "takings" of private land and needs amendments to better protect landowner's rights.

Gayle Buhner-- *Poolman*
Cambridge, ID

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, February 17, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	Acknowledgement of Page - Hana Pfeiffer	Chairman Vick
Minutes Approval	Approval of Minutes - February 3, 2021	Senator Heider Senator Guthrie
	Approval of Minutes - February 8, 2021	Senator Bair Senator Patrick
Docket No. 58-0103-1901	Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks	Vice Chairman Johnson
H 23	Endowment land exchange, repeal	Scott Phillips, Policy and Communications Chief, IDL
H 24	Board of scaling, compensation	Scott Phillips
Presentation	Introductions	James Curry, Government Affairs Lead, Northwestern U.S. - Bayer
	Caldwell Canyon Phosphate Mine Soda Springs Site Ballard Mine	Randy Vranes, Business Unit Lead Mineral Activities - Bayer
	Roundup Litigation Updates	James Curry

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 17, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Van Orden (Bair), Heider, Patrick, Guthrie, Siddoway (Burtenshaw), Stennett, and Rabe

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

PAGE RECOGNITION: **Chairman Vick** noted the first half of the Legislative session is over and the pages are returning to their respective high schools. He and the Committee recognized and thanked Hana Pfeiffer, who served as the page for the Committee. **Chairman Vick** presented Ms. Pfeiffer with a letter of recommendation, signed by all Committee members, and a necklace with the State of Idaho on it as a remembrance of her service.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of February 3, 2021. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.
Senator Patrick moved to approve the Minutes of February 8, 2021. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

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

DOCKET NO. 58-0103-1901 **Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks.** **Vice Chairman Johnson** said discussion was previously held on **Docket No. 58-0103-1901** and Dr. Mary Anne Nelson, Administrator, Surface and Wastewater Division, Department of Environmental Quality (DEQ), was present to answer them. **Senator Patrick** stated he spent more time reviewing the docket and was satisfied.

MOTION: **Senator Patrick** moved to approve **Docket No. 58-0103-1901**. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

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

H 23 **Relating To Endowment Land; Repealing Section 58-156, Idaho Code, Relating To Legislative Findings and Purposes Regarding The Exchange Of Certain Lands.** **Scott Phillips**, Policy and Communications Chief , Idaho Department of Lands (IDL), presented **H 23**. **Mr. Phillips** said this legislation would eliminate an obsolete section of Code. In 2001, the Idaho Legislature enacted legislation to authorize a land exchange between the State Land Board, Idaho State University, the University of Idaho, and the State Board of Education with the goal of transferring title of endowment lands that comprise the Center for Higher Education in Idaho Falls to the universities. This land exchange was completed on July 24, 2002. Idaho Code § 58-156 enabled a one-time event to occur. Since the exchange was completed, this section of Code is no longer needed, according to Mr. Phillips.

MOTION: **Senator Guthrie** moved to send **H 23** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. Chairman Vick will be the floor sponsor.

H 24 **Relating To The Idaho Board of Scaling Practices; Amending Section 38-1205, Idaho Code, To Revise Provisions Regarding Board Compensation.** **Mr. Phillips** presented **H 24** and said he was addressing the Committee on behalf of Russ Hogan, Executive Director, Idaho Board of Scaling Practices (Board). **Mr. Phillips** said the Board's members receive \$35 per day and PERSI eligibility for attending meetings. This legislation seeks to maintain the \$35 honorarium but removes PERSI eligibility.

DISCUSSION: **Senator Stennett** asked what precipitated this request. **Mr. Phillips** said when the Board was formed, it was quite common for part-time Board members to be included in PERSI. However, in the past few years, many agencies with these volunteer type of boards have moved away from PERSI credits toward more of an honorarium-type service.

Senator Heider inquired about the scaling practice. **Mr. Phillips** said it was a volumetric method of determining what a log is worth and is fundamental for the industry as it determines how landowners are paid for the logs that are harvested from their land.

MOTION: **Senator Patrick** moved to send **H 24** to the floor with a **do pass** recommendation. **Senator Rabe** seconded the motion. The motion carried by **voice vote**. Senator Patrick will be the floor sponsor.

PRESENTATION: **Briefing on Mines - Caldwell Canyon, Soda Springs, Ballard - and Roundup Litigation Update.** **Chairman Vick** welcomed James Curry and Randy Vranes to the meeting. They represent the Bayer Company (formerly Monsanto) who has mines in and around Soda Springs, Idaho. **Mr. Curry** said he is the Government Affairs Lead for Bayer CropScience in northwestern United States and is based in Washington State. **Mr. Curry** stated there are positive developments in the Soda Springs area which will be featured in the slide presentation conducted by Randy Vranes, Business Unit Lead, Mineral Activities, with Bayer. Mr. Vranes is based in Soda Springs.

Mr. Vranes said he has been with Monsanto, and now Bayer, for over 35 years and the company is committed to Idaho. Mr. Vranes provided a slide presentation of the mining industry in and around the area of Soda Springs. Mining began two miles north of the city of Soda Springs in 1951 and continued until 1969. The Ballard Mine, which is a little further north, was mined, then operations moved to the Henry Mine. Mining was done there for about 20 years, and after mining operations were exhausted, they moved to the Enoch Valley Mine, followed by the South Rasmussen Mine. Remaining reserves are located in Trail Creek and Caldwell Canyon.

The Soda Springs site employs 800 people, with 200 at the mine/quarry, all contractors. Six hundred are employed at the plant, with 400 being Bayer employees. The total direct annual payroll is \$49 million. Payroll and property taxes amount to \$2 million. Royalties paid was \$2.1 million and annual Idaho charitable giving amounted to \$400,000.

Mr. Vranes said the Caldwell Canyon Mine is very unique. Permitting began in 2014 and a permit was received September, 2019. The average mine in the United States takes about 10 years to permit. Road construction has been started and the end result will be that this mine will have 35 years of operations. The investment in the Caldwell Canyon Mine is \$328 million. **Mr. Vranes** said over 16 million tons of material will be moved just in the construction effort, with eight miles of roads built and seven miles of rail.

DISCUSSION: **Senator Heider** inquired as to why rails were being used, rather than roads. **Mr. Vranes** replied that by using rails, Bayer avoided going through a lot of wetlands and Sage-grouse lands.

Senator Heider mentioned how much he enjoyed touring the mines in the summertime and suggested that the practice of tours be continued. He said his tour helped in making decisions that involved mining. **Mr. Vranes** stated that he is a vice president in the Idaho Mining Association, and tours are something they have discussed and believe is important.

Next, **Mr. Vranes** discussed the Ballard Mine. It was mined from 1951 to 1969 before any of the mining laws were in effect and about 5 million tons of ore was left in the ground. Bayer is now in the process of recovering that material and doing extensive reclamation. **Mr. Vranes** noted challenges dealing with the Environmental Protection Agency (EPA); however, good progress is being made.

Senator Stennett inquired if anything else was mined besides phosphate. **Mr. Vranes** replied no, but the processing of phosphorus leaves behind vanadium, which is used as an additive to harden steel.

Mr. Vranes said that when he gave these presentations previously, he would state they didn't have any environmental issues like the metal mines or some of the coal mines. In 1996, Bayer found out they did have an issue with selenium. The reason it was not known earlier is because the detection limits were such that it was hard to identify. **Mr. Vranes** said that presently, almost all the groundwater that comes off their sites meets the groundwater standards.

In closing, **Mr. Vranes** said Bayer has a strong commitment to Soda Springs and Idaho. They have invested over \$300 hundred million in the Ballard Mine, \$200 million in a water treatment plant, and over \$100 million in future air scrubbing systems.

PRESENTATION: ROUNDUP LITIGATION UPDATE. **Mr. Curry** said he wanted to share some good news regarding litigation. Roundup Weed Killer and Glyphosate lawsuits drew a lot of negative attention and press over the last few years, based on U.S. product liability litigation. Bayer has a 40-year history of safe use, according to Mr. Curry. This is consistent with health regulators and officials around the world, including the EPA, which, as recently as last year, said glyphosate does not pose a risk to human health and is not likely to be carcinogenic. European Food Safety Authority and officials in Australia, Japan, and Korea have consistently agreed with that assessment. It is one of the most thoroughly studied products of its kind and has been a transformative chemistry in American agriculture, allowing Bayer to reduce farm tilling practices, reduce emissions, and increase farm productivity, he said.

Mr. Curry said Bayer announced they would consider a settlement in the litigation if it was financially feasible and brought finality to the legal dispute. In June 2019, Bayer reached an agreement with plaintiff attorneys and Bayer believed it was financially feasible when viewed against the risks of ongoing multiyear litigation and impacts to the company's business and reputation. The agreement contains no admission of guilt or wrongdoing. **Mr. Curry** reiterated that their products will be available going forward in unchanged availability.

DISCUSSION: **Senator Patrick** inquired as to who is going to pay for the current and future settlements. **Mr. Curry** said Bayer has separate legal funds set aside to manage the litigation. **Chairman Vick** asked about qualified claimants. **Mr. Curry** said, generally speaking, over the next four years, people who claim they used Roundup and want compensation for non-Hodgkin's lymphoma and its resulting complications would go through an advisory science panel before they have their day in court. The advisory science panel's findings can be used as evidence in the trial.

In closing, **Mr. Curry** said the advisory science is a mechanism for Bayer to bring science back into the conversation at the trial court level and help put an end to any potential future litigation.

Roger Batt, who represented Bayer, thanked the Committee for listening to the presentation and for their support of the industry.

ADJOURNED: There being no further business at this time, Chairman Vick adjourned the meeting at 2:30 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AMENDED AGENDA #2
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, February 22, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
WELCOME	Page Charlotte Brockman	Chairman Vick
S 1123	Lava Hot Springs	Colby Cameron, Bureau Chief for Regulatory & Legislative Affairs, Division of Financial Management
PRESENTATION:	Annual Update of Idaho Department of Water Resources	Gary Spackman, Director,, IDWR
	Annual Update of Idaho Department of Water Resources Board	Jeff Raybould, Chairman, IDWRB

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick

Vice Chairman Johnson

Sen Bair

Sen Heider

Sen Patrick

Sen Guthrie

Sen Burtenshaw

Sen Stennett

Sen Rabe

COMMITTEE SECRETARY

Juanita Budell

Room: WW37

Phone: 332-1323

Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 22, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Van Orden (Bair), Heider, Patrick, Guthrie, Siddoway (Burtenshaw), Stennett, and Rabe

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

PAGE INTRODUCTION: **Chairman Vick** welcomed Charlotte Brockman as the page for the second half of the Legislative Session. **Ms. Brockman** said she is from Gooding, Idaho, and attends Gooding High School. She is also enrolled at the University of Nebraska, where she hopes to double-major in horticulture and agricultural economics, she said. **Ms. Brockman** said she is interested in government and someday would like to be involved in agricultural policy and maybe even become a Senator.

S 1123 **Lava Hot Springs (Springs). Amends Existing Law To Provide That Certain Moneys Regarding Lava Hot Springs Foundation Fund Are Continuously Appropriated.** **Colby Cameron**, Bureau Chief for Regulatory and Legislative Affairs, Division of Financial Management (DFM), provided background on the Lava Hot Springs' Foundation (Foundation). He stated the Springs' land was deeded to the State of Idaho to provide a health and recreation facility. The State built a natatorium on that location in 1918, and the Foundation oversees the operation of the swimming pools and hot baths. The Foundation has five members, all appointed by the Governor.

Mr. Cameron said **S 1123** seeks to convert the Foundation's annual appropriation to a continuous appropriation. The money flows through the Foundation's Board, which sets the budget and meets annually.

Matthew Reiber, a budget analyst for DFM, said he reviewed the Springs' budgets over the past five years. The Springs' have had a consistent budget of \$2.3 million to \$2.5 million, and it is dedicated revenue. All revenue is self-generated, coming from ticket sales, retail sales, and rentals. **Mr. Reiber** said looking into the budgets 10 to 15 years ago, neither the Governor nor the Legislature turned down budget requests, as they were very routine.

DISCUSSION: **Senator Patrick** asked if the coronavirus affected the Springs' revenue last year. **Mr. Reiber** said the Springs were closed to the public for two months, but once they reopened, the revenue has improved.

Senator Stennett inquired about the fiscal note pertaining to travel to Boise from the Springs. **Mr. Reiber** replied that eliminating the requirement that the Springs report to DFM each year, will make their budget obligations a little lighter as those obligations can be managed internally.

Senator Stennett asked if there was a comparable organization to the Springs. **Mr. Cameron** said he does not know of any that have comparable day-to-day duties, but there are some comparable in the sizes of their budgets and dedicated funds. **Senator Stennett** asked why it was so important to have continuous appropriations as opposed to annual appropriations. **Mr. Cameron** said this year the Foundation is requesting two new staff positions including a swimming pool supervisor and the Foundation can't hire until July. If it had continuous appropriation, the Board could potentially look at advertising for that position and fill it in April. The nature of the Springs is that of a small business versus a regulatory or a licensing board, **Mr. Cameron** said.

Senator Siddoway asked if the appropriations are subject to audits. **Mr. Cameron** replied they are. He stated the continuous appropriations could be added as an amendment to **S 1123**, if the Committee so desired.

Senator Guthrie asked who brought forth this legislation. **Mr. Cameron** said some of the Joint Finance-Appropriations Committee members and the DFM Administrator discussed the matter after the last Legislative Session. Mr. Reiber worked with the Foundation and its executive director in compiling the information about the Springs. The executive director said he saw the potential benefit of a continuous appropriation and said it would help them better manage the Springs' day-to-day functions. **Senator Guthrie** asked who would be responsible if the Springs were in a position of financial jeopardy. **Mr. Cameron** said he assumed the State would provide backup funds in a default situation.

Chairman Vick clarified DFM is requesting this legislation, not the Board. **Mr. Cameron** said DFM sees it as a worthwhile function for the Board to have the ability to continually appropriate funds to function as an efficient local entity.

Senator Stennett said she was concerned as to why the Foundation had not requested the continuous appropriation instead of DFM, and the Springs are functioning fine as is. **Senator Stennett** also said this isn't done for the Department of Parks and Recreation. **Mr. Cameron** said it is not that the Springs' Foundation is not appreciative of the fact that the legislation is here. DFM communicated to the Foundation that DFM was going to propose legislation based off questions asked by some of the policyholders who made budget decisions in the past. The Foundation let DFM know that it would be willing to have continuous appropriation. **Mr. Cameron** said the Springs are not on the same level as the Department of Parks and Recreation. The Springs are one division of one park set up under the auspices of a foundation that is appointed by the Governor for one local purpose, not a Statewide purpose.

MOTION:

Vice Chairman Johnson moved that **S 1123** be held in Committee, subject to the call of the Chair. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

Gary Spackman, Director, Idaho Department of Water Resources (IDWR), requested that Jeff Raybould, Chairman, Idaho Water Resource Board (IWRB) present his annual report prior to hearing IDWR's report.

PRESENTATION: Annual Update of Idaho Water Resource Board. **Mr. Raybould** reported on the past year's activities, noting that IWRB worked on the Priest Lake outlet and thoroughfare improvements. A study was conducted by IWRB to see what was needed to better manage Priest Lake. **Mr. Raybould** said when there is light snowpack and less water available to maintain flows in the river, an extra 6 inches of water should be held, then let out over the course of the summer season to maintain minimum inflows in the river while not going below the lake elevation, which is in statute. **Mr. Raybould** said IWRB also needed to do construction work at the outlet gates of Priest Lake to allow for that extra 6 inches of water to be impounded in the lake. Work is half-completed, will resume this fall, and should be completed by spring 2022. Other work included rebuilding a deteriorated breakwater that stops waves from eroding into the northeast part of the lake, and dredging the thoroughfare to Upper Priest Lake.

Mr. Raybould said IWRB is continuing its partnership with Idaho Power for its collaborative Cloud Seeding Program in the Boise River drainage, the Wood River, and the Upper Snake Region. Idaho Power is paying for one-third of the cost of that program, while local water users and IWRB are covering the rest. IWRB is in the process of doing a benefits analysis of cloud seeding in various basins informing interested parties how they might allocate the cost of the program into the future. IWRB is also looking at how it might expand the program as it has had requests from other basins across the State, especially in southern Idaho.

Mr. Raybould also reported on the aquifer recharge. He said Idaho had four great water years in a row, and the Eastern Snake Plain Aquifer is beginning to stabilize. In 2020, the Idaho Legislature directed IWRB to work with Lemhi water users to find solutions to their water needs, as well as providing better flows in the lower Lemhi River. IWRB engaged Clive Strong and Norm Semanko, attorneys, to facilitate those efforts. The first meeting was in June 2020. They reached agreements on several issues but still have to determine what the flushing flow should be on the Lemhi River to remove sediment to improve spawning and maintain fish passage on certain tributaries.

A few years ago, Idaho and Utah filed a water rights application for additional storage in Bear Lake. The outcome was an agreement between Idaho, Utah, Wyoming, and PacifiCorp to talk about how to store more water in the lake. **Mr. Raybould** said IWRB have done some modeling on the Lower Bear River, and it appears that if they are able to take out some of the impediments in the river and work out some flood easements with the local landowners, they will be able to carry more water over in Bear Lake and not have to release water strictly for flood-control purposes. **Mr. Raybould** stated IWRB met with local landowners and found a willingness to entertain how IWRB might be able to acquire those flood easements.

Mr. Raybould said IWRB has some high-priority "shovel-ready" projects that fit in with the Governor's Building Idaho's Future plan, including the Anderson Ranch Reservoir Enlargement Project. IWRB has worked with the U.S. Bureau of Reclamation on this project for almost three years and met the deadline of January 1, 2020, to get a finding of feasibility from the Secretary of the Interior allowing the project to go forward. The project will provide additional water for the Treasure Valley and surrounding areas. Estimated constructed costs will be about \$83.3 million, with about \$9.2 million coming from the federal government and the remaining cost to be shared by the state. Construction needs to start by December 16, 2021, to maintain federal eligibility.

Mr. Raybould said another shovel-ready project is the creation of a sustainable water supply for the Mountain Home Air Force Base. IWRB and the U.S. Air Force began teaming several years ago to build a pipeline from the Snake River to the Air Base. The Legislature appropriated money and IWRB secured a water right on the Snake River from the J. R. Simplot Company. Some initial work has been done, such as preliminary engineering to come up with cost estimates, evaluating water treatment options, and securing the easement from the Snake River to the Air Force Base. The State's portion of costs for this project will be about \$28 million to construct the pipeline and a pump station. The Air Force will be responsible for the water treatment plant, which will cost about \$30 million. Once the project is completed, it is planned that the Air Force will cover all the long-term operation and maintenance. The water right will remain with IWRB, he said.

Mr. Raybould said with regard to the Eastern Snake River Plain Aquifer, IWRB is trying to get more recharge in the Upper Valley to help stabilize the upper end. Some examples of that project would be a pipeline that would start with a pump station just west of the Menan Butte on the Snake River and pump water in a northwesterly direction to recharge basins and out to Mud Lake. There are some other smaller sites within the Upper Valley that IWRB is exploring.

In conclusion, **Mr. Raybould** said IWRB is continuing to work with the aquifer basin committee on resolving issues with the declining aquifer in the Moscow-Pullman area. **Mr. Raybould** said there is a need to find additional water to supply that region of the State.

DISCUSSION: **Senator Guthrie** asked if there could be a water call from downstream users if Anderson Ranch is raised. **Mr. Raybould** said the water right has been applied for and he doesn't think any downstream users could make that call.

PRESENTATION: Annual Update of Idaho Department of Water Resources. **Mr. Spackman** reported on the snowpack in various basins throughout the State and showed graphs to identify the amounts of snowpack.

Mr. Spackman showed graphs of efforts by the Department, beginning with a timeline of pending transfers. IDWR aims to maintain about 100 pending transfers each month and did so over the past two months. **Mr. Spackman** reported on permits for proof of beneficial use that were filed and are awaiting the issuance of water licenses. There is a huge backlog of these permits, totaling almost 500. Field examinations have to be done by IDWR on these permits and that is usually conducted in the summer. **Mr. Spackman** anticipates it will take one to two years to drop below the 500 mark.

Mr. Spackman said he is astounded by the work that IWRB is accomplishing, and complimented Mr. Raybould and former Chairman Roger Chase for their efforts.

Mr. Spackman also shared an experience he had with a group of people from Nepal who wanted to know more about what IWRB was doing related to recharge and water sustainability. India is drilling wells to support the agricultural needs of its large population and those wells are impacting flows in the Ganges River. Groundwater pumping is also affecting groundwater levels in Nepal and depleting surface water flows in rivers there. **Mr. Spackman** said Idaho's success story is not only well-known in the Western United States but also in other countries.

Mr. Spackman stated that Idaho is on the threshold of accomplishments unparalleled in the Western U.S.: resolving existing water conflicts; protecting the rights of senior water-right holders; and harnessing enough of Idaho's plentiful water resources to sustain Idaho's economic growth well into the future. **Mr. Spackman** said he is convinced that the Governor's vision of appropriating money now for water projects will be rewarded with exponential economic returns in the future.

Mr. Spackman's final comments regarded adjudicating the water rights in the Clark Fork-Pend Oreille River Basin in northern Idaho. A hearing was held, but a court hasn't yet issued a commencement order. **Mr. Spackman** said a few matters need to be resolved with federal entities, and he anticipates that effort will start about the end of the calendar year.

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 3:02 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, February 24, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment	James Yost, Meridian, Idaho was reappointed to the Northwest Power & Conservation Council for a term commencing January 15, 2021 and expiring January 15, 2024.	James Yost
S 1090	Department of Lands, Attorney General	Senator Harris
H 43	Water Resources	Gary Spackman, Director, IDWR
H 57	Water Authority	Gary Spackman, Director, IDWR

Public Testimony Will Be Taken by Registering Through the Following Link:
[***Registry to Testify***](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Van Orden(Bair)
Sen Heider
Sen Patrick

Sen Guthrie
Sen Siddoway(Burtenshaw)
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 24, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick (Vick), Vice Chairman Johnson, Senators Van Orden (Bair), Heider, Patrick, Siddoway (Burtenshaw), Stennett, and Rabe

ABSENT/ EXCUSED: Chairman Vick and Senator Guthrie

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

Vice Chairman Johnson said the first order of business was the Gubernatorial Appointment hearing for James Yost. However, he was not present, so the Committee moved on to bills. **Vice Chairman Johnson** said he anticipated that **S 1090** would take a little more time, so he called on Gary Spackman to present **H 43** while awaiting Mr. Yost's arrival.

H 43 **Relating to Water; Eliminates Inactive Provisions of Law and Outdated and Obsolete Sections of Idaho Code.** **Gary Spackman**, Director, Idaho Department of Water Resources (IDWR), presented **H 43**. He said the Governor's Office directed each agency to submit legislative proposals to seek to eliminate outdated or unnecessary provisions in the Idaho Code. **H 43** is one of those legislative proposals.

Section 42-237b through 42-237g authorized the creation of a local groundwater board to resolve complaints from those holding rights to surface water and groundwater against groundwater users' holding water rights. **Mr. Spackman** said IDWR is unaware of the local groundwater board to ever hold a hearing or make a decision, so the proposal would repeal its formation and operations.

MOTION: **Senator Siddoway** moved to send **H 43** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Vice Chairman Johnson will be the floor sponsor.

GUBERNATORIAL APPOINTMENT: **James Yost** said he was reappointed to the Northwest Power and Conservation Council (Council) for a three-year term and noted his 12-year tenure on the Council. **Mr. Yost** said the Council is developing a five-year power action plan for the Northwest to be completed by late summer. The plan includes Washington, Oregon, Montana, and Idaho on how to direct activities of the Bonneville Power Administration. The Council completed the Fish and Wildlife program, which will be incorporated into the power plan as required by the Northwest Power Act of 1980.

DISCUSSION: **Senator Stennett** said she wanted to know more about the power action plan. **Mr. Yost** said the circumstances the Council members find themselves in is unique this year. With trying to retire coal and with very little favor for natural gas, the region has moved extensively toward renewable energy sources like solar and wind. **Mr. Yost** stated for reliability, renewables have to be overbuilt and that puts energy efficiency at a higher cost than the renewables. The problem the Council is facing is capacity and reliability.

Senator Stennett asked about capacity and the ability for storage. **Mr. Yost** replied that it will be either pumped storage, which is limited, or batteries. **Senator Stennett** asked Mr. Yost what he would prefer to see in the power plan. **Mr. Yost** said he is supportive of renewables, but if the Northwest has to build six to eight times the amount of renewables required for reliability, it would become very expensive. The people who have invested in those renewables will be curtailed during the day and then it is not economical for them. He also has some concerns about the financing. **Mr. Yost** said his position has been that a balanced system is needed where there is reliability and then use renewables when they are available.

Senator Stennett inquired about the Columbia River Treaty, for which Mr. Yost is advocating for Idaho. **Mr. Yost** said there had not been any recent meetings between the United States and Canada, but some sub groups have had discussions.

Senator Siddoway asked if the Council would have a role in the studies if anything comes of Representative Simpson's proposal to remove the dams. **Mr. Yost** replied that two years ago, the Council was asked about power replacement options if there was not hydro power generated at the four lower Snake River dams. The Council indicated they needed to finish the power plant, then could shift funding and staff to do the modeling and studies required to figure out what replacement costs would be. **Senator Siddoway** inquired about what necessary infrastructure would be needed if the dams were removed. **Mr. Yost** said the Council only deals with power and there are a lot of other issues that would have to be reviewed. The three main ones are power and energy replacement, transportation, and irrigation.

Vice Chairman Johnson thanked Mr. Yost for his comments to the Committee and for his service to Idaho. He said voting will be held next Monday.

S 1090

An Act to Remove the Responsibility of the Attorney General From the Department of Lands. **Senator Harris** presented **S 1090** and said this legislation removes the Attorney General's responsibility of providing legal representation to the Idaho Department of Lands (IDL). **Senator Harris** said the Attorney General is one of five constitutional officers who sit on the Land Board that is charged with managing more than 2.5 million acres of State endowment trust lands in Idaho. In addition to being a member of the Land Board, the Attorney General provides legal counsel to IDL. **Senator Harris** said this is viewed as a conflict of interest and consequently, there is some distrust among the public.

Senator Harris discussed the fiscal note. IDL has a budget for legal counsel set at \$400,000. The Attorney General's office receives \$382,311 annually, of that amount, to offset the cost of providing legal counsel to IDL. **S 1090** would allow IDL to secure their own attorneys when the need arises at a cost of \$250 per hour.

DISCUSSION:

Senator Stennett wanted to know the source and need for this bill. **Senator Harris** replied it was his bill. He perceives it as a conflict of interest. **Senator Heider** questioned the cost and wondered if it was worth the change.

TESTIMONY:

Vice Chairman Johnson said he had received written testimony from Mr. Bruce Smith, a retired natural resource attorney for 30 years, requesting that his testimony be read into the record (Attachment 1) and the Vice Chairman obliged. Mr. Smith, opposed **S 1090**. He stated the bill is likely unconstitutional and is based mostly on speculation, conjecture, and misunderstanding of how the Land Board and IDL operates.

Darrell Early, Natural Resources Division Chief, Office of the Attorney General, said the Attorney General does not normally comment on legislation that is pending before the Senate or the House. This proposed legislation has direct impacts upon the office of the Attorney General and upon the State Board of Land Commissioners (Land Board), of which the Attorney General is a member. For that reason, the Attorney General asked him to be here today to express on his behalf his opposition to this proposed legislation. **Mr. Early** said it was his hope that his comments will clarify there is no conflict of interest between the Attorney General's role on the Land Board and the supervision of the attorneys that represent IDL.

Mr. Early stated the Attorney General's Office has 121 attorneys, with three that are permanently assigned and retained by IDL. All have specialized experience in any number of areas and all those services are available to IDL. **Mr. Early** explained the roles of the assigned attorneys. One is a specialist in real estate land transactions, another handles litigation for fire cost recovery, and another provides administrative law support on issues like encroachment permits on navigable lakes, fire protection, and related services.

Mr. Early said they provide legal advice on all matters related to the agency's actions. IDL manages 2.5 million acres of land surface and 3.4 million acres of mineral reserves within the State of Idaho. It has 303 full-time employees and 223 temporary or seasonal employees. IDL is a business and it is charged by the Constitution with making money for the endowments and that involves any number of business transactions on a daily basis throughout the year. IDL is also a regulatory agency with significant regulatory responsibilities for navigational encroachments, mine reclamation, forest protection, fire protection, and associated land management activities. As a government agency, IDL has to comply with statutes, constitutional mandates, and the Administrative Procedures Act.

Mr. Early said the scope of the work done by the Attorney General's Office is broad and specialized, and cannot be obtained on the market readily, and the experience they bring to this department is invaluable. **Mr. Early** indicated when deputies in the Attorney General's Office are hired, they are given one direction from the Attorney General: to provide objective, fair, timely, and accurate legal advice to their clients. In closing, **Mr. Early** said their job is to make sure the Director of IDL and the Land Board stay within the law.

Jonathan Oppenheimer, External Relations Director, Idaho Conservation League (ICL), testified in opposition to **S 1090** via Zoom. He said ICL is concerned that this legislation may interfere with the activities of IDL. **Mr. Oppenheimer** also said he does not see a conflict of interest associated with the representation of services that the Attorney General's Office provides to IDL. Another issue that Mr. Oppenheimer noted is the fiscal note, which significantly underestimates the cost to provide legal counsel.

Mr. Oppenheimer provided by email an Attorney General's opinion relating to H 118, S 1090, and H 101 which said all three bills raise serious constitutional concerns because they interfere with the Attorney General's core function of protecting the State's legal interests. **Mr. Oppenheimer** noted that in 2015, the Office of Performance Evaluations generally affirmed that the services that were provided by the Attorney General were a good deal for the Idaho taxpayers. He suggested that if there are concerns, the Legislature's Office of Performance Evaluations determine whether a more efficient system could be pursued.

Mark Radford, Idaho Falls, Idaho, business owner and cattle rancher, testified in opposition to **S 1090**. He said the fiscal note that Senator Harris presented is inaccurate, as the \$250 per hour charge is not even close to the actual charge. **Mr. Radford** also expressed concern over the hiring of independent lawyers who could charge any amount. He also said the bill did not include a budget.

Senator Stennett asked Dustin Miller, Director, IDL, if he had any discussion with the sponsor of the bill. **Mr. Miller** replied that he had not had any discussion with Senator Harris. **Senator Stennett** then inquired if IDL was having any difficulty with the way the Attorney General was representing IDL's interests. **Mr. Miller** said no, they were not. **Senator Stennett** then said it was her understanding that IDL has a degree of autonomy by the Constitution in order to do what their fiduciary or endowment responsibilities are. Aside from the Land Board, is that correct? **Mr. Miller** replied it was correct. He said the Land Board sets the policy for the department and it is his job as the director to focus on implementation of those directives.

Senator Stennett's last question was inquiring if Mr. Miller, as the director of IDL, could ever find the equivalent expertise, the diversity, that was mentioned by Mr. Early from outside counsel. **Mr. Miller** stated it would be very difficult to find that level of expertise.

Vice Chairman Johnson asked Mr. Early if there is in current statute an exemption that an agency may apply for so that they don't have to use the Attorney General's staff. **Mr. Early** responded by saying the major departments of the state government receive their legal services from the office of the Attorney General. There are a small number of very limited exceptions where they are allowed to retain or seek their own counsel.

Senator Harris closed the discussion by asking why a board of directors would have an attorney who also represents the company. He said that creates a conflict and asked that the bill be sent to the floor with a **do pass** recommendation.

MOTION:

Senator Patrick moved that **S 1090** be sent to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion.

DISCUSSION:

Senator Heider quoted an old saying: "If it ain't broke, don't fix it." He said in this particular situation, the system is not broken, and he will be voting no. **Senator Siddoway** said the bill states that the Attorney General shall not represent or provide legal service to IDL. For that reason, he supports the bill. **Vice Chairman Johnson** indicated he would be more comfortable supporting the bill if the Office of Performance Evaluation studied what appears to be a conflict of interest and also, Committee members expressed some very valid concerns. **Senator Rabe** said she did not see clarity in the language and also has some concerns about its legality. That could cause additional litigation and expenses.

**ROLL CALL
VOTE:**

Vice Chairman Johnson called for a roll call vote on the motion. **Senators Van Orden, Patrick, and Siddoway** voted aye. **Senators Rabe, Stennett, Heider, and Vice Chairman Johnson** voted nay. Chairman Vick and Senator Guthrie were absent. The motion failed.

ADJOURNED:

There being no further business at this time, **Vice Chairman Johnson** adjourned the meeting at 3:00 p.m.

Senator Johnson
Vice Chair

Juanita Budell
Secretary

February 23, 2021

Chairman Vick/Senator Harris/Members of the Committee:

Please consider this as my testimony in opposition to Senate Bill 1090. I would appreciate it if you could read it into the record.

My name is Bruce Smith. I am a retired natural resource attorney. I spent 30 years in private practice representing ranching, farming, timber, mining, power, and water delivery entities on a variety of natural resource issues involving litigation, permitting, business strategy, and counseling on various legal matters. I also helped Senate and House committee members with understanding and developing legislation.

Senate Bill 1090 is fundamentally flawed both in its substance and in drafting. Two problems are readily apparent.

First, it is likely unconstitutional. It is easily foreseeable that the bill could deprive the Board of Land Commissioners (Land Board) and the Department of Lands the ability to fulfill their fiduciary obligations to the endowment, obligations that are enshrined in the constitution. The Land Board and the Department have to address a range of complex matters that require specialized legal advice unique to their constitutional obligations. The bill fails to take into consideration, accommodate, and respect the obligations of and issues confronting these constitutional officers and the Department.

Second, the bill is based mostly on speculation and conjecture and a misunderstanding of how the Land Board and Department of Lands operate. It attempts to address concerns that are currently resolvable without the radical restrictions imposed by the legislation. Based on my experiences over 30 years, I contacted the bill sponsor in the House to try to understand the basis for and concerns that were driving the companion House bill. Representative Blanksma told me the House bill was not based on a constituent request and, more critically, she could not identify a single specific instance where the problems envisioned by the bill had actually occurred. It would be helpful to understand if the same is true for the Senate bill. If there are specific examples of problems, they need to be identified so a true understanding is available to the legislature. Also, since the fiscal impact is identified in the bill description, the fiscal impact is grossly misrepresented. There is zero chance the Land Board and Department will get the legal representation they would need for \$250/hour from the private sector. Idaho citizens will end up paying dearly for this misguided legislation.

The above comments are consistent with my experiences in 30 years of representing natural resource clients. I do not recall a single instance where a client voiced concerns with the situation the House bill and I believe the Senate bill attempt to address. Both bills are based on speculation and conjecture and not supported by fact. House Bill 118 and Senate Bill 1090 deserve a rapid and un-tragic death and a shared grave to save time and money.

Thank you,

Bruce Smith
2809 S. Shadywood Way
Boise, ID 83716
208-805-0133

AMENDED AGENDA #1
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, March 01, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
<u>RS28681</u>	A Joint Memorial opposing the removal or breaching of the dams on the Columbia-Snake River System. Unanimous Consent Request for Referral to a Privileged Committee for Printing	Sen. Bayer Chairman Vick
<u>H 57</u>	Relating to Water Resources to eliminate inactive provisions of law.	Gary Spackman, Director, IDWR
<u>HCR 7</u>	A Concurrent Resolution to authorize the Legislative Council to continue an interim committee to undertake studies of natural resource issues.	Senator Bair
<u>H 93</u>	Relating to Parks and Recreation to implement fee increases for nonresidents.	Representative Okuniewicz
<u>H 25</u>	Relating to Parks and Recreation to eliminate inactive provisions of law.	Susan Buxton, Interim Director, IDPR

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 01, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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

RS 28681 **A Joint Memorial Opposing The Removal Or Breaching Of The Dams On The Columbia-Snake River System.** **Senator Bayer** presented **RS 28681** and said it is a Senate Joint Memorial opposing the removal or breaching of the dams on the Columbia-Snake River System that provides transportation of commodities, fish and wildlife habitat, recreation, hydropower, flood control, and irrigation. The Memorial enumerates so many of the attributes of the Snake River that Idaho enjoys. **Senator Bayer** asked for unanimous consent to send **RS 28681** to a privileged committee for printing, then returned to the Resources and Environment Committee for further action.

MOTION: **Senator Patrick** asked for unanimous consent to send **RS 28681** to the Senate State Affairs Committee for printing. There were no objections.

H 57 **An Act Relating To Water Resources To Eliminate Inactive Provisions Of Law.** **Gary Spackman**, Director, Idaho Department Water Resources (IDWR), presented **H 57** which proposes to eliminate and amend Idaho laws that IDWR determined to be unnecessary or needed to be streamlined. In most instances, the bill also eliminates characterizes water violations as criminal misdemeanors - except in two instances, recreational dredge mining and injection wells.

Mr. Spackman said that when the Ground Water Act was enacted in 1951, the Act did not affect existing applications to appropriate ground water. The Act can be repealed because IDWR has no applications that were pending on or before 1951. Another elimination was how IDWR was to use media to notify water users of the requirement to file statutory claims. The claims were due by 1983. IDWR complied with the requirement in the late 70's, early 80's.

Mr. Spackman stated chapter 19, title 42 is being repealed because the chapter authorized the construction of dams and booms on the Clearwater River for timber transport purposes. Dams and booms are no longer being used for timber transport on the Clearwater River.

Mr. Spackman spoke next regarding amendments eliminating criminal enforcement: drilling a well without the driller holding a well drilling license; stream channel alteration; and violations of laws governing drilling, operation, and abandonment of geothermal wells over 212 degrees Fahrenheit. **Mr. Spackman** said IDWR will rely on civil enforcement, rather than criminal enforcement.

Mr. Spackman explained the reasons for recreational dredge mining and injection wells to not be eliminated. Sheriffs in rural counties have employed the criminal enforcement to remove folks from a river or stream when there are egregious activities. Repeal of criminal enforcement for injection wells would result in the loss of state primacy over injection well oversight.

DISCUSSION: **Senator Stennett** said it appears that penalties and violations are being deleted. **Mr. Spackman** replied that IDWR can pursue two paths - criminal or civil enforcement and there are penalties. **Senator Stennett** inquired if IDWR can pursue criminal action. **Mr. Spackman** said IDWR is attempting to eliminate the associated criminal provisions.

TESTIMONY: Written testimony was provided by Paul Arrington, Executive Director and General Counsel, Idaho Water Users Association (IWUA), stating that IWUA is in support of **H 57**.

MOTION: **Senator Bair** moved to send **H 57** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Bair will be the floor sponsor.

HCR 7 **A Concurrent Resolution Stating Findings Of The Legislature And Authorizing The Legislative Council To Appoint A Committee To Undertake And Complete A Study Of Natural Resource Issues.** **Senator Bair** said **HCR 7** would authorize the Legislative Council to continue an interim committee to undertake studies of natural resource issues, particularly the water resources of the state.

MOTION: **Senator Burtenshaw** moved to send **HCR 7** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. Senator Bair will be the floor sponsor.

H 93 **An Act Relating To Parks And Recreation To Revise Provisions Regarding Certain Fees.** **Representative Okuniewicz** presented **H 93** and stated for many years, Idaho's state parks have been so full of out-of-state patrons that Idaho residents struggle to access the parks. **Representative Okuniewicz** said one solution that he pursued was to set aside a certain number of spaces for Idaho residents, but the Federal Land and Water Conservation Fund said that ability was not allowed to provide preferential reservations for in-state residents.

Representative Okuniewicz said **H 93** doubles the camping and entry fees at the five most popular parks. The revenue is expected to increase by \$1.4 million a year, and could exceed \$2 million a year if it is expanded beyond the minimum number of locations now identified. The proceeds must be used at the parks. **Representative Okuniewicz** said many other states charge more for nonresidents than residents.

DISCUSSION: **Senator Guthrie** asked for clarification on the word "substantially." **Representative Okuniewicz** said that was done at the request of the Idaho Department of Parks and Recreation (IDPR). IDPR was concerned if it was mandated exactly doubled, it could be troubling. To avoid that, the word "substantially" was used after discussing it with a drafting attorney. **Senator Guthrie** inquired if the list of parks is fluid. **Representative Okuniewicz** said IDPR is given complete flexibility on where to implement the fees, which would be the parks experiencing heavy traffic from out-of-state patrons.

Susan Buxton, Interim Director, IDPR, commented that this past year there have been 1.7 million more users of Idaho's parks and recreation facility programs. As far as camping, there are approximately 300,000 camping nights per year that are available and one-half of those are generally used by out-of-state residents. **Ms. Buxton** said IDPR proposed a fee increase for the \$10 park passport, but there wasn't a lot of support for that, so they looked elsewhere for revenue. **Senator Stennett** said she noted that Ms. Buxton said Idaho had 1.7 million more users, and asked what the total number of users in the state park system are annually. **Ms. Buxton** replied in the last year, the total number was 7.7 million users.

Chairman Vick asked about current fees for camp spaces for residents and nonresidents. He said if the fees are increased, there needs to be a sense of the amount of increase. **Ms. Buxton** said it depends on the type of campsite, which tier the campsite is in, and what time of year it will be used. **Ms. Buxton** said she could provide the fee schedule to whomever wants one.

Senator Guthrie inquired as to what identification is used for nonresidents at campsites. **Ms. Buxton** said driver's licenses are used to determine residency.

MOTION:

Senator Johnson moved to send **H 93** to the floor with a **do pass** recommendation. **Senator Bair** seconded the motion. The motion carried by **voice vote**. Chairman Vick will be the floor sponsor.

H 25

An Act Relating To Parks and Recreation To Eliminate Inactive Provisions Of Law. **Ms. Buxton** provided a handout to the Committee outlining the nine sections of Idaho Code that are no longer necessary for the operations of IDPR. Following are the reasons for deletion:

1. Pertaining to Heyburn State Park - unnecessary to acknowledge that state laws apply.
2. Covers agreement with the United States to operate lands adjacent to Lake Walcott and American Falls Reservoir and Cascade Reservoir as Recreational areas. Also, authority for Bureau of Reclamation leases.
3. Related to administration of areas by IDPR Board that duplicates authorities granted (donations, rules, leases).
4. Pertains to IDPR Board's expenditure authority.
5. Concerns Farragut State Park's boundaries which do not need to be described in statute.
6. Covers the management of Farragut State Park.
7. Relates to the potential sale of property at Farragut State Park.
8. Concerns Register Rock, Massacre Rocks State Park and Historical Monument.
9. Pertains to the acquisition of the Spring Shores Dock at Lucky Peak State Park and a one-time spending authorization.

Ms. Buxton said the proposed deletions were discussed at three public meetings in 2019 and a public hearing in 2020, and no comments were received.

MOTION:

Vice Chairman Johnson moved to send **H 25** to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Vice Chairman Johnson will be the floor sponsor.

ADJOURNED:

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

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, March 03, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	Approval of Minutes of February 10, 2021	Senator Stennett Vice Chairman Johnson
	Approval of Minutes of February 15, 2021	Senator Guthrie Senator Rabe
	Approval of Minutes of February 17, 2021	Vice Chairman Johnson Senator Heider
H 91	Relating to Fish and Game and to revise provisions regarding bait.	Representative Lickley
H 99	Relating to water quality and to provide for water quality innovation and pollutant trading.	Representative Vander Woude
S 1123	Convert Lava Hot Springs Foundation Fund to a continuously appropriated account. Committee discussion (only) and vote.	Colby Cameron. Bureau Chief for Regulatory & Legislative Affairs, Division of Financial Management

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 03, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, and Rabe

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 1:30 p.m.

MINUTES APPROVAL: **Vice Chairman Johnson** moved to approve the Minutes of February 10, 2021. **Senator Rabe** seconded the motion. The motion carried by **voice vote**.

Senator Guthrie moved to approve the Minutes of February 15, 2021. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Johnson moved to approve the Minutes of February 17, 2021. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

H 91 **Relating to Fish and Game and to Revise Provisions Regarding Bait.** **Representative Laurie Lickley** said **H 91** is a very simple piece of legislation that clarifies Idaho Code § 36-1103 to allow for the use of inedible portions of game for bait when trapping. The clarification will enable the trapping regulations to be consistent, uniform, and prevent confusion in the field.

TESTIMONY: **Paul Kline**, Deputy Director, Idaho Department of Fish and Game (IDFG), said the Fish and Game Commission supports **H 91**. This bill addresses inconsistencies in rules regarding the use of bait for trapping wildlife.

Chyla Wilson, Governmental Affairs, Idaho Farm Bureau Federation, stated they support **H 91**. **Ms. Wilson** said the members of the Federation are very aware of how important trappers are when it comes to managing predators in the State.

Benn Brocksome, representing Idaho Sportsmen, testified in support of **H 91**. **Mr. Brocksome** stated the Idaho Sportsmen Board of Directors and Policy Committee voted unanimously to support this bill. This legislation clarifies language for the use of bait for fur-bearers, predators, and wolves. This process gives additional flexibility to trappers to use bait; and ensures the rules, laws, and regulations trappers follow are consistent across species.

MOTION: **Senator Heider** moved to send **H 91** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

Chairman Vick changed the order of the bills on the Committee's calendar, saying he received a request for **H 99** to be heard last.

S 1123 **Convert Lava Hot Springs Foundation Fund to a Continuously Appropriated Account.** **Chairman Vick** stated **S 1123** was heard and discussed at an earlier meeting, so no public testimony will be taken. Matthew Reiber, Financial Management Analyst, Division of Financial Management, was present to answer any questions from the Committee. However, there were none asked.

MOTION: **Senator Burtenshaw** moved to send **S 1123** to the floor with a **do pass** recommendation. **Vice Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

H 99 **Relating to Water Quality and to Provide for Water Quality Innovation and Pollutant Trading.** **Representative John Vander Woude**, who presented the bill, said **H 99** authorizes a water quality innovation and pollutant trading program in Idaho and provides the Department of Environmental Quality (DEQ) authority to regulate the program. **Representative Vander Woude** emphasized that it is voluntary and allows private industry to get involved in keeping Idaho's waters clean and receiving some credit for taking out pollutants. **Representative Vander Woude** said it can become very expensive for small cities or municipalities to remove the remaining pollution and if another source can remove the pollutant at a much lower cost, it will be better for the taxpayers and the State of Idaho.

DISCUSSION: **Vice Chairman Johnson** asked Representative Vander Woude how he perceives this program working and if he already had some experience with the program. **Representative Vander Woude** replied that he toured a prospective site for reducing pollutants and talked with members of private industry and also the agricultural industry. **Representative Vander Woude** got the impression both industries are in agreement there is real potential with this program to keep Idaho's waters cleaner.

Vice Chairman Johnson asked for Representative Vander Woude's opinion of lines 22 and 23 of the bill, which state, "The department is authorized to investigate, review, approve, modify, or deny water quality trades." **Representative Vander Woude** said DEQ may set up rules and framework, and follow guidelines on water quality trading.

TESTIMONY: **Dr. Mary Anne Nelson**, Administrator, Surface and Wastewater Division, DEQ, testified in support of **H 99**. **Dr. Nelson** said water quality trading under the Clean Water Act is an option to help facilities comply with effluent limitations in a discharge permit. A trading framework is used to guide and encourage trading between point sources and nonpoint sources. A water quality trading framework sets up the basics of how a trading program would work in an individual watershed. The framework would address the implementation questions that need to be resolved such as what is an appropriate ratio, how the trading credits will be verified, and how trade banks may be launched.

Dr. Nelson stated that water quality trading is most useful in instances where a water body is not meeting its beneficial use designations. For those water bodies, DEQ works with local stakeholders to draft a pollution reduction plan referred to as a "total maximum daily load" (TMDL). This plan characterizes the water body as it exists identifying all the various sources of the specific pollutant and then evaluates what the concentration of the pollutant in the water should be to support the beneficial uses.

In 2019, the Environmental Protection Agency issued a revised policy guidance memo to update the national policy on trading. The memo promoted the adoption of market-based programs to incentivize the implementation of technologies and practices to reduce nonpoint source pollution; provided additional guidance and policy options to stakeholders for developing and implementing market-based programs; and promoted increased investment in conservation actions, she said.

Dr. Nelson said DEQ has worked with the Idaho Water Users Association (IWUA) and others in reviewing the draft legislation. DEQ believes this legislation provides the affirmative authority to the agency to oversee trading programs while avoiding prescriptive measures that may hinder the development of a trading market. The concept of water quality trading has been around for 25 years, but it has not been utilized to any great degree in Idaho. (See Attachment 1 for Dr. Nelson's full testimony.)

DISCUSSION: **Senator Patrick** asked about temperature trading. **Dr. Nelson** replied that temperature trading is a little more unique because it doesn't have pollutant loads in pounds per day or in a concentration. It is a very significant modeling effort that goes into evaluating and creating a temperature trial. **Dr. Nelson** indicated that DEQ would much rather focus on the nitrogen and phosphorus as DEQ has a better handle on those.

Senator Guthrie asked about trading rights between entities. **Dr. Nelson** said after agreements are established, they are submitted to DEQ, which then incorporates agreements into the permits. Permits are renewed on a five-year basis after re-evaluation. **Senator Guthrie** said he understands the agreements are flexible. **Dr. Nelson** replied that was correct.

Chairman Vick inquired if rules would be drafted or if discharge permits would be issued on a case-by-case basis. **Dr. Nelson** said DEQ wants to develop a guidance document that outlines the process before it begins to consider what needs to be in rule versus what can be allowed to work in the free market, rather than being regulated. **Chairman Vick** asked if the Legislature will have a chance to review the guidance documents. **Dr. Nelson** said no, but anyone is welcome to participate in DEQ's guidance meetings.

Chairman Vick said lines 22 and 23 of the bill, states the department is authorized to investigate, review, approve, modify, or deny water quality trades and asked if guidance would be developed in those areas as well. He stated he is concerned about arbitrary decisions. **Dr. Nelson** said DEQ would develop guidance and one they have looked at is the use of a third party.

Vice Chairman Johnson asked if DEQ is aware of any risks, or financial or legal obligations, they may assume by establishing what qualifies as a trade and trading frameworks. **Dr. Nelson** said she didn't know of any risks from a financial standpoint but suggested a deputy attorney general could provide a more definitive answer. **Vice Chairman Johnson** said he would appreciate a follow-up as to the risks in entering this type of program.

TESTIMONY: **Dan Steenson**, Attorney, Sawtooth Law Offices, said he represents numerous water delivery organizations, drainage organizations, and water users, particularly in the agricultural sector. **Mr. Steenson** said he is also a director of the Lower Boise Watershed Council. He said he worked on this legislation with the Idaho Water Users Association and the Legislative committee.

Mr. Steenson said he wanted to speak to water quality trading from a water user's perspective. He provided two handouts that explained water quality trading and what it intends to accomplish. **Mr. Steenson** presented a program using slides to illustrate water quality trading. The following is an overview:

1. An impaired water body does not meet water quality standards.
2. TMDL sets instream targets and load reductions.
3. Implement a high-cost mandatory point source treatment to meet TMDL allocation.
4. Lower cost voluntary nonpoint source reduces more loading than TMDL allocation.

5. Trade contract between point source and nonpoint source.
6. Point source provides funding for nonpoint load reduction through water quality trade.
7. Provides a credit toward load requirements if load reduction is financed.

Mr. Steenson reviewed the benefits of the program.

Cities:

1. meets discharge permit requirements
2. lower cost
3. savings for infrastructure and other needs

Agricultural producers:

1. funding source for Best Management Practices installation and maintenance
2. sediment also reduced
3. projects enhance agriculture production and efficiency

Watershed:

1. water quality standards met
2. lower cost to the local economy
3. increased local collaboration and control of water quality management

Mr. Steenson addressed Vice Chairman Johnson's inquiry as to the agency's additional liability. He said the agency's only involvement in the trade transaction is to approve the credit as a basis for complying with the permit. The agency is simply performing a regulatory function. **Mr. Steenson** responded to Senator Patrick's inquiry regarding temperature and said reduction of temperature was achieved by municipalities considering the requirement of the installation of chilling towers. In response to the Chairman's inquiry about guidance, **Mr. Steenson** said there is more than adequate guidance that was thoroughly vetted over a long period of time.

Senator Bair said irrigators converting from flood irrigation to drip and sprinkler irrigation caused a significant reduction in incidental recharge to the aquifer in other parts of the State. He inquired if sprinkling was converted in the Treasure Valley, there would be a significant decrease in incidental recharge and a lowering of the aquifer beneath the valley. **Mr. Steenson** replied that incidental recharge comes from seepage from field irrigation and seepage from canals and drain treatment projects where water is collected.

TESTIMONY: **Johanna Bell**, Policy Analyst, Association of Idaho Cities (AIC), testified via Zoom on behalf of Kelley Packer, Executive Director, AIC, and the Board of AIC, they would like to express support for **H 99**. Ms. Bell also submitted written testimony.

Paul Arrington, Executive Director, IWUA, said IWUA members execute these types of projects throughout southern Idaho and this will be a helpful program. IWUA is in support of **H 99**, according to Mr. Arrington.

MOTION: **Senator Patrick** moved to send **H 99** to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion.

DISCUSSION: **Senator Rabe** said she wanted to make sure that progress is being made to minimize phosphorous and other pollutants that go into the water. She said **H 99** is a good step in the right direction and in tandem with other efforts to improve water quality.

VOICE VOTE: The motion carried by **voice vote**.

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

Senator Vick
Chair

Juanita Budell
Secretary

Good afternoon Mr. Chairman and members of the committee. I'm Dr. Mary Anne Nelson, the Surface and Wastewater Division Administrator with the Department of Environmental Quality. I am here this afternoon in support of HB099 Water Quality Trading.

Water quality trading (WQT) under the Clean Water Act (CWA) is an option to help facilities comply with effluent limitations in a discharge permit. Water quality trading may be between two point sources, or between a point source and nonpoint source project. For trading to occur, one entity has to remove the pollutant more than is necessary so the other may purchase the credit. Most often the pollutants being traded are phosphorus and nitrogen as they are most prevalent in nonpoint source pollution; however trading is not necessarily limited to these. A credit is typically measured in pounds equivalent and can be generated by a point source overcontrolling its discharge or by a nonpoint source installing best management practices (BMPs) that are different than or in addition to its baseline.

A trading framework is used to guide and encourage trading between point sources and non-point sources. A water quality trading framework sets up the basics of how a trading program would work in an individual watershed. The framework would address the implementation questions that need to be resolved such as what is an appropriate trading ratio, how the trading credits will be verified, how trade banks may be set up, and other concerns.

Water quality trading is most useful in instances where a water body is not meeting its beneficial use designations. For these, DEQ works with local stakeholder to draft a pollution reduction plan referred to as a total maximum daily load (TMDL). This plan characterizes the water body as it exists identifying all the various sources of the specific pollutant and then evaluates what the concentration of the pollutant in the water should be to support the beneficial uses. It then creates a set of pollutant reductions that need to be met in order for that water body to fully support the uses. If there are point sources (wastewater treatment plants, or industrial plants), the TMDL will allocate a specific load (pounds per day) of the pollutant that can be discharged by the point source. These specific load limits are then incorporated into a discharge permit as effluent concentration limits. Water quality trading allows the discharger to buy additional pounds of loading if they are unable to meet the specific limit in their permit, or if the cost of meeting those limits is higher than the cost of purchasing credits.

Water quality trading began as a concept in the mid 1990's with EPA's Draft Framework for Watershed-Based Trading. EPA has long interpreted the CWA to allow pollutant reductions from water quality trading and offsets to achieve help compliance with CWA regulatory requirements. Neither the CWA nor the EPA's implementing regulations explicitly address water quality trading. So in the absence of explicit statutory language or regulations allowing or prohibiting water quality trading, the EPA has encouraged states to develop and provided guidance for states and stakeholders to consider when developing market-based programs like water quality trading.

In 2019, EPA issued a revised policy guidance memo to update the national policy on trading. This memo promotes the adoption of market-based programs to incentivize the implementation of technologies and practices to reduce nonpoint source pollution; provides additional guidance and policy options to stakeholders for developing and implementing market-based programs; and promotes increased investment in conservation actions. Over the years DEQ has worked with

interested parties to help further water quality trading concepts and frameworks.

Trading can provide greater flexibility on the timing and level of technology a facility may need to install. It can reduce overall compliance costs and encourage voluntary participation of non-point sources within the watershed. It may also provide ancillary environmental benefits such as flood retention, riparian improvement, and habitat. Water quality trading is a tool for regulatory authorities, point source discharges, and entities wishing to improve water quality associated with non-point source pollution.

Pollutant sources in a watershed may face very different costs to control the same pollutant. Under trading programs, a facility with permitted discharges that's facing higher pollution control costs may be able to meet their regulatory obligations by purchasing environmentally equivalent pollution reductions from another source at a lower cost. Trading may produce substantial cost savings while meeting the same water quality goal. It may also offer greater flexibility on the timing and level of technology a facility might install.

DEQ has worked with the Idaho Water Users Association and others in reviewing the draft legislation. We believe this provides the affirmative authority to the agency to oversee trading programs while avoiding prescriptive measures that may hinder the development of a trading market. While water quality trading as a concept has been around for 25 years, it has not been utilized to any great degree in Idaho. This is partially due to uncertainty on the part of buyers. The capital investment involved with building or upgrading a water treatment plant is significant, in the tens to hundreds of millions of dollars. When public works, city councils, and others make decisions on how to best move forward with that capital investment, they are looking for regulatory certainty that what they choose to do will comply the permit. Without the explicit approval authorization that this legislation provides, the path towards investing in water quality trading does not have the same certainty that building or upgrading a treatment process does. So even though there may be a net benefit for water quality trading the assurance of permit compliance is not there thereby creating a hurdle to the trading market.

For these reasons, DEQ supports HB099 and respectfully requests the committee's support with a motion to approve and a do-pass recommendation. Thank you and I'm happy to stand for questions.

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, March 08, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment	Voting will be held on the Gubernatorial reappointment of James Yost to the Northwest Power and Conservation Council for a term commencing January 15, 2021 and expiring January 15, 2024.	
SJM 103	A Joint Memorial opposing the removal or breaching of the dams on the Columbia-Snake River system and its tributaries.	Senator Bayer Chairman Vick
H 185	Enables a flood control district to approve annexation petitions filed by landowners whose lands are not contiguous to the district's existing boundaries.	Paul Arrington, Ex. Director, Idaho Water Users Association
H 182	Provides a streamlined process to adjust canal company boundaries where there is no increased use and no injury to other water rights.	Paul Arrington, Ex. Director, Idaho Water Users Association

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 08, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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

GUBERNATORIAL REAPPOINTMENT: **Vice Chairman Johnson** moved to send the Gubernatorial Reappointment of James Yost to the Northwest Power and Conservation Council for a term commencing January 15, 2021 and expiring January 15, 2024 to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Vice Chairman Johnson will be the floor sponsor.

SJM 103 **Columbia-Snake River System.** **Senator Regina Bayer** presented **SJM 103**, which opposes the removal or breaching of the dams on the Columbia-Snake River system and its tributaries. She said U.S. Congressman Mike Simpson proposed a \$33 billion dollar plan to breach the lower Snake River dams, which ignited a firestorm in the Pacific Northwest. Governor Brad Little stated on February 18, 2021, "that breaching the dams would have devastating impacts on Idahoans and vital segments of Idaho's economy."

Senator Bayer provided some historical facts regarding the Columbia-Snake River system:

1. The four lower Snake River dams were constructed under the Flood Control Act of 1944.
2. The federal government built the river system to control flooding, generate hydroelectricity, store municipal and irrigation water supplies, and enable vessels to travel from the mouth of the Columbia River to the most inland port in the nation, which is Lewiston, Idaho.
3. The U.S. Army Corps of Engineers owns and operates 12 dams on the Columbia-Snake River system, including the four dams on the lower Snake River.
4. The Bonneville Power Administration markets and transmits the electricity generated by the hydroelectric dams.

Senator Bayer said all four dams are multiuse facilities that provide navigation, hydropower, recreation, irrigation, and fish and wildlife conservation benefits.

Senator Bayer stated the total commerce from the Columbia-Snake River system is second only to that on the Mississippi River. Wheat is the number one crop in the Pacific Northwest, is grown in 42 of Idaho's 44 counties, and is the State's number two crop in terms of total revenue. Almost half the wheat grown in Idaho is exported through the Columbia-Snake River system, which is the third-largest grain export gateway in the world. If the dams were breached, Pacific Northwest wheat growers would have to pay about another 50 to 80 cents per bushel in transportation costs.

Senator Bayer said without the ability to barge goods down the river, diesel fuel consumption would increase by nearly 5 million gallons per year as barges would be replaced by less efficient trucks. A typical barge tow consists of a towboat and four barges and moves the same amount of cargo as 140 rail cars or 538 semi-trucks. The river system is also a top West Coast system for forest products, mineral exports, and auto imports. A cruise industry is also on the river with 8 vessels bringing approximately 28,000 travelers to the ports of Lewiston and Clarkston. Those passenger numbers are predicted to increase to 33,500 next year, significantly boosting Idaho's economy.

Senator Bayer gave information regarding power, noting the dams provide enough clean energy to power 187 million homes. Removing the dams would destabilize the power grid, increase overall greenhouse emissions, and more than double the risk of regional power outages. **Senator Bayer** said replacing the peaking electrical power capacity of 3,489 megawatts from the four dams would take 3 nuclear or 14 gas-fired or 6 coal-fired power plants.

Next, Senator Bayer noted that in 2008, 2014, and 2020, the National Oceanic and Atmospheric Administration produced opinions that stated breaching the four lower Snake River dams was not a necessary action for salmon recovery. Even the Congressional proponent of breaching the dams said he wanted to be clear that he is not certain removing them will restore Idaho's salmon and prevent their extinction. West Coast wild salmon and steelhead runs are struggling, and the common denominator, according to the scientific community, is the condition of the ocean itself, including the salmon predators.

DISCUSSION:

Senator Stennett said so far, \$17 billion has been spent for fish recovery, and it is projected over the next 30 years another \$20 billion will be spent. Science indicates salmon are more imperiled than ever before. **Senator Stennett** asked why are we pretending to really care about the fish and what about the people who depend on these fisheries. **Senator Bayer** replied that the economy of the Pacific Northwest is contingent upon the dams. Also, there has been some fish recovery on the rivers and the biggest enemy to the salmon is in the ocean. The warming of the ocean, the acidity of the ocean, and the predators are preventing the salmon from getting up the Columbia River.

Senator Stennett inquired about the river's water quality. **Senator Bayer** replied that she has not read any documentation that says the dams have hindered water quality.

Chairman Vick announced that testimony will be limited to two minutes, due to the number of people signed up to testify.

TESTIMONY: **Nathan Small**, Fort Hall Business Council member, testified on behalf of the Shoshone-Bannock Tribes in opposition to **SJM 103**. He said each Legislative Session offers Idaho a chance to envision sound public policy that will improve the delivery of services across the State and develop comprehensive solutions to promote a transition into an uncertain future. **Mr. Small** said **SJM 103** meets neither of those goals. The Tribes recommend engaging directly with Congressman Simpson on his proposal to develop legislation that transitions the Northwest to a more sustainable future, rather than focusing on preserving an antiquated unsustainable piece of energy infrastructure located in Washington and Oregon.

Mr. Small said the intent of developing the current hydro system was to provide for the needs of the region at that time. Many of those facilities were constructed, and in the intervening decades, those needs have changed dramatically.

DISCUSSION: **Senator Patrick** inquired if the salmon ever made it to Fort Hall. **Mr. Small** replied they have not because of natural barriers.

Senator Stennett asked how much opportunity the Tribes have had to participate in the discussion on the dams and fisheries. **Mr. Small** replied the Tribes receive updates every Friday afternoon with Congressman Simpson's staff about what is going on and if progress has been made.

TESTIMONY: **Paul Arrington**, Executive Director, Idaho Water Users Association (IWUA), testified in support of **SJM 103**. He said IWUA represents canal companies, irrigation districts, groundwater districts, and other similar water management organizations throughout Idaho. As a water user organization, they rely heavily on a developed river system to provide water and low-cost hydropower to Idaho's farming and ranching communities. In the past, the water users have supported similar legislative memorials, recognizing the value of the rivers of the river system. **Mr. Arrington** said SJM 110, adopted last year, expressly states opposition to removing the dams, recognition of Idaho's sovereignty over its water resources, prohibition against contributions of water from Idaho's reservoirs for flow augmentation, contention that fish recovery efforts must be based on sound science, support for the maintenance and multiuse benefits of the river system, and finally, the support for the Port of Lewiston, Idaho. **Mr. Arrington** said IWUA supports each of those statements.

DISCUSSION: **Senator Stennett** said there are about 487,000 acre feet of water that is being moved down to help salmon to be able to push through those four dams. If not for the dams, couldn't the water be used for agriculture or for recharge and not have to leave the state. **Mr. Arrington** said 487,000 acre feet of water was part of a bargain and there is an agreement for a 30-year biological opinion on the Upper Snake River that lasts until 2034 with an option to renew for another 30 years.

TESTIMONY: **Brian Brooks**, representing the Idaho Wildlife Federation (Federation), stated it is opposed to **SJM 103** because the bill has several false or misleading statements: 1.) The dams produced thousands of megawatts a year; 2.) Breaching the dams won't help the salmon; 3.) The Governor's Salmon Workgroup excluded the lower Snake River dams removal; 4.) The lower Snake River dams will provide flood control and irrigation; and 5.) The Memorial states there is a 95 percent survival rate at each of the dams. According to Bonneville Power Administration and the Army Corps of Engineers' numbers, over half of Idaho's juvenile fish perish during their migration through the hydro system. Another 15 percent of returning adult fish die from hydro power-related causes.

In closing, **Mr. Brooks** said the Federation did not attend the meeting to challenge support for the lower Snake River dams, but he came to say that if Idaho's people are serious about recovering Idaho's fish, or supporting the hydro system as it stands now, there needs to be honesty about the benefits and drawbacks of the status quo or make a change. If **SJM 103** passes as is, then the people are furthering themselves from the honest work ahead that needs to be done to help the hurting communities.

DISCUSSION:

Senator Stennett asked Mr. Brooks to address the issue of lawsuits that is costing the taxpayers millions of dollars that nobody wants to talk about. **Mr. Brooks** replied the federal agencies have had to recommit to find a new management plan to do no harm to the fish and that resulted in new litigation. The judge found validation in those arguments and the taxpayers have been in this endless litigation process for over 20 years and it will get more restrictive.

Senator Rabe asked about the factual statements in the bill, specifically lines 38 through 40, which say 4 of the 13 listed salmon have a 95 percent survival rate past the dams. **Mr. Brooks** said according to the Bonneville Power Administration and the Army Corps of Engineers' own numbers, over half of Idaho's juvenile fish perish during their migration through the hydro system. It's a combination of water, transport time, powerhouse interactions, hot and stagnant water, and predators. All that put together contributes to one out of two of Idaho's fish dying before they even get below Bonneville Dam, which is the lowest dam in the system. Once they are there is what is referred to as delayed mortality, the stress of that system.

Senator Rabe inquired if Mr. Brooks participated in the proposal and to what extent. **Mr. Brooks** said he went to Washington D.C. a few times for a number of issues that pertain to wildlife, and hunting and fishing, on public lands. On one occasion, he traveled with some guides, outfitters, and business owners from the Clearwater region to specifically talk about Congressman Simpson's proposal. They talked about what the changes would be from the headwaters of the Salmon River all the way to the Pacific Ocean and the costs of replacing power and transportation.

Senator Stennett wanted to know how sport fishing and fisheries being intact and thriving are contributing to Idaho's economy. **Mr. Brooks** said in 2017 or 2018 when the steelhead season closed, the Clearwater region lost \$8.6 million a month. There's a lot more than just outfitters and guides impacted by lower fish returns – it is hotels, bars, restaurants, gas stations, and boat shops.

TESTIMONY:

Will Hart, Executive Director, Idaho Consumer-Owned Utilities Association (ICRA), said they are in support of **SJM 103**. ICRA represents 22 rural electric cooperatives in the U.S. Power is distributed to over 147,000 Idahoans, mostly in rural parts of the state. About 96 percent of the power that is distributed comes from Bonneville Power Administration. This is valuable to their consumers, not only because it is low cost, but because it is reliable emission-free power, green power, renewable energy. **Mr. Hart** said ICRA is actively at the table and is working with Congressman Simpson's office on what changes could be made to the system. ICRA was also at the table with the Governor's Salmon Workgroup and many other collaborative measures across the region over the last 20 years. **Mr. Hart** said ICRA stands in support of calling for protection of the system at this time.

DISCUSSION:

Senator Stennett asked how much of the power actually comes from those dams for ICRA's system. **Mr. Hart** replied it is approximately 1,000 megawatts a year.

TESTIMONY: **Aaron Lieberman**, Idaho Outfitters and Guides Association (IOGA), said he represents an industry that has long been impacted negatively by the decline in sport fishing opportunities for salmon and steelhead. There are between 1,500 and 2,500 outfitters and guides across Idaho licensed for and reliant on salmon and steelhead fishing. Approximately 80 percent of the outfitters and guides live in and contribute to the economies of communities with an average population of 500. He stated **SJM 103** does not address or even acknowledge these impacts or their plight.

Braden Jensen testified in support of **SJM 103** on behalf of the Idaho Farm Bureau Federation (Federation). He stated the agriculture industry is the backbone of the State's economy and is only made possible by its reliable and functional water systems. The State relies heavily on its water resources and the Federation recognizes them among its most valuable assets. **Mr. Jensen** said the Federation supports the continued existence and current usage of all the dams on the Columbia-Snake River system and opposes any effort to destroy or decrease the production of those dams.

Nic Nelson, Executive Director, Idaho Rivers United, testified in opposition to **SJM 103**. He stated the legislation disregards the interests of entire communities and thousands of Idahoans. In 2020, the Federal Environmental Impact Statement and Analysis said the most effective way to recover Idaho's salmon and steelhead is through a naturally free-flowing river. The dams offer no flood control or provide storage for irrigation as **SJM 103** indicates. **Mr. Nelson** said the notion that dams provide thousands of megawatts of energy is factually inaccurate. Over the last 15 years, the lower Snake River dams have produced an average of 963 megawatts of the most expensive power in the Columbia River system. **Mr. Nelson** requested the Committee to vote no and embrace the regional dialogue that will consider how best to restore salmon and steelhead to abundance and ensure all stakeholder interests are addressed.

DISCUSSION: **Senator Stennett** asked Mr. Nelson to address what the dams do to the ecosystem and habitat. **Mr. Nelson** replied, claiming that by removing the dams, cold water would be provided up and down the Columbia River corridor. In 2015, when summer temperatures were exceptionally hot, 95 percent of the returning sockeye population were killed due to hot water temperatures produced by the dams. **Mr. Nelson** said since then, the state of Washington became legally mandated to do a TMDL analysis on the effects of and how to mitigate for temperature and other pollutants.

TESTIMONY: **Richard Durrant** indicated that he is Vice President of the Idaho Farm Bureau Federation, but decided to testify on behalf of himself. He produces agricultural commodities in Ada County on 1,500 acres. **Mr. Durrant** said there are several issues to be discussed regarding **SJM 103**, but issue number one is transportation of commodities and barges are the most economical way to ship grain. He said power is talked about a lot. Congressman Simpson's plan of creating safe, renewable nuclear power on untested, untried principles leave a lot to be desired.

Mr. Durrant said he toured Lower Granite dam last year and met with their fish biologist who estimated the survival rate of the fish going through that plant was 98 percent, which is due to the new turbines and infrastructure that has been installed. **Mr. Durrant** said the predators in and around the ocean were to be considered when discussing the survival of salmon and steelhead. He urged the Committee's passage of **SJM 103**.

Scott Hauser, Executive Director, Upper Snake River Tribe Foundation, said Mr. Small could not complete his testimony due to the time limitations, so he is taking the opportunity to address the remaining two paragraphs of Mr. Small's testimony. **Mr. Hauser** said **SJM 103** presents the concept of modifying the hydro system infrastructure located on the Snake River as inherently negative for Idaho. This approach is disingenuous and counter productive to achieving a more reliable system for end users of the Snake River. Each issue identified in the Memorial can be addressed collaboratively and improve the delivery of services to every resident in the State. Energy can be replaced and located near population centers that are experiencing significant growth and will actually benefit the citizens of Idaho for decades to come.

Mr. Hauser said water resources are currently being sent down the river to mitigate for effects from the Columbia River system and it seems like that water would be put to better use in the Upper Snake from the Tribes' perspective. Recreation experiences can be enhanced on the Snake River through restoration actions similar to the numerous wild and scenic river reaches that made Idaho iconic. Transportation issues can be resolved with a system that provides Idaho's exports with reliable access to global markets.

In closing, **Mr. Hauser** said **SJM 103** offers an approach making the past infrastructure a permanent fixture. The Tribes encourage every member of the Idaho legislature to put aside the current Memorial in favor of actively engaging in discussions with Idaho's delegation in Congress to comprehensively resolve issues surrounding the lower Snake River dams in Washington and Oregon.

DISCUSSION:

Senator Stennett inquired as to how the fisheries, the river system, and their economic benefits serve the Tribes. **Mr. Hauser** said he is not a Tribal member, but has worked over nine years for four Tribes. He said the salmon and Tribal members are as one, the rate of unemployment is incredibly high, diabetes is rampant, and obesity is due to the loss of the salmon and unemployment issues.

Chairman Vick inquired if the Upper Snake River Tribes support the removal of the other dams on the Snake River as well. **Mr. Hauser** replied that he could not speak to that issue.

TESTIMONY:

Wyatt Prescott testified on behalf of the Idaho Grain Producers Association in support of **SJM 103**. **Mr. Prescott** reiterated the importance of the Columbia-Snake River system to Idaho's grain industry and the State economy. He also acknowledged Senator Bayer for her efforts in presenting the Memorial.

**WRITTEN
TESTIMONY:**

Jonathan Oppenheimer, Idaho Conservation League (ICL), submitted written testimony stating ICL is concerned that **SJM 103** misses the mark again. ICL strongly supports efforts to promote recovery of salmon and communities.

Jon Kittell, via Zoom, testified in opposition to **SJM 103**. He said he resides in Riggins, Idaho, and is a fishing guide. Due to the lack of the salmon and steelhead population dwindling, he is looking for work elsewhere. Riggins' economy has depended upon tourism and fishing and now the community is struggling economically.

DISCUSSION:

Senator Stennett said Idaho Department of Fish and Game did a study about 20 years ago as it pertained to Riggins, and just for Chinook, it was \$40 million in revenue that the community was able to do because of the fishery. **Senator Stennett** asked what the monetary decline in revenue has been for Riggins. **Mr. Kittell** replied many businesses are for sale and community members find it difficult to have the income necessary to live there.

TESTIMONY:

Kerry Brennan said via Zoom that he has been a steelhead and salmon fishing guide, outfitter, and business owner for the last 35 years and resides in Riggins, Idaho. He urged the Committee to vote no on **SJM 103**.

Greg Branson, Nezperce Prairie Grass Growers Association, supports **SJM 103**. He suggested the money Congressman Simpson would use to apply for the removal of the dams and compensation to the cities affected would be better spent to make the dams more fish-friendly, improve the rail system, and study the impacts of predators and over fishing in the oceans.

Kelsey Helfrich said she is a fourth-generation owner and outfitter of her family's fly-fishing and whitewater rafting company and next year will be their 100-year anniversary. **Ms. Helfrich** said the family business depends on the health of the rivers and ecosystems. Salmon and steelhead are vital to the ecological health and the economic health of the State. She urged the Committee to vote no on **SJM 103**.

Jerry Myers, a retired river outfitter, requested **SJM 103** be tabled until the Committee has a hearing with Congressman Simpson on his proposal. **Mr. Myers** is opposed to the Memorial.

Chairman Vick said there were seven more people signed up to testify via Zoom, but there wasn't time to hear them, and he apologized for that. **Chairman Vick** said it appears they are all outfitters and all were opposed to **SJM 103**. He then asked Senator Bayer to close the debate.

Senator Bayer said scientific data shows destroying the four lower Snake River dams would have high environmental and economic costs, and very likely would not accomplish the intention of saving salmon, according to the Pacific Northwest Waterways Association. A recent environmental impact study also found that breaching the dams would require massive investments to replace the barging system with rail and trucking infrastructure. Barging is the safest, lowest-cost, and most environmentally friendly mode of transportation for trade. No amount of money can protect the lifestyle and economies of the communities that depend upon the Columbia-Snake River system.

MOTION:

Senator Patrick moved to send **SJM 103** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

DISCUSSION:

Senator Patrick said the effects on marketing hadn't been discussed and he reflected on that issue.

Vice Chairman Johnson said he served on the Governor's Salmon Working Group (Working Group) and recounted extensive discussions about the dams. It is noted in the Working Group's report the impact on fisheries efforts to mitigate these impacts and breaching. **Vice Chairman Johnson** reviewed the Working Group's other recommendations that can improve salmon survival. The Working Group asked that other stakeholders and states be engaged, and that is why, the Working Group is sending **SJM 103** to other delegations.

Senator Rabe stated she is concerned there is misleading information in the Memorial and said a more thoughtful and collaborative approach with more carefully crafted language is needed.

Senator Stennett said there need to be earnest discussions about how the State can make improvements on this issue and not keep the status quo. It is important to remember all the people who earn a living through tourism and sports fishing.

VOICE VOTE:

Voting aye were **Senators Burtenshaw, Guthrie, Patrick, Heider, Bair, Vice Chairman Johnson**, and **Chairman Vick**. Voting nay were **Senators Stennett** and **Rabe**. The motion carried by **voice vote**.

Chairman Vick announced that **H 182** and **H 185** will be added to Wednesday's agenda.

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 3:00 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, March 10, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	Approval of Minutes February 22, 2021	Senator Patrick Senator Heider
	Approval of Minutes February 24, 2021	Senator Stennett Vice Chairman Johnson
	Approval of Minutes March 1, 2021	Senator Guthrie Senator Rabe
H 186	Relating to water.	Representative Lickley Senator Harris
H 184	Relating to water rights.	Paul Arrington, Ex. Director, Idaho Water Users Assoc.
H 267	Relating to water.	Paul Arrington
H 268	Relating to water.	Paul Arrington
H 182	Relating to water.	Paul Arrington
H 185	Relating to flood control districts.	Paul Arrington

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 10, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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

MINUTES APPROVAL: **Senator Patrick** moved to approve the Minutes of February 22, 2021. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Senator Stennett moved to approve the Minutes of February 24, 2021. **Vice Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

Senator Rabe moved to approve the Minutes of March 1, 2021. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

H 186 **Relating to Water.** **Senator Mark Harris** said this legislation clarifies the ability of ranchers to file for stock water rights on federal grazing allotments. The priority date for stock water rights is the date of the original federal grazing authorization. The bill also allows and clarifies the current base property back to the base property associated with the original federal grazing authorization. This legislation clarifies that stock water on federal grazing allotments cannot be moved or used for another purpose.

TESTIMONY: **Paul Arrington**, Idaho Water Users Association (IWUA), said he appreciated Senator Harris bringing **H 186** before the Committee and that IWUA is in support of this bill.

Braden Jensen, representing the Idaho Farm Bureau Federation, said the Federation stands in support of **H 186**. Previously, it was difficult for some livestock owners to provide or obtain the needed documentation to accurately establish their water right priority date. This bill will aid these producers and correctly establish their claim to the beneficial use of the water.

Gary Spackman, Director, Idaho Department of Water Resources (IDWR), stated that **H 186** will simplify the work that a holder of a federal grazing permit has to go through with IDWR to establish a date of priority for their own water rights. There were two difficult tests for a stock water permit holder: obtaining a chain of title for the grazing permit and a chain of title for the base property. This bill will simplify the process by establishing a rebuttable presumption that those two chains of title exist. **Mr. Spackman** indicated that IDWR participated in the drafting and finalization of **H 186** and supports the passing of the bill.

MOTION: **Senator Burtenshaw** moved to send **H 186** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

H 184

Relating to Water Rights. Mr. Arrington said **H 184** proposes amendments to Idaho Code: 1.) A notice of change of ownership to be provided to IDWR whenever a water right is conveyed to a new owner; 2.) A notice to landowners where water rights used on the land are owned by a third party; and 3.) A notice of change of ownership process is not a determination of ownership of that water right and is not an administrative action subject to challenge. **Mr. Arrington** said a water right is a property right, as defined in Idaho law, and when it changes hands, similar to any other piece of property, a legal document is needed to show ownership of the water. Ownership of a water right is determined through a deed, court decree, or other legal documents. If there are disputes over who owns the water, those disputes have been and will continue to be done through a quiet title action.

DISCUSSION:

Vice Chairman Johnson asked for a definition of "quiet title." **Mr. Arrington** replied it is a legal term that basically means a court adjudication to determine ownership to title. In other words, the court is quieting the disputes in the title of that water.

Senator Guthrie said it seemed to him that when a title search is done on an exchange of property that it would affect the water rights. **Mr. Arrington** said water rights are not tied to the land directly, so it is not a simple matter of just doing a title search for a deed or legal document for water rights. **Mr. Arrington** said meetings with title companies and realtors have been held to find a solution to the problem of how to better work the transfer of ownership of water rights.

Senator Patrick asked if liens can be filed on water rights. **Mr. Arrington** said he was not aware of a lien on a water right in the same sense of filing a lien on property.

MOTION:

Senator Guthrie moved to send **H 184** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

H 267

Relating to Water. Mr. Arrington said **H 267** establishes the Idaho Water Resource Board's water management account. It is intended to provide more flexibility to the Board in managing the account and identifying projects. Moneys that are appropriated to that account are used for water projects throughout Idaho such as: flood management grants; the raising of Anderson Ranch dam; approval of studies which conserve or increase water supply; improving drought resiliency; and addressing water sustainability. **Mr. Arrington** said there are certain projects that are not subject to the \$50,000 annual grant limitation. These include large infrastructure projects and flood management grants.

Mr. Arrington said also, the legislation confirms that any projects must consider and protect existing water rights and uses, and requires additional information regarding the considered projects' actual expenditures.

MOTION:

Senator Bair moved to send **H 267** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

H 268

Relating to Water. Mr. Arrington said **H 268** establishes the general rule that new water rights must be developed within five years. However, there are two exceptions. If there is litigation about the ownership of that water right, the time can be extended. The other exception is the large permit exemption. The development of large water rights is regularly completed in phases and may include multiple permits. This includes municipal, industrial, and agricultural projects. **Mr. Arrington** said it is particularly true of small community systems providing water for domestic irrigation and/or heating purposes that are regularly developed in phases in many circumstances. A 10-year extension of development for a water permit may be granted for multiple permits relating to a common diversion or distribution system.

MOTION:

Senator Heider moved to send **H 268** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

H 182

Relating to Water. **Mr. Arrington** stated **H 182** will provide a streamlined process to adjust canal company boundaries where there is no increased use and no injury to other water rights. Circumstances have arisen across the state where the place of use identified on a canal company's water right does not match what is actually happening on the ground. This discrepancy can be the result of an oversight during a water rights adjudication or even an adjustment of water usage within the canal company, he said. Presently, the canal company can only correct those issues by filing an application for transfer, which can be very expensive and can result in unnecessary litigation.

Mr. Arrington said three conditions must be met: 1.) No increase in diversion rate or the number of acres irrigated; 2.) There is no enlargement; and 3.) There will be no injury to other water rights. If these conditions are met, the canal company can submit a letter and a map to show what the new digital boundary should be. IDWR may then adjust the canal company's boundaries without a full application for transfer process.

DISCUSSION:

Senator Stennett asked if this process would streamline the workload of IDWR. The question was deferred to Mr. Spackman, and his response was these particular circumstances are infrequent and there might only be one or two instances a year.

Chairman Vick said Mr. Arrington mentioned unnecessary litigation and asked what type of issues were litigated. **Mr. Arrington** said what he was referring to was that sometimes there are disputes or disagreements within an irrigation district or a canal company that are unrelated to the boundaries.

MOTION:

Senator Burtenshaw moved to send **H 182** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

H 185

Relating to Flood Control Districts. **Mr. Arrington** said **H 185** enables a flood control district to approve annexation petitions filed by landowners whose lands are not contiguous to the district's existing boundaries.

MOTION:

Vice Chairman Johnson moved to send **H 185** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:15 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, March 15, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
H 187	Relating to fish and game.	Emily McClure
H 235	Relating to fish and game.	Representative Okuniewicz
H 239	Relating to phosphate.	Benjamin Davenport, Executive Vice President, Idaho Mining Association

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 15, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

**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: **Vice Chairman Johnson** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m. He announced Chairman Vick was in another meeting.

PASSED THE GAVEL: Vice Chairman Johnson passed the gavel to Chairman Vick who just arrived after attending another meeting.

Chairman Vick said the first order of business is **H 187**, to be presented by Emily McClure, an attorney for Riley Stegner and Associates.

H 187

Relating to Fish and Game. Ms. McClure said the State Legislature has a long history of encouraging private landowners to open up their lands to public access for recreational purposes. Under the Large Tracts program, the owners of large amounts of forestland enter into an agreement with the Idaho Department of Fish and Game (IDFG) to open up their lands to the public for recreational purposes. In return, IDFG agrees to enforce agreed-upon restrictions. **Ms. McClure** said currently, almost 1 million acres of privately owned forestlands are open to the public through this program.

Ms. McClure stated in 2020, there was an explosion of outdoor recreational activity and a massive increase in the number of visitors on large tracts of land. In the first six months of 2020, IDFG saw a 65 percent increase in fishing license sales over the previous year. While most people followed signage and respected gates and fences, some did not. Inappropriate motor vehicle use caused extensive damage. One landowner incurred damages estimated as much as \$74,000 by the end of the year for fencing, gate destruction, trail obliteration, and crop loss. This particular landowner hired private security contractors when IDFG was reluctant to act because there was confusion about the parameters for enforcement.

Ms. McClure said large tract landowners have worked with IDFG staff to agreed-upon language to clarify the situation. **H 187** states that upon entering into a recreational access agreement with a private landowner, IDFG officers would be authorized to enforce motorized vehicle restrictions as long as the private landowners and IDFG agree upon what those restrictions are. Notices would be posted on properties, IDFG's website, and the nearest regional office. The bill would also provide clear penalties for violations. IDFG already has the authority to enforce trespass laws on private property, she said.

Ms. McClure said the following businesses are in support of **H 187**: Stimson Lumber Company; Hancock Forest Management; Molpus Woodlands Group; Bennett Lumber; PotlatchDeltic; Private Property Rights Coalition; Idaho Cattle Association; Food Producers of Idaho; and recreation groups. **Ms. McClure** said the bill would encourage landowners to enter into agreements with IDFG to open their properties to public recreation and ensure IDFG will uphold the agreements. As a result, Idahoans will continue to have access to private forestlands that could otherwise be closed, according to **Ms. McClure**.

DISCUSSION: **Senator Burtenshaw** inquired if a contract could be cancelled. **Ms. McClure** said it would depend on the specific details of that particular contract.

Vice Chairman Johnson inquired about the different wheel widths and how the restrictions apply. **Ms. McClure** said the U.S. Forest Service have their own restrictions regarding wheel widths on their trails, which are different from the private landowners' properties regulating motorized use.

MOTION: **Senator Bair** moved to send **H 187** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion.

TESTIMONY: **Benn Brocksome**, testifying on behalf of Idaho Sportsmen, said they support **H 187** and appreciate the landowners who have opened up their land to public access.

Paul Kline, Deputy Director, IDFG, stated the Idaho Fish and Game Commission supports **H 187**. This bill makes a narrow but important addition to Idaho laws that encourages and supports private landowners who choose to provide public recreational access with motorized use restrictions to protect their property.

DISCUSSION: **Senator Stennett** inquired if there are other large tracts of land undergoing the same kind of negative destruction that Ms. McClure described. **Mr. Kline** said to his knowledge, PotlatchDeltic is the other large landowner that IDFG is in agreement with for recreational access. In addition to the landowners that Ms. McClure mentioned, IDFG staff has not received any complaints regarding the use of their property. Included in these agreements is IDFG's Access Yes! program, which oversees 300,000 acres, **Mr. Kline** said.

VOICE VOTE: The motion carried by **voice vote**.

H 235

Relating to Fish and Game. Representative Doug Okuniewicz presented **H 235** and said the primary goals are twofold: 1.) Increase the opportunity for hunters to take more birds; and 2.) Improve the specificity of data that applies to the locations and populations of Sage-grouse. **Senator Bair** inquired if rules would be forthcoming. **Representative Okuniewicz** said that was his understanding.

TESTIMONY: **Mr. Kline** said **H 235** will better align the process of setting Idaho's Sage-grouse hunt season-setting process with biological information on Sage-grouse abundance and distribution. The tags will be distributed across the 14 Sage-grouse management zones and no more than 10 percent of the population of Sage-grouse is anticipated to be harvested in any one zone, according to **Mr. Kline**.

DISCUSSION: **Chairman Vick** asked how much of this strategy is dictated by the Sage-grouse Management Plan. **Mr. Kline** responded by saying former Governor Butch Otter's Sage-grouse Management Plan had provisions in place to responsibly manage Sage-grouse in cases of over abundance. **Mr. Kline** said IDFG believes this is consistent with that approach by changing from the permit-based structure to the number of tags based on population abundance.

TESTIMONY: **Mr. Brocksome** testified in support of **H 235**. **Mr. Brocksome** said Idaho Sportsmen appreciates the ability to collect data and manage the Sage-grouse populations appropriately, not just for the upcoming season but in perpetuity.

MOTION: **Senator Rabe** moved to send **H 235** to the floor with a **do pass** recommendation. **Vice Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

H 239 **Relating to Phosphate.** **Benjamin Davenport**, on behalf of the Idaho Mining Association, said phosphate is a critical mineral, and Idaho is one of the major sources of phosphate in the United States. Phosphate is a key component in a number of products and fertilizers that support the agricultural community in Idaho and throughout the West. Idaho is home to two phosphoric acid facilities and fertilizer production plants, which are located north of Soda Springs and west of Pocatello.

Mr. Davenport said phosphogypsum is the solid waste product that remains after the production of phosphoric acid, and is disposed of and placed in impoundments called phosphogypsum stacks near phosphoric acid production facilities. A bill passed last Session, H 367, created a minimum design and construction standard for phosphogypsum stacks. The Environmental Protection Agency (EPA) was in the process last year of negotiating similar requirements with three companies in Idaho that have these stacks. **Mr. Davenport** said at that time, another bill was introduced that was functionally equivalent to the EPA requirements under negotiation. Since then, a settlement was reached that involved an Idaho company at a facility in Wyoming. The language in **H 239** reflects the standards put forth in that settlement and prior EPA settlements, focusing on the specifics of design and construction standards from those settlements. Discussions with EPA and the three Idaho companies are continuing on related matters.

Mr. Davenport stated **H 239** addresses a few key points: 1.) It adds definitions to **H 239**; 2.) The bill adds stormwater control requirements; 3.) The safety factor to be used is specified; 4.) The design provides the detailed requirements for synthetic and nonsynthetic components of a composite liner; 5.) Aspects of a quality control plan is listed; 6.) Requirements for leachate control system components are described; 7.) Requirements for perimeter deconstruction and design are provided; and 8.) The fees that need to be paid are specified.

DISCUSSION: **Senator Stennett** asked who is managing the oversight with the new process in place. She also asked how the waste sites are managed and what they look like now. **Mr. Davenport** said Idaho did not have a standard for the facilities prior to the Legislative session and the EPA did not have a standard for building the facilities. In the last session, a bill was passed that essentially created the framework for this bill. **Mr. Davenport** said it was his understanding until last year that there was no statutory requirement for these types of liner systems. The requirement was only done in negotiations with the regulator as to how phosphogypsum stacks were treated.

Senator Stennett asked how often the solid waste impoundment systems, if they are 30 to 50 years old, are checked to make sure they are not leaching into groundwater. **Mr. Davenport** replied that both the facilities that produce phosphoric acid have very extensive groundwater monitoring plans in place. He then asked Alan Prouty, Vice President of Regulatory Affairs for the J.R. Simplot Company, to address the issue and be more specific. **Mr. Prouty** stated that most groundwater monitoring wells are typically looked at on a quarterly or semi annual basis. Also, drain systems are inside the impoundments, so those flows can be checked. **Mr. Prouty** said those are two of the parameters that the facilities would use to evaluate whether or not there is a problem.

Senator Patrick asked for long-term planning purposes, if it is better to have rules written or in statute. **Mr. Prouty** said from an industry perspective, the statute put forward provides some certainty to the industry that these are the standards. In the proposed legislation, there is some flexibility provisions that allow for alternate designs if they meet certain specific and physical criteria.

- TESTIMONY:** **Jonathan Oppenheimer**, representing the Idaho Conservation League (ICL), testified via Zoom. He stated this legislation will effectively preempt the rulemaking process, eliminating the ability for negotiated rulemaking as it applies pursuant to the Idaho Administrative Procedures Act. **Mr. Oppenheimer** claims that circumventing the rulemaking process is not a good way to go for governmental efficiency. **Mr. Oppenheimer** said ICL appreciates the commitment from phosphate miners to manage the waste. He said there is a need to ensure environmental protections are in place. Groundwater protection is critically important, and a baseline for groundwater monitoring needs to be established, he said. He asked that **H 239** be held in Committee.
- DISCUSSION:** **Vice Chairman Johnson** inquired as to why the groundwater monitoring plan is no longer needed. **Mr. Davenport** responded by saying both facilities have extensive groundwater monitoring plans currently in place, and going forward, those agreements will continue to evolve.
- MOTION:** **Senator Guthrie** moved to send **H 239** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion.
- DISCUSSION:** **Senator Stennett** indicated she still has a lot of questions and needs to conduct further research. She said she would vote for the motion but wanted to reserve the right to change her vote on the floor. **Senator Rabe** said she is concerned that this bill is putting into statute some rules that may need to be more flexible in the future. She also requested to reserve the right to change her vote on the floor.
- VOICE VOTE:** The motion carried by **voice vote**.
- ADJOURNED:** There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:25 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AMENDED AGENDA #1
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, March 17, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	Approval of Minutes March 3, 2021	Senator Burtenshaw Senator Bair
	Approval of Minutes March 8, 2021	Senator Heider Senator Patrick
	Approval of Minutes March 10, 2021	Senator Guthrie Senator Heider
Presentation	Idaho Power's Collaborative Cloud Seeding Program	Kresta Davis, Idaho Power Water Resources and Policy Senior Manager;
	Idaho Water Resource Board's Cloud Seeding Program Update	Brian Patton, Executive Officer, Idaho Water Resource Board
<u>H 266</u>	Relating to Water	Representative Gibbs; Paul Arrington, Executive Director, Idaho Water Users Association
<u>H 307</u>	Relating to Irrigation	Paul Arrington

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 17, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, and Rabe

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 1:30 p.m.

MINUTES APPROVAL: **Senator Burtenshaw** moved to approve the Minutes of March 3, 2021. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

Senator Heider moved to approve the Minutes of March 8, 2021. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

Senator Guthrie moved to approve the Minutes of March 10, 2021. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Idaho Power's Collaborative Cloud Seeding Program.** **Kresta Davis**, Idaho Power, gave a presentation on the company's cloud seeding program. This program increases snow accumulation that benefits agriculture, fish, wildlife habitats, aquifer recharge, and water quality. **Ms. Davis** said it also benefits recreational users such as skiers and snowmobilers, while providing increased generation at the company's hydroelectric facilities.

The program's additional benefits include the low cost of adding water to the system through cloud seeding as compared to acquiring water from other sources; and lowering the current operational costs which are shared by Idaho Power, the State of Idaho, and stakeholders. There are many uses of cloud seeding – fog suppression, health suppression, rainfall enhancement, and snowpack enhancement. **Ms. Davis** said Idaho Power is focused on snowpack enhancement.

Ms. Davis said the original cloud seeding program began in the Payette River watershed in 2003. The program was expanded to the Upper Snake River Basin above Milner Dam in 2008, and in 2015, it was again expanded to cover the Wood River and Boise River Basins. Researchers involved in studies by the Desert Research Institute and the National Science Foundation collected atmospheric data in the Payette River Basin to understand winter precipitation processes in mountainous terrain and the effect of cloud seeding on cloud structure and precipitation. Recent analysis further validates water supply enhancement resulting from cloud seeding, according to **Ms. Davis**.

Ms. Davis said based upon these analyses, Idaho Power estimates the cloud seeding programs provide approximately 600,000 acre-feet of additional water in the Payette, Boise, and Wood River Basins; as well as over 400,000 acre-feet of additional water each year in the Upper Snake River Basin. One million acre-feet of water can generate approximately 844,500 megawatt-hours, if used for hydroelectric production, which is enough to power 74,000 homes.

The principle of cloud seeding was discovered in 1946 and the use of silver iodide to enhance the formation of ice crystals in clouds was discovered just a little later, according to **Ms. Davis**. Idaho Power seeds clouds by using ice nuclei (silver iodide) in winter storms with two methods – remote ground generators located at high elevations and airplanes that burn special flares within storm clouds. Either method successfully releases silver iodide into passing storms. Minute water particles within the clouds freeze on contact with the silver iodide particles and eventually grow and fall to the ground as snow.

Ms. Davis said there are environmental concerns regarding cloud seeding, and there are a myriad of studies that have looked at the environmental effects. All those studies found no evidence of adverse effects to either human health or the environment. The reason for that is, it is insoluble in water and so therefore it cannot be absorbed into organisms and it also can't break apart back into its original components of silver iodide.

DISCUSSION: **Chairman Vick** asked if there are restrictions on who is allowed to conduct cloud seeding. **Ms. Davis** replied that at this point, there were none. **Senator Guthrie** said at one time, there were talks about lawsuits being filed because cloud seeding was taking moisture that might go on to another state. He inquired if there has been any legal interaction with this issue. **Ms. Davis** said, to her knowledge, there hasn't been, because as that storm system is moving across the air, it is constantly picking up precipitation.

PRESENTATION: **Idaho Water Resource Board's Cloud Seeding Program Update.** **Brian Patton**, Executive Officer, Idaho Water Resource Board (IWRB), spoke about the State's participation in the cloud seeding program that **Ms. Davis** described. IWRB first investigated cloud seeding as a way to boost winter snowpack in 2008 and 2009, the Comprehensive Aquifer Management Plan. When the Legislature approved that plan in 2009, cloud seeding was included as a strategy to boost water supply in the Snake River Basin. Idaho Power offered to partner with IWRB on a five-year pilot program in the Upper Snake, and it was successful. In 2013, the Wood River Basin was added, then the Boise River Basin in 2015.

Mr. Patton said **H 266** would establish cloud seeding in those basins where IWRB determines that water supplies are insufficient to meet current water uses and needs. The bill also stipulates that IWRB may establish, participate in, or authorize cloud seeding programs Statewide again in those basins. **H 266** also provides some level of liability protection for those cloud seeding programs.

Mr. Patton said there is significant interest in cloud seeding from other basins around the State: Bear River, Raft River, Goose Creek, Lost River, and Lemhi River. Other basins may join in, as well.

DISCUSSION: **Senator Heider** asked why the Twin Falls area wasn't included in the cloud seeding plans. **Mr. Patton** said IWRB didn't have the bandwidth yet to think about that area.

Senator Guthrie wanted to know who gets the water and how does that play into the grand scheme of water delivery. **Mr. Patton** said in dry years, the established water rights get filled first before any water goes to additional uses or spills past Milner.

Chairman Vick asked if anything besides silver iodide was ever used in cloud seeding. **Mr. Patton** replied not to his knowledge. **Chairman Vick** inquired as to the return on the investment of cloud seeding. **Ms. Davis** said cloud seeding is by far the most inexpensive resource that Idaho Power has.

H 266

Relating to Water. **Paul Arrington**, on behalf of the Idaho Water Users Association, said **H 266** states findings relating to cloud seeding in Idaho, defines cloud seeding, and provides that IWRB is responsible to authorize cloud seeding in Idaho and may participate in cloud seeding programs. The legislation further states that water generated through cloud seeding will be administered in accordance with the prior appropriation doctrine and limits liability for participation in certain cloud seeding projects.

Representative Marc Gibbs, author of the bill, said the single most important part of **H 266** is that the bill requires water derived from cloud seeding to be handled just like natural precipitation.

TESTIMONY:

Testifying in opposition to **H 266** and representing themselves were Del Chapel, Steven Keyser, Monica McKinley, Duane McMurdie, Rosa Martinez, and Eva Selleck.

Testifying in support of **H 266** were Lynn Tominaga of Idaho Groundwater Appropriators, and Braden Jensen of Idaho Farm Bureau Federation.

MOTION:

Senator Burtenshaw moved to send **H 266** to the floor with a **do pass** recommendation. **Senator Bair** seconded the motion.

DISCUSSION:

Chairman Vick asked if there are air quality standards and who regulates them. **Mr. Patton** replied there are currently no regulations for cloud seeding in the State of Idaho. However, a cloud seeding operator must be registered with the Idaho Department of Agriculture and a report must be submitted to the director of the Idaho Department of Water Resources every year on cloud seeding operations. **Mr. Patton** said **H 266** attempts to bring all the cloud seeding operations under the umbrella of IWRB. In order to achieve those liability protections, IWRB has to either approve, participate, or authorize that program.

VOICE VOTE:

The motion carried by **voice vote**.

H 307

Relating to Irrigation. **Mr. Arrington** said **H 307** is the same as **S 1074**, which was heard earlier and passed by the Senate, with the exception of additional language regarding ditch easements (page 1, line 21).

MOTION:

Senator Guthrie moved to send **H 307** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

**PAGE
ACKNOWLEDGE-
MENT:**

Chairman Vick said the next order of business is not on the agenda, as he wanted to surprise the page, Charlotte Brockman. **Chairman Vick** presented Ms. Brockman with a letter of recommendation, signed by all Committee members; an Idaho ceramic mug; and a "Boise" teddy bear to remind her of the time spent in Boise and serving the people of Idaho. He then asked Ms. Brockman to tell the Committee what she had learned and what she liked about being a page. **Ms. Brockman** said she enjoyed seeing the Senators working together and being light hearted. She said coming to the Capitol in the middle of the Legislative Session was a bit intimidating, but the Committee members made her feel comfortable quickly. When asked about her plans for the future, **Ms. Brockman** indicated she is already enrolled at the University of Nebraska and hopes to major in International Agriculture, specifically crop production and food systems trade.

ADJOURNED:

There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:50 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

JOINT AGENDA
**SENATE RESOURCES & ENVIRONMENT COMMITTEE
AND
HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE**
1:00 P.M.
Lincoln Auditorium WW02
Monday, April 12, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Presentation	"Move Oregon's Border for A Greater Idaho"	Mike McCarter, President of Move Oregon's Border and Citizens for Greater Idaho
	NOTICE: No public testimony will be taken, as this is a presentation only.	Mark Simmons, Union County, Oregon Rancher and former Oregon Speaker of the House of Representatives

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick

Vice Chairman Johnson

Sen Bair

Sen Heider

Sen Patrick

Sen Guthrie

Sen Burtenshaw

Sen Stennett

Sen Rabe

COMMITTEE SECRETARY

Juanita Budell

Room: WW37

Phone: 332-1323

Email: sres@senate.idaho.gov

MINUTES
JOINT MEETING

**SENATE RESOURCES & ENVIRONMENT COMMITTEE
HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE**

DATE: Monday, April 12, 2021

TIME: 1:00 P.M.

PLACE: Lincoln Auditorium WW02

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

Chairman Ehardt, Vice Chairman Wisniewski, Representatives Vander Woude, Horman, Scott, Amador, Armstrong, Blanchard (Furniss), Hartgen, Lickley, Young, Adams, Yamamoto, Chew, Necochea, and Nash

**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 Vick** called the joint meeting of the Senate Resources and Environment Committee (Committee) and the House Environment, Energy and Technology Committee (Committee) to order at 1:02 p.m.

Chairman Vick welcomed the Committee members and the audience to the joint meeting to hear "Move Oregon's Border for a Greater Idaho," a presentation by Mike McCarter, President of Move Oregon's Border and Citizens for Greater Idaho, an Oregonian and retired from the agricultural industry; and Mark Simmons, Oregon rancher and former Speaker of the Oregon House of Representatives.

PRESENTATION: **"Move Oregon's Border for a Greater Idaho." Mr. McCarter** said the "Move Oregon's Border" movement is not about politics or political parties, but is about people who are battling to preserve their traditional values of faith, family, freedom, and independence. He added "Move Oregon's Border" is a grassroots movement with no corporate or political support, and consists only of volunteer members. **Mr. McCarter** stated it is necessary to have a governmental system in place to prevent chaos and facilitate the freedom to choose who governs through the election process. However, he questioned whether the people have the right to choose which state government represents them. (See attachment 1.)

Mr. McCarter said asking the citizens of rural Oregon before asking Oregon's or Idaho's Legislature about the process to join Idaho is the first step to change Oregon's border. **Mr. McCarter** stressed it was not a vote to secede from Oregon, nor a vote to start a new state, just the beginning process of asking Oregon to let Oregon's rural counties ask Idaho if it would allow them to become part of Idaho.

Several reasons were given for this request and they were:

- To be independent of an overreaching state government;
- To have the opportunity to raise families the way they want;
- The need for safety of law and order supporting law enforcement;
- A balanced budget and reasonable taxes; and
- To protect the environment and have a firm supply of energy sources in both States.

Mr. McCarter said there is a large cultural divide between northwest Oregon and rural Oregon, and it is getting larger.

Mr. Simmons stated the border initiative passed in his home county, Union, giving the residents hope the effort might succeed. He said the present government in power in the Legislature and governorship in the State of Oregon do not have a vision for the future that includes rural Oregon. The values and goals are very different. Because of those differences, that is the reason for seeking answers to the Oregon boundary change. **Mr. Simmons** also said the discussion of changing state boundaries are not new. For example: Virginia and West Virginia; Illinois and Indiana; North Carolina and Tennessee; Colorado and Wyoming; and New York City and New York.

Mr. Simmons reviewed some of the benefits for Idaho if Oregon's border should change:

- employment opportunities;
- increased land mass;
- water port;
- timber; and
- other natural resources.

However, he acknowledged many details need to be worked out, such as minimum-wage laws, correctional and educational institutions, roads, equipment, and buildings. **Mr. Simmons** admitted he didn't know how these issues would be resolved.

DISCUSSION:

Some of the questions asked were:

- What percentage of Oregonians agree that they want to be a part of Greater Idaho?
- How would the minimum wage law be addressed?
- How would the criminal justice system and jurisdictions be resolved?
- In which State will the tax base come from?
- How much of Oregon is national forest land, privately owned land, and Bureau of Land Management land?
- Of the nine correctional institutions in Oregon, how many would be in Greater Idaho?
- Has Oregon's governor bought into this idea?

Chairman Ehardt thanked Mr. McCarter and Mr. Simmons for their presentation and said if the gentlemen have answers later to the questions posed by the Committee members, she will distribute them. **Chairman Vick** also thanked Mr. McCarter and Mr. Simmons for taking the time to come here and explain how moving the border would help Idaho.

Mr. McCarter said he was deeply grateful for the two Chairmen's willingness to entertain a conversation about the boundary, and such a conversation lends credibility to the effort and he appreciated it very much.

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 1:55 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

Attachment 1
4/12/21



Moving the Oregon/Idaho Border

This proposal is different from secession because it is simply a shift in borders that does not affect the balance of power in the US Senate. It does not create a new state or increase the number of states.

Borders between states have been relocated many times in US history. If a deal were made that two state legislatures pass, a border change would almost certainly become a reality. According to a peer-reviewed law journal, "Prior to 1921, 36 compacts between states were put into effect with the consent of Congress; virtually all of these settled boundaries between contiguous states." These interstate compacts are constitutional according to Article 1, section 10 of the US Constitution. See link:

[http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?&article=1544&context=penn law review](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?&article=1544&context=penn%20law%20review)

The most recent example was land transferred from Minnesota to North Dakota in 1961. Cf. www.revisor.mn.gov/laws/1961/0/Session+Law/Chapter/236/pdf

AMENDED AGENDA #3
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, April 19, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	PRESENTATION: Bonneville Power Administration Update	John Williams, Constituent Services

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, April 19, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, and Rabe

ABSENT/ EXCUSED: Vice Chairman Johnson and 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 1:35 p.m.

PRESENTATION: **Bonneville Power Administration Update. John Williams**, Idaho/Nevada Constituent Account Executive for Bonneville Power Administration (BPA), provided an update on the role BPA serves in the Pacific Northwest.

Mr. Williams said although BPA is part of the U.S. Department of Energy, it is self-funded and covers its costs by selling its products and services. BPA operates a high-voltage transmission grid comprising more than 15,000 miles of lines and associated substations in Washington, Oregon, Idaho, and Montana. The power is produced at 31 federal dams operated by the U.S. Army Corps of Engineers (USACE) and Bureau of Reclamation, and one nuclear plant in the Northwest.

Mr. Williams stated the Northwest Power Act of 1980 has a broad reach over BPA and Pacific Northwest energy issues. BPA and its electric utility customers have saved more than 2,150 aMW electricity through energy efficiency. The Power Act reconfirmed BPA's existing mandates such as cost-based power rates, and regional and public preference, he said.

Mr. Williams said Congress authorized the USACE and the Bureau of Reclamation to construct, operate, and maintain the 14 federal dams along the Columbia River system as one interconnected system to meet multiple purposes. They include flood risk management, navigation, hydropower generation, irrigation, fish and wildlife conservation, recreation, and providing municipal and industrial water supply. **Mr. Williams** said BPA is not interested in participating in any efforts in which dam breaching is the ultimate goal. He said BPA needs to focus on balanced solutions that preserve the value of the hydropower system while making advancements for fish and wildlife.

Mr. Williams said, as the region's energy policies reshape the electric system and reduce the reliance on fossil fuels and carbon, BPA will have to keep a close eye on resource adequacy. Also, any discussion of breaching or removing any hydro facilities will need to be grounded in honest information about the value they provide to BPA customers and the region, and how it fits into the clean energy future.

Mr. Williams reviewed winter power outages in Texas and the Northwest, citing the differences. In Texas, the outages were largely caused by a lack of insulation and weatherization of equipment. In the Northwest, the issue was fallen trees and ice that brought down power lines and other distribution equipment.

The characteristics of hydropower also play a critical role in BPA's grid reliability, **Mr. Williams** said. The diversity of the hydro system, with major generation on the upper Columbia, lower Columbia, and lower Snake rivers, gives operators options to solve the unique challenges each event can bring. In the recent storm, technical issues at a Columbia River dam required BPA to lean on the lower Snake River dams for generation.

In conclusion, **Mr. Williams** said the Columbia River is known as the "crown jewel" of the Pacific Northwest. The Columbia River is undeniably among the region's greatest assets – supplying low-cost clean hydropower; making deserts bloom, thanks to irrigation; and providing navigation, recreation, and a home for many species of fish and wildlife.

The BPA Administration is proud to be a steward of this great resource and their mission is to serve the people and the environment of the Pacific Northwest. BPA's responsibilities include promoting energy efficiency, facilitating development of renewable power, protecting fish and wildlife affected by hydro development, honoring treaty obligations to tribes, and promoting a reliable energy future through collaboration and partnerships.

DISCUSSION: **Senator Patrick** inquired as to what stops other regions from using this reasonably priced power. **Mr. Williams** replied the Northwest Power Preference Act basically says that only public customers in the Pacific Northwest can acquire and enter into a long-term contract with BPA.

Senator Burtenshaw asked about the reliability of solar and wind power. **Mr. Williams** said when solar and wind power are generating, they are great, but during very hot and very dry events, they are not that reliable.

Senator Burtenshaw asked if Congressman Mike Simpson had been in communication with BPA concerning their projections and ideas to breach the dams. **Mr. Williams** said Congressman Simpson started talks two years ago when some public interest groups indicated that BPA was in financial trouble, the salmon were in trouble, and something needed to be done.

In closing, **Mr. Williams** said he has been with BPA almost 35 years, and has been a point of contact for 26 years and the dam breaching conversation probably started before his tenure began.

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:20 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Tuesday, April 20, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	Minutes of 4/12/21	Senator Heider Vice Chairman Johnson
S 1211	Relating to Wolves	Senator Burtenshaw

***Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)***

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick
Vice Chairman Johnson
Sen Bair
Sen Heider
Sen Patrick

Sen Guthrie
Sen Burtenshaw
Sen Stennett
Sen Rabe

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: 332-1323
Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Tuesday, April 20, 2021

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

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

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of April 12, 2021. **Vice Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

S 1211 **Relating to Wolves.** **Senator Burtenshaw** presented a time line of events leading up to the creation of **S 1211**. He stated it was not a last-minute attempt to pass a bill to eliminate wolves, as some people perceived, but was one that started in January in an effort to control them. Due to waiting on the Department of Fish and Game (IDFG) to provide the number of wolves in Idaho, the Covid-19 illness, and the Legislative recess, the legislation was stalled. In the meantime, the industry – composed of sheep men, cattlemen, IDFG, Idaho Farm Bureau Federation (Farm Bureau), Outfitters and Guides, and trappers, – worked on the legislation that culminated in **S 1211**. The industry made sure all parties were in agreement before presenting the legislation.

Senator Burtenshaw reviewed some changes made to various sections of the Idaho Code involving wolf management. They were:

- The addition of private contractors to implement the provisions of the Wolf Conservation and Management Plan.
- Changed the year from 2015 to 2022.
- The increase of money from \$110,000 to \$300,000.
- Transfer of the money from the IDFG Fund to the IDFG Fund Transfer Subaccount of the Wolf Control Fund.
- Classified wolves as game animals.
- Method of take.
- Year-round trapping season on private property.
- Collaring of wolves for assisting with population counts.
- Wolf tags to be valid for hunting, trapping, and snaring when seasons are open.
- No limit to the number of wolf tags an individual can purchase.
- IDFG education requirements must be met.
- The reporting period of taking wolves was changed from 10 days to 30 days.

- Wolves may be disposed of by any federal agency, state agency, private contractor, political subdivision of the State of Idaho, or agency of another state.
- When the wolf population has exceeded the recovery goals of the Idaho Wolf Conservation and Management Plan, they may be disposed of, and a permit must be obtained from the Director of IDFG.

DISCUSSION: **Senator Stennett** inquired as to who would be a contractor. **Senator Burtenshaw** said the Foundation for Wildlife Management would be a contractor, but it is available to anyone at the discretion of the Wolf Control Board. **Senator Stennett** then discussed the numbers of wolf disposal for the past two years. She said to maintain 15 packs (150 wolves) would mean 90 percent (1,500) of the wolf population would be killed. **Senator Burtenshaw** replied the direction from the Idaho Wolf Conservation and Management Plan is that aggressive action can be taken if there are more than 15 packs. He stated no one wants to wipe out wolves completely, just manage them.

Senator Stennett asked if there are any activities that are not allowed as far as the taking of wolves, given that ATVs, snowmobiles, and helicopters can be used. **Senator Burtenshaw** said IDFG's rules still stand, as well as the seasons, and the industry that drew up **S 1211** is not trying to tread on the territory of the IDFG Commission. They are only trying to address the problems.

Senator Stennett questioned as to why an agency of another state has the ability to operate within Idaho. She then asked if Idaho has a reciprocal agreement to do what we want in their state. **Senator Burtenshaw** responded by saying if a neighboring state has wolves coming into Idaho, they can apply for a permit to pursue those wolves.

Senator Rabe asked if the U.S. Fish and Wildlife Service and IDFG were included in the discussions of the drafting of this legislation. **Senator Burtenshaw** said to his knowledge, the U.S. Fish and Wildlife Service was not involved, but IDFG was involved. **Senator Rabe** wanted to know if the changes that were made will conflict with the Idaho Wolf Conservation and Management Plan that is in place and could it create future litigation. **Senator Burtenshaw** indicated that he did not think there would be a conflict.

TESTIMONY: **Wyatt Prescott** spoke on behalf of the Idaho Cattle Association, supporting **S 1211**. He said wolf depredation has been an issue for the livestock industry for a number of years. **Mr. Prescott** stated it is a complex issue on the livestock production side and an emotional and challenging issue as a producer. **Mr. Prescott** said there is no easy solution because there are a lot of stakeholders whose interests need to be considered in this process. After collaboration with the Idaho Trappers Association, Foundation for Wildlife Management, the Farm Bureau, and the Idaho Wool Growers Association, legislation was agreed upon, with IDFG providing technical corrections.

DISCUSSION: **Senator Stennett** asked about private contractors removing wolves. **Mr. Prescott** replied that it would be at the discretion of the Wolf Depredation Control Board that has public oversight to make those negotiations and contracts with private contractors to ensure there is a significant amount of liability.

TESTIMONY: **Chyla Wilson**, representing Farm Bureau, spoke in support of **S 1211**. **Ms. Wilson** said Farm Bureau supports all methods of year-round wolf control and population management, and thanked the aforementioned groups for collaborating to write the legislation.

TESTIMONY: **Jonathan Oppenheimer**, representing the Idaho Conservation League testified in opposition to **S 1211**. **Mr. Oppenheimer** said in 2002, when the Idaho Legislature approved the Idaho Wolf Conservation and Management Plan, the numbers set were neither a target nor a ceiling. The numbers were the minimum necessary in order to maintain some semblance of a stable population. **Mr. Oppenheimer** stated that plan and the resulting approval from the U.S. Fish and Wildlife Service relied upon the notion that wolves would not be managed as predators but instead they would be managed as a big game species to be entrusted to the IDFG Commission. He said **S 1211** removes and limits the authority and the discretion of the IDFG Commission to set policy as it relates to wildlife in Idaho and sees this as potentially inviting the U.S. Fish and Wildlife Service to return in a management capacity within the State of Idaho.

DISCUSSION: **Senator Stennett** asked about the agreement with the U.S. Fish and Wildlife Service and the federal government as it pertains to wolf management in Idaho. **Mr. Oppenheimer** said the agreement was binding and approved by the Legislature, and deviations from that arrangement threatens to basically upend that agreement and invite the U.S. Fish and Wildlife Service to resume management of wolves within the State of Idaho.

Senator Stennett asked again, how an agency of another state could have any bearing on something that is an agreement between Idaho and the federal government. **Paul Kline**, Deputy Director of Programs/Policy, IDFG, said it would just be facilitating an arrangement for assistance with management where border situations existed.

Senator Stennett inquired about the transfer of money. **Mr. Kline** said the money would be from IDFG Fund account to the IDFG Fund Transfer Subaccount of the Wolf Control Fund and no additional appropriation is needed from the Legislature. As far as payments, **Mr. Kline** said that decision is made by the IDFG director, the Department of Agriculture director, and other members on that Board.

Senator Stennett wanted to know if the two programs, damage to crops and predator damage, are allowed to operate at the same time on the same property. **Mr. Kline** said they are allowed.

MOTION: **Senator Bair** moved to send **S 1211** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

Chairman Vick asked Senator Burtenshaw to close the debate. **Senator Burtenshaw** described situations about the devastation of sheep, cattle, and household animals. He stated no one wants to wipe out any species, but just control the wolves, which is reasonable, he said.

Senator Stennett said it disturbed her that so much money is spent on depredation and she wished 1 percent of that amount could be spent on tourism. Also, she was concerned that U.S. Fish and Wildlife Service was not consulted as they would have been able to help and assist in the criteria of what one would choose as far as a contractor. **Senator Stennett** said she will not support the motion.

VOICE VOTE: The motion carried by **voice vote**. **Senators Stennett** and **Rabe** asked to be recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairman Vick** adjourned the meeting at 2:19 p.m.

Senator Vick
Chair

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:00 P.M.
Room WW55
Thursday, April 22, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
HCR 21	Lemhi River Basin Settlement	Representative Dorothy Moon

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Vick

Vice Chairman Johnson

Sen Bair

Sen Heider

Sen Patrick

Sen Guthrie

Sen Burtenshaw

Sen Stennett

Sen Rabe

COMMITTEE SECRETARY

Juanita Budell

Room: WW37

Phone: 332-1323

Email: sres@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Thursday, April 22, 2021

TIME: 1:00 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Senators Bair, Heider, Patrick, Guthrie, Burtenshaw, Stennett, and Rabe

ABSENT/ EXCUSED: Vice Chairman Johnson

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 1:00 p.m.

HCR 21 **Lemhi River Basin Settlement. Representative Dorothy Moon**, District 8, presented **HCR 21**, saying it would extend SCR 137. That resolution adopted last year would allow the Idaho Water Resource Board (IWRB) and local water users to resolve issues related to the high water flows in the river basin consistent with past and current practices in Idaho Code.

DISCUSSION: **Senator Stennett** inquired as to what has been agreed to and what is still needing more work. **Representative Moon** said what they have worked on was determining who the water rights belonged to and the high water flows. Also, the Idaho Department of Fish and Game (IDFG) has discussed flushing flows to improve fish habitat.

Senator Burtenshaw said the high water that is being referred to is in the Lemhi Basin. The ranchers use it twice – the water that is used for irrigation on the ground comes back in the river at a different place and can be used again, so it is beneficial to those who use it.

Senator Heider asked for more clarity of the resolution. **Representative Moon** said there was some contention in the Valley as to who has the water rights and it has involved IDFG, IWRB, as well as landowners.

Senator Stennett asked how long has the IWRB been participating in this settlement effort. **Mat Weaver**, Deputy Director, Idaho Department of Water Resources, replied they had been participating in the settlement agreements for about a year. After the Idaho State Legislature passed SCR 137 last year, initiating the settlement discussions, IWRB brought on former Attorney General Clive Strong and another attorney, Norm Semanko, to act as co-facilitators because 24 pending water right applications for various uses were protested. There was a test case and what came out of that was a need to bring all parties together and work through those conflict issues. There needs to be clear guidance to the water users in the Lemhi basin so that IWRB does not have to take every one of those protested applications to trial, **Mr. Weaver** said.

Mr. Weaver said there are two major issues IWRB is looking at and one of them is recognition of that historical practice of diverting high flows in the spring to recharge the aquifers. There are no reservoirs in the Lemhi Valley, so they like to think of this practice as a type of reservoir. Another component of this is getting minimum streamflow rights in the basin for support of the fish recovery efforts that are ongoing that the IWRB, IDFG, and Office of Species Conservation have put a lot of effort into.

Senator Stennett asked if part of the discussion is about restoration work being done or is it just purely about water rights during high flows. **Mr. Weaver** said what is discussed is a comprehensive settlement that results in high flow water rights, minimum streamflow water rights, and the resolution of all 24 protested applications.

MOTION:

Senator Burtenshaw moved to send **HCR 21** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Vick** adjourned the meeting at 1:15 p.m.

Senator Vick
Chair

Juanita Budell
Secretary