

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, January 22, 2020

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

**PLACE:** Room WW55

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

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

**MINUTES APPROVAL:** **Senator Mortimer** moved to approve the Minutes of January 15, 2020. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

**RS 27413** Relating to wolves to provide for chronic depredation zones, wolf-free zones, and declaring an emergency.

**Vice Chairman Brackett** addressed the Committee and advised that this Routing Slip (RS) will assist the wolf population and management for depredation purposes where it has occurred. He explained that this RS would cover a wolf taken by any hunter provided they have a wolf tag. He specified that depredation remains at a high level and ranchers' livelihood is being threatened by wolves.

**MOTION:** **Senator Bair** moved to send **RS 27413** to print. **Senator Mortimer** seconded the motion. The motion passed by **voice vote**, with **Senators Stennett** and **Jordan** requesting that they be recorded as voting nay.

**GUBERNATORIAL APPOINTMENT:** The Gubernatorial Appointment of Bradley Melton to the Idaho Fish and Game Commission.

**Mr. Melton** stated that he lives in Lewiston, is an avid hunter and fisherman, and has a passion for all things fish and wildlife, flora and fauna. He explained that he moved to Idaho 15 years ago and thinks Idaho has amazing resources. His career is as a financial advisor.

**DISCUSSION:** **Senator Bair** asked questions regarding Mr. Melton's thoughts about the top issues before the Idaho Fish and Game (IDFG) Commission. **Mr. Melton** opined the most urgent issues are with fish population and issues surrounding fish; wolf management; and non-resident tags and how the IDFG Commission manages them.

**Chairman Heider** announced that a vote on this appointment will take place at the next Committee meeting.

**GUBERNATORIAL APPOINTMENT:** The Gubernatorial Re-Appointment of Derick Attebury to the Idaho Fish and Game Commission.

**Mr. Attebury** stated that it was a privilege to serve the state in the past and he wants to keep Idaho great. He explained that he has enjoyed working with constituent hunters, trappers, and anglers. He commented that he would love to serve on the IDFG Commission for another four years.

**DISCUSSION:** In response to questions from the Committee, **Mr. Attebury** explained some of the challenges and solutions he thought the IDFG Commission would face over the next four years. He discussed issues relating to hunting congestion, budget, non-resident tags, predator management, and other problematic areas that need to be addressed.

**Chairman Heider** announced that a vote on the appointment will take place at the next Committee meeting.

**DOCKET NO. 25-0101-1900F:** Idaho Outfitter and Guides Licensing Board omnibus pending fee rule under IDAPA 25, page 233.

**Lori Thomason**, Executive Director, Outfitters and Guides Licensing Board (OGLB), introduced herself and advised the Committee that this docket was an existing rule which had been previously reviewed and approved. She explained the OGLB's approach was in line with the Red Tape Reduction Act. She highlighted that OGLB:

- eliminated the restrictive number of times that an applicant can take the examination and reduced the reexamination waiting period;
- allows licensees to provide electronic proof of licensure;
- eliminated the fee to be on a waiting list for licensure;
- eliminated the requirement that a guide be clean and well mannered; and
- eliminated the requirement that an outfitter applicant, who has not been licensed in the past five years, provide personal and bank references.

She set forth that the OGLB was doing additional negotiated rulemaking and gathering further information from federal and state agencies with relevant information to consider.

**MOTION:** **Senator Bair** moved to approve **Docket No. 25-0101-1900F**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**DISCUSSION:** **Chairman Heider** explained that he was going to move **Docket Nos. 20-0303-1901** and **20-0304-1901** up on the agenda due to language in those rules.

**DOCKET NO. 20-0303-1901:** Department of Lands pending rule under IDAPA 20, Rules Governing Administration of the Reclamation Fund, page 204.

**Mick Thomas**, Minerals, Oil and Gas Division Administrator, Idaho Department of Lands (IDL), introduced himself and explained IDL's authority and reasons for entering negotiated rulemaking. He spelled out that Idaho's Reclamation Fund (RF) is a type of state bond pool, created in 2002, to provide an alternative form of performance bond or financial assurance to complete reclamation activities. He stated that since the RF had been in existence for 15 years, the IDL wanted to address needed changes to comply with the Red Tape Reduction Act, amendments to the Mined Land Reclamation Act, account for inflation, and address feedback received by IDL.

**Mr. Thomas** noted that negotiated rulemaking took place and stakeholder input was generally favorable.

**MOTION:** **Senator Jordan** moved to approve **Docket No. 20-0303-1901**. **Senator Mortimer** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO. 20-0304-1901:** Department of Lands pending fee rule under IDAPA 20, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho, page 226.

**Mr. Thomas** spoke about the fee rule and IDL's authority and reasons for entering negotiated rulemaking. He explained that IDL regulates encroachments, such as docks and marinas, on navigable lakes and the funding for that management comes from fees and rent charged by IDL for the use of these lands. He specified that no General Fund dollars are used to manage these public lands. He expounded that upon this review process, IDL found that the costs associated with the application fees for single-family docks, two-family docks, water intake lines, and permit assignments do not cover the actual costs to process these applications. He detailed the efforts taken during the negotiated rulemaking process and explained that public comments included no objection to proposed changes. He specified that the rule changes increase encroachment permit application fees for single-family docks, two-family docks, and water intake lines from \$300 to \$425; and the encroachment permit assignment fee from \$150 to \$300.

**Senator Patrick** inquired if and how notice of the increased fees would be given. **Mr. Thomas** explained that the rule change would primarily impact lakefront homeowners who are applying for new permits or wanting to assign existing permits and they would be directly notified.

**MOTION:** **Senator Stennett** moved to approve **Docket No. 20-0304-1901**. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 20-0000-1900:** Department of Lands omnibus pending rule under IDAPA 20, page 144.

**David Groeschl**, Deputy Director, IDL, introduced himself and presented a history and description of the three rule chapters, detailing that each was an existing rule that had been previously reviewed and approved by the Legislature. He cited that IDL identified and eliminated sections that were outdated and unnecessary, including six pages from rules that were duplicative within the statute. He informed that IDL held two public hearings in August regarding the tree retention requirements along Class 1 fish-bearing streams, more commonly referred to as the "shade rule." He explained that the majority of comments were in favor of reauthorizing the rules without amendments. He concisely reported that the shade rule struck an important and appropriate economic, operational, and biological balance. He asserted that the rules presented today were without amendments. He referred to copies of letters from interested stakeholders that were in the Committee's packets (see attachment 1).

**TESTIMONY:** **Jonathan Oppenheimer**, External Relations Director for the Idaho Conservation League (ICL), addressed the Committee and stated that he was pleased to support the IDL omnibus rules. He disclosed that ICL had been involved in the negotiated rulemaking process.

**MOTION:** **Senator Guthrie** moved to approve **Docket No. 20-0000-1900**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
20-0000-1900F:**

Department of Lands omnibus pending fee rule under IDAPA 20, page 19.

**Mr. Groeschl** discussed the reauthorization of this existing 16-chapter omnibus fee rule from their agency which had been previously reviewed and approved by the Legislature. He clarified that IDL reviewed the rules to identify and eliminate sections that were outdated and unnecessary; the largest clean-up was eliminating five pages from the Rules Governing Conservation of Oil and Natural Gas by allowing sections to expire that had been superseded by Idaho Code. He addressed that all edits made were minor and nonsubstantive. He described that IDL held three public hearing in August regarding dredge and placer mining operations; with the only comments received directed at other state and federal agencies due to a misunderstanding of the scope of the rules. He reassured the Committee that the only changes to these rules were related to Red Tape Reduction Act efforts.

**DISCUSSION:**

**Senator Patrick** inquired regarding the specific fees and **Mr. Groeschl** reiterated there were no changes to fees in this specific omnibus package. IDL wanted to make sure if changes were to be made it would go through the negotiated rulemaking process.

**MOTION:**

**Senator Bair** moved to approve **Docket No. 20-0000-1900F**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
20-0302-1902:**

Department of Lands pending temporary rule under IDAPA 20, Rules Governing Mined Land Reclamation, page 3.

**Mr. Thomas** discussed that this docket would extend the effective date of the emergency fee rule. He expounded that IDL is responsible for providing regulatory oversight of mining activities on state, federal, and private lands in Idaho. He detailed that during the 2019 regular session, the Legislature passed House Bill 141 which updated mining regulations created in the early 1970s. In March 2019, IDL promulgated the temporary rule and initiated negotiated rulemaking. He reported that many changes to the original draft rule were based on input from the rulemaking participants and detailed the changes:

- underground mines are now required to obtain reclamation plans for their surface impacts;
- IDL is now able to collect reasonable fees for reclamation plans and the plans are required to include post-closure activities;
- actual cost estimation of reclamation activities are now used to determine financial assurance;
- operators are given the flexibility needed for long-term post-closure activities through additional types of financial assurance; and
- IDL is now required to review every plan at least once every five years.

**Mr. Thomas** concluded that IDL believes this temporary rule can be used to implement the changes to the Idaho Mined Land Reclamation Act while further negotiations continue to develop a proposed rule. He asked that the Committee approve the extension of this temporary rule.

**DISCUSSION:**

**Senators Bair** and **Patrick** and **Mr. Thomas** discussed IDL's reasons for extending the temporary rule. **Mr. Thomas** confirmed that negotiated rulemaking was not complete therefore IDL would like an extension and would resume meetings in April.

**Senator Guthrie** and **Mr. Thomas** discussed dock fees, the temporary rule collecting those fees, and public notice thereof. **Mr. Thomas** noted that IDL sent out 700 mailers to permit holders regarding notice of fee changes, updated their website, and provided notice to area offices regarding new fees being put into place.

**Senator Guthrie** asked about H 141's specific requirements regarding fees. **Mr. Thomas** confirmed that H 141 was not violated and there was no financial crisis to require how they submitted this pending rule. **Vice Chairman Brackett** and **Mr. Thomas** discussed IDL's emergency declaration and since compliance with H 141 needed to be complete by August 1, 2019, the emergency was declared and they requested the temporary rule to not accelerate the process.

**TESTIMONY:**

**Ben Davenport**, Executive Vice President, Idaho Mining Association (IMA), spoke in support of the temporary rule and the changes made by August 1. He stated he was unaware if any of his members have paid the new fees but he had not heard any feedback on the fees collected. He reiterated that IMA supports the process and they were working together going forward.

**DISCUSSION:**

In response to Committee questions, **Eric Wilson**, Bureau Chief for IDL, informed that he was the one who conducted rulemaking for this particular rule docket. He clarified that IDL did not have application fees prior to this rule. He specified that because of H 141 and the changes that it made, it caused IDL a significant increase in expenses; some examples being that inspections that happened every 15 years now have to be every 5 years. He elaborated that the fiscal impact of H 141 would be nil if application fee revenue covered the increase in operating expenses.

**MOTION:**

**Senator Jordon** moved to approve **Docket No. 20-0302-1902**. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business at this time, **Chairman Heider** adjourned the meeting at 2:59 p.m.

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Senator Heider  
Chair

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Erin Miller  
Secretary