

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