

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