

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, March 07, 2011

SUBJECT	DESCRIPTION	PRESENTER
H 153	Water Quality	Alan Prouty, Chr., IACI Environmental Committee
Docket No. 58-0102-1001	Water Quality Standards	Barry Burnell, Administrator, Water Quality Div., DEQ
H 85	F&G, mentored hunters	Sharon Kiefer, IDFG
H 94	Injection wells	Tom Neace, IDWR

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippetts
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 07, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

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 Pearce** called the meeting to order at 1:30 P.M. He welcomed everyone - both those who will participate and those who will observe.

ANNOUNCEMENTS: He said there are several handouts that have been provided to aid in the presentations of the bills: Copies of Power Point slides for H 153; Idaho Special Resource Waters Map and Water Body Identification Numbers; Tier 2 Protections for Aquatic Life (single page); and a copy of Docket Number 58-0102-1001.

The **Chairman** then asked **Vice Chairman Bair** to explain the procedure that will be used in today's meeting.

Vice Chairman Bair said there would be two documents open at the same time, but voting will take place separately. Mr. Alan Prouty, will present H 153, referring to the Power Point slides and Mr. Barry Burnell, Administrator, Water Quality Division, DEQ, will present the Water Quality Standards Rule, Docket Number 58-0102-1001. There will be side-by-side comparisons of the two documents, with voting first on the Rule, followed by the bill.

SPEAKER: **Mr. Prouty is Chairman of the Environmental Committee for the Idaho Association of Commerce and Industry (IACI), and is the Vice President of Environmental and Regulatory Affairs for the J. R. Simplot Company.**

Mr. Prouty said the whole subject of anti-degradation is fairly complex. He provided some background information to help understand the issue. The federal Clean Water Act (CWA) requires states to protect the existing uses of all state waters and to protect high quality waters from degradation. This is known as anti-degradation. Essentially, if a water body has water quality that exceeds water quality standards, then the quality of that water cannot be "lowered" or degraded unless specific criteria are met.

Federal law requires the state to have both an anti-degradation policy and "methods" for implementing the policy. Waterbodies are typically classified (for anti-degradation purposes) into three tiers:

Tier I: requires that existing uses and the water quality to protect these uses shall be maintained and protected;

Tier II: where water quality exceeds that necessary to protect existing uses and mandates that any action that could lower water quality be approved only after certain processes (economic evaluation, public participation);

Tier III: applies to outstanding national resource waters where existing quality regardless of existing uses "shall be maintained and protected."

The State of Idaho has an anti-degradation policy in its existing regulations; the issue is the "methods" for implementation of this policy.

In April, 2010, the Idaho Conservation League (ICL) filed a complaint in federal court claiming that Idaho has not promulgated an anti-degradation implementation plan and is in violation of the Clean Water Act. ICL is seeking the court to order EPA to promulgate an anti-degradation implementation plan regulation for Idaho.

The State of Idaho Department of Environmental Quality (DEQ) started in April 2010 a rulemaking process to develop an anti-degradation implementation plan regulation. It is very important for Idaho to have an anti-degradation implementation plan that Idaho has written. In November 2010, the Board of Environmental Quality approved an implementation rule. Sixteen different trade organizations were interested. The proposed regulation does add requirements, "regulatory process" (i.e., time and expense) to obtaining a new or renewal of a wastewater, stormwater or other type of general permit related to a water discharge. For example, obtaining a stormwater construction permit or multi-sector general permit, which right now is a relatively straightforward and simple process, could now be potentially subject to an extensive time consuming and expensive process to prove that any discharge is not harming Idaho's waters.

As the regulated community looked at the rulemaking, they focused on four main elements.

- Consistency with CWA (protection of environment and stringency).
- Practicability: additional work and timing of getting approvals for permits.
- Effect on business/community development.
- Minimizing the potential for future litigation.

Their goal was to develop a regulation that provides the necessary protection for water quality while still providing a water discharge permitting process that is workable for Idaho business. The rulemaking addressed almost all of these factors; however, at the conclusion of the rulemaking they believed that several changes were still needed.

What they are suggesting are some changes in the rule. Rejections are the language of degradation, descriptions of general permits, how high quality Tier 2 waters are identified and the criteria for determining insignificant activity or discharge. There is language in H 153 that provides the replacement language. Mr. Prouty stated that H 153 has other language that is needed to incorporate the anti-degradation rule. IACI did meet with DEQ to discuss the potential changes in the statute and the rejection of Rule language. Some recommendations were provided by DEQ and they were incorporated into this proposed legislation.

He stated that there are four main pieces that have replacement language in the bill. The first one is the definition of degradation (or also known as "lower water quality"). What they are trying to do is to preserve the concept of measuring the adverse change and also incorporating the use of monitoring data. The second change is how general permits are described. The third major change is the identification of Tier II waters. The final piece has to do with what is considered an insignificant activity or discharge. Two criteria had been proposed to determining what is insignificant discharge or activity. Based on some EPA action in other states, they felt that the criteria could be modified to just a single criterion and that is why they proposed the change.

Mr. Prouty said that on page 1 of the bill, there is a Declaration of Policy. This is amended to clarify that these laws and accompanying rules apply to "navigable waters of the U.S." They do not want this law and applicable rules to apply to certain man-made waters and other waters that are not subject to federal rules (i.e., irrigation ditches, return water, canals, private ponds). State rules designate certain waters of the state as Special Resource Waters. It is not clear how these designations are to be handled under this anti-degradation implementation procedure. Also, this legislation has language that clarifies that any water body designated as a special resource water is treated like any other water body for purposes of anti-degradation review.

Chairman Pearce thanked Mr. Prouty for his presentation.

Senator Tippets disclosed that his employer will be directly affected by this legislation.

SPEAKER:

Mr. Barry Burnell, Administrator, Water Quality Division, DEQ stated that he wanted to review some of the elements that DEQ has in H 153. The first part is the definition of navigable waters in the United States. He feels that it is appropriate and is a part of the Clean Water Act and the additional changes are helpful. Section two of the bill brings up the definition of degradation. The current definition of degradation or lower water quality was constructed with the intent of looking back at how a water became impaired (or degraded) and that it is measurable because the degradation has occurred. Anti-degradation is a protection requirement of the Clean Water Act and because the activity has not occurred, it is a predictive exercise. Because the Anti-degradation review of point source and nonpoint source impacts has yet to occur, the method to estimate impact or degradation has to be based on calculations and can't be based on measurement. Anti-degradation applies when the federal government issues a permit or license, as is the case with EPA's NPDES permits, the US Army Corps of Engineers 404 dredge and fill permits, and the FERC hydropower licenses and relicenses. The scope of the anti-degradation is for those three types of permitting.

Mr. Burnell said that on page 7 of the bill, there are three policy decisions that have to be made. The first decision is on lines 10 and 11, defining Tier I waters and Tier II waters. All waters of the state are Tier I waters. Tier II waters are the high quality waters. In this section is where sediments and nutrients have been removed from the list of pollutants that were put forward in the pending rule. On the single page handout that Mr. Burnell provided, 46 waterbodies are listed for either nutrients or sediments. By accepting the language in H 153, these 46 waterbodies would have Tier I protection only. Mr. Burnell said this is a policy decision that the Committee needs to address.

The next policy decision is on page 7, lines 20 and 21, special resource waters and they were designated in 1980 and 1985. The second handout, with the map, is a graphic that displays where those special resource waters are. There are 283 waterbodies that are identified as special resource waters. The following pages of the handout lists information about those waterbodies. In the 1980's, the Water Quality Advisory Committees were used to identify these, so essentially, sportsmen and water users in the State of Idaho nominated the streams that they felt needed additional protection for designation of special resource waters. The definition is "those segments of waterbodies which are recognized as needing intensive protection to preserve outstanding or unique characteristics or to maintain a current beneficial use." Removal of special resource waters from the Rules would put those waterbodies into either Tier I or Tier II, dependent upon if they have an impairment listed in the integrated report.

The last policy issue is on page 7, lines 29 through 33 and talks about how the department shall identify insignificant waters. What is needed is a 10% assimilative capacity.

There are two other sections of the bill that are both needed and necessary, and the language that is added, Mr. Burnell said they agree with it. That concluded his presentation.

TESTIMONY: **Mr. Justin Hayes, Program Director, Idaho Conservation League (ICL)**, testified that ICL is not supportive of the rule. He said they feel it does not go far enough to protect the water quality in Idaho. They are also not supportive of the legislation that is before the Committee. He said the changes that are being proposed in this legislation make it much more likely that EPA will not approve the rule. Should EPA approve that rule, ICL will challenge it in court.

TESTIMONY: **Mr. Dale Atkinson**, representing himself, said he didn't understand why more rules are needed to protect the environment. He feels there is less cause for pollution because the economic activity has been reduced.

TESTIMONY: **Mr. Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA)**, was next to testify. He said he was part of the negotiated rulemaking, representing 13 of the cities that are on the Eastern Snake Plain Aquifer (ESPA). About half of them are dischargers to the Snake River and will be affected by this particular legislation. As far as stakeholders, there were developers, irrigators, cities, industrial users, and conservation groups. During the discussions of the negotiated rulemaking, 90 to 95% of the people involved agreed with what IACI was doing. Mr. Tominaga said the Association of Idaho Cities is in favor of the Rule and H 153, as well as the 13 cities that he represents.

Mr. Tominaga said to answer a question regarding the special resource waters, there were rivers or streams listed such as Soda Creek (because of the soda) and Panther Creek (high content of arsenic) that had nothing to do with water quality standards. When water is designated as Tier II, it has to be proven that it will not degrade or have a significant impact on that water body. That is one of the major concerns regarding Tier II.

In the present Rules, there is basically a 10% leeway and that has been determined by other states' rulings from different parts of the EPA. The question is – how long do you reserve that? It is an issue that is going on now.

Because of the controversy of the Rule, Mr. Tominaga said they are developing guidance as they are doing the Rule. He said to remember - always do the law, then the interpretation of the Rule, then do guidance, if there is a question as to what the Rule means. He feels that all three things are being done at the same time and wondered if it had ever been done before. He stated that there will be another meeting two weeks from now and he also wanted the Committee to know that ICL plans to sue, no matter the outcome.

TESTIMONY: **Mr. Jack Lyman, Executive Director, Idaho Mining Association**, testified next. His remarks were concerning the process. He was part of the original anti-degradation negotiations 22 years ago. The Senator that implemented it was Senator Tominaga. He said when they did negotiated rulemaking, they brought all the parties together, agreed on ground rules as to what would constitute consensus. Twenty two years ago, they defined consensus as everyone agreeing; however, if one party objected, they could go forward, but if two objected, they worked to reach consensus. About 10-15 years ago, they decided two-thirds of the group was a consensus.

At the initial meeting of this rule, it was asked if they were going to define consensus among the parties. The Department (DEQ) determined that they would not. They asked if votes would be taken and the Department said no. When they asked about minutes being taken so that they could document the decisions that had been made, and the discussions that had taken place, again the Department said they would not. Mr. Lyman said the Committee, as well as the Department, worked hard to try to reach consensus position, but ultimately, it didn't matter. If 90% agreed on something, but wasn't what DEQ thought would work, then they (DEQ) would tell them what they wanted. The DEQ Board was approached in November 2010, to let them know the concerns that the Committee had (most of which are reflected in H 153). The DEQ Board accepted some, but failed to accept others. Mr. Lyman said the Committee is not going back on any commitments that were made - there was no consensus - and they have indicated to DEQ, from the beginning of this process, that they reserved the right to use all means available to make sure the Legislature was made aware of the concerns they had and what they thought would help to go forward.

Chairman Pearce asked Mr. Lyman if he thought that what the Legislature was doing was in any way hampering any development in the mining industry in Idaho? Mr. Lyman's response was yes - it is more stringent than what they have been doing before; however, they understand the need to do it and they understand the need for federal permission and there will be less mining in Idaho as a result of this. He doesn't feel it will be a significant decrease, but it will be more expensive and will take more time. The mining industry accepts and supports the State developing the anti-degradation implementation plan so that they can go forward.

DOCKET NO. 58-0102-1001 **Chairman Pearce** reminded the Committee that a hearing was held on this rule, but was held until other legislation was reviewed.

Vice Chairman Bair said that he would like to make a motion and it will be consistent with a concurrent resolution that has been voted on both in the House Environment, Energy, & Technology Committee and the floor of the House.

MOTION: **Vice Chairman Bair** then made a **motion** to approve Water Quality Standards Pending Rule Docket Number 58-0102-1001 with the following sections rejected: Page 123, 010.19 - Degradation or Lower Water Quality; Page 135, 052.03 - General Permits; Page 135, 052.05 - Identification of Tier II Waters; and Page 137, 052.08.a - Insignificant Activity or Discharge. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by majority vote. **Senator Werk** voted **no** and asked to be recorded as such.

MOTION: **Senator Tippetts** made a **motion** to send H 153 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Bair**. A roll call vote was requested. Voting **aye** were Senators Tippetts, Heider, Brackett, Siddoway, Cameron, Vice Chairman Bair, and Chairman Pearce. Voting **nay** were Senators Werk and Stennett. The vote was 7-2 in **favor** of the motion. **Vice Chairman Bair** will be the floor **sponsor** of this bill.

H 85:

Ms. Sharon Kiefer, Assistant Director of Policy, Idaho Fish & Game, spoke in regards to H 85. She said that a 2002 national survey of hunter recruitment rates found that only 6.3% of Idaho's population of children, age 6 to 15, were hunters and 15.5% of the population age 16 and older were hunters. The national average was 4.2% of kids age 6 to 15 and 6.1% of people aged 16 and older, so while our percentage of older hunters was much higher than the national average, our youth statistic was lower. According to this survey, Idaho's youth hunter replacement ratio of 0.41 was lower than the national of 0.60.

Nationally, states are deploying a variety of tools for their toolbox of hunter recruitment. One of the tools that many states have developed is a Mentored Hunting Program, also called Hunter Education Deferral or Apprentice Hunting. Although often aimed at youth, these programs can apply to all ages; we want hunting to be a lifetime sport. Generally, these programs provide a mechanism to allow any person who has not yet received hunter education certification or acquired a hunting license to receive special authorization to hunt for a prescribed time period, usually no more than a year, while accompanied by a licensed mentor. This allows the mentored hunter to experience hunting such as with a family member before pursuing hunter education to get a hunting license in Idaho. Who could present a more positive and cherished experience to spark an interest in a lifetime sport than a supportive mentor? Not surprisingly, states that have deployed mentored or apprentice hunting programs report generally positive experiences with the program. However, few have yet published information related to the number of mentored hunters that ultimately become licensed hunters. To date, Minnesota has the most comprehensive information about mentored hunters converting to hunter education certified license purchasers. About 37% of mentored hunters moved forward with hunter education and about 30% purchased licenses.

Currently in Idaho, unless specifically exempted from licensure in Idaho Code 36-401, no person can be issued a hunting license if they are born after January 1, 1975 (36 years old) unless they previously held a valid hunting license in Idaho or another state or unless they present certificate of completion in hunter education from Idaho or the equivalent from another state or country. House Bill 85 would give the Commission discretionary authority to work with stakeholders such as sportsmen, families, and the Idaho Hunter Education Association to create rules for a mentor hunting program. As with other rulemaking conducted by the Commission, this would be a public process including further research into the safety and violation record of mentor hunt programs across the nation and with further evaluation of the efficacy of this program as a recruitment tool. Currently, we find that many of the students who complete hunter education in Idaho do not purchase a hunting license so the benefit of developing a mentor hunt program may be two-pronged. It may help increase the number of students who would take hunter education anyways arrive in class already committed to hunting because of positive experiences, who will follow through with not only hunter education investment but also become a licensed hunter and it may help recruit new hunters who might not have taken hunter education to pursue hunter education and get a hunting license.

The bill amends several sections of Idaho Code to create opportunity for a mentor hunt program.

1. In Section 1, the Fish and Game Commission authorities in Idaho Code 36-104 are amended to allow the Commission to adopt rules governing a mentored hunting program (b), page 4, line 39).
2. In Section 2, a new license exemption is added to Idaho Code 401 that allows mentored hunters participating in a program prescribed by the commission to apply for a special authorization to take wildlife while accompanied by an adult (age ≥ 18) licensed to hunt. The authorization will be valid for a specific period of time and once invalid, all requirements of Idaho Code 36-411 requiring hunter education certification for licensure will apply. In no way does this bill exempt the requirement for hunter education certification to obtain a hunting license.
3. Section 3 incorporates "authorization" in Idaho Code 36-409 as a mechanism to hunt because the mentored hunter will be exempted from licensure.

Ms. Kiefer said that the Fish and Game Commission and the Department asks for your "Do Pass" recommendation for this bill.

MOTION:

Senator Heider made the **motion** to send H 85 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Tippets**. The motion **passed** by unanimous voice vote. The **sponsor** of this bill is **Senator Heider**.

ADJOURN:

Chairman Pearce adjourned the meeting at 3:05 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary