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MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Wednesday, February 05, 2020

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Gibbs, Vice Chairman Gestrin, Representatives Moyle, Shepherd, Wood, Boyle, Vander Woude, Mendive, Kauffman, Blanksma, Addis, Lickley, Moon, Raybould, Rubel, Toone, Mason, Necochea

**ABSENT/
EXCUSED:** Representative(s) Rubel

GUESTS: The sign-in sheets will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheets will be filed with the minutes in the Legislative Services Library.

Chairman Gibbs called the meeting to order at 1:30pm.

MOTION: **Rep. Toone** made a motion to approve the minutes of the January 23, 2020 meeting. **Motion carried by voice vote.**

RS 27549: **Aaron Lieberman**, Executive Director, Idaho Outfitters and Guides Association, stated this consensus legislation will amend laws governing the allocation of deer and elk hunting tags, by the Idaho Fish and Game Commission, for clients of outfitters in capped and controlled hunts. He explained this legislation also clarifies the agency's authority and direction to ensure they can implement the statutes in a manner that provides predictability, provides opportunities for growth for outfitters, and maximizes the use of these tags by the outfitted public.

MOTION: **Rep. Lickley** made a motion to introduce **RS 27549**. **Motion carried by voice vote.**

RS 27592: **Rep. Gannon**, District 17, stated recreation is Idaho's third largest industry and access to hunting, fishing, motorized trails, hiking, and all other forms of recreation is vital to the economy and outdoor culture of Idaho. He explained this legislation defines publicly accessible lands and waters referencing existing definitions in Idaho Code. It also creates modest incentives for Idahoans to post or place gates only on grounds individuals have the authority to do so. He said this legislation also adds a civil remedy to address violations of intentional access obstruction and to ensure public access while addressing law enforcement constraints.

MOTION: **Rep. Mason** made a motion to introduce **RS 27592**. **Motion failed by voice vote.**

RS 27555: **Rep. Mason**, District 16, explained the purpose of this resolution is to recognize anniversaries of certain public lands and public land designations, and to recognize the impact that designated lands and waters have on the social, economic, and ecological well-being of Idaho and to future generations of Idahoans. Additionally, this resolution asks the public land management agencies responsible for the stewardship of Idaho's public lands to direct adequate financial resources to Idaho to ensure the effective management, utilization, enjoyment, and conservation of these public lands and waters.

Committee members commented with concerns that 1) no representatives who's districts were included in the resolution were contacted ahead of this print hearing, and 2) many of the public lands identified in this resolution are special designation areas, meaning there are restrictions on multiple use activities such as mining, grazing, and timber harvest.

- MOTION:** **Rep. Toone** made a motion to introduce **RS 27555**. **Motion failed by voice vote.**
- H 382:** **Senator Harris**, District 32, stated this legislation authorizes the initiation of general water rights adjudication for the Bear River Basin. He explained the Bear River Commission governs the allocation of water to Idaho, Wyoming, and Utah through which the Bear River flows. The Commission is granted authority through the 1958 Bear River Compact, which was amended in 1980, but there are concerns. For example, many of the existing decreed or licensed water rights are not being used as described in the historical decrees or licenses, statutory claims on record with the Idaho Department of Water Resources have never been confirmed, and many beneficial use water rights (constitutional or grandfathered water rights) exist in the Basin but are unrecorded. He explained, these beneficial use rights, while sometimes the oldest, are the first to be curtailed because of the unrecorded status, resulting in disputes between water users and uncertainty regarding water rights in property transactions or water administration. The Bear River Adjudication will accurately record all existing water rights to resolve any uncertainties and help to ensure fair and accurate water administration.
- Roger Chase**, Chairman, Idaho Water Resource Board, stood **in support** of **H 382**.
- MOTION:** **Rep. Blanksma** made a motion to send **H 382** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gibbs** will sponsor the bill on the floor.
- H 367:** **Ben Davenport**, Executive Director, Idaho Mining Association, stated this legislation will establish minimum design standards for the disposal of phosphogypsum at phosphoric acid facilities. He explained phosphogypsum is a by-product of the manufacturing of phosphoric acid and currently, Idaho's solid waste requirements exclude phosphogypsum systems from regulation. Therefore, minimum design requirements are necessary to eliminate the case by case determinations by state and federal agencies on the design of these systems. The minimum design requirements in this legislation reflect current industry practices and will minimize impacts to human health and the environment.
- MOTION:** **Rep. Blanksma** made a motion to send **H 367** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kauffman** will sponsor the bill on the floor.
- DOCKET NO. 37-0000-1900F:** **Mat Weaver**, Deputy Director, Idaho Department of Water Resources stated this is a follow-up to the January 15, 2020 committee meeting where the motion was made to approve **Docket No. 37-0000-1900F** with the exception of **37.03.07.061.01** and **37.03.07.061.03** which were held for further discussion. These subsections are within the Stream Channel Alteration Rules Chapter, which addresses minimum standards for suction dredges and prohibitions to mechanized equipment within the stream channel. Mr. Weaver stated, there was a recent informational dredge mining session that was provided for interested committee members, where staff from Idaho Departments of Water Resources, Lands, and Environmental Quality were all present to answer questions, present on recreational dredge mining, and review the various authorities from each of the agencies. As a result of that informational session, the Director of the Department of Water Resources and the Chairman of the Water Resource Board signed a memo (See Attachment 1) directing staff from the Stream Channel Alteration Program make the stream alteration sections in question be the first priority in the 2021 rulemaking efforts.
- MOTION:** **Rep. Blanksma** made a motion to approve **37.03.07.061.01** and **37.03.07.061.03** from **Docket No. 37-0000-1900F**.

Donald Smith, representing himself, provided testimony on his personal background as it relates to obtaining a dredge mining permit. He also discussed pending dredge mining court cases in the states of Washington and Oregon and how they relate to Idaho's suction dredge mining program. Additionally, he stated his concerns regarding Idaho's dredge mining permitting process and requested more hearings on Idaho Department of Water Resources policy making before any more decisions are made.

Rep. Giddings, District 7, stated overall her constituents believe the suction dredge issue needs a lot more attention. She said as Legislators, their role in reviewing Administrative Rules is to make sure legislative intent is being met and believes these two rules do not meet that intent. She commented, for example, the issue regarding five inch hose size is not in alignment with Idaho Code, and there are many other issues that need to be resolved, not just these two issues. She concluded by stating she does not believe the Department of Water Resources commitment letter will address all of the small scale suction dredge miners' concerns.

In response to concern as to whether or not the Department of Water Resources commitment letter covers more of the Stream Channel Alteration Chapter beyond the two identified areas of concern, **Mr. Weaver** responded he is not in a position to commit to more than what the Director agreed to but would relay the committee's concerns to the Director.

Donald Smith, representing himself, requested the record reflect the Clearwater Basin Special Supplement started as policy but is now codified, and also impacts the Salmon River. He stated his concern is policy is now being built upon the codified Basin Plan, which started off as just policy.

Chairman Gibbs requested the record reflect nobody else came forward to testify.

**VOTE ON
MOTION:**

Chairman Gibbs called for a vote on the motion to approve Sections **37.03.07.061.01 and 37.03.07.061.03** from **Docket No. 37-0000-1900F. Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:46pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary

MEMORANDUM

To: Mat Weaver, Brian Patton, Tim Luke
 Cc: Shelley Keen, Aaron Golart

From: Roger Chase
 Gary Spackman

Date: February 5, 2020

Re: Rulemaking for Small Scale Suction Dredge Mining

On January 16, 2020, Governor Little signed an executive order titled “ZERO-BASED REGULATION” numbered Executive Order No. 2020-1. The order states, in part:

Ongoing Review Process for Existing Rules

2. Each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule according to a schedule established by the Division of Financial Management (DFM) as follows: a. All rule chapters, excluding those issued by Constitutional officers, shall be reviewed and, if applicable, be promulgated as specified in this Executive Order no later than sine die in 2026;

b. The agency review schedule shall be staggered across agencies and within agencies if the agency has five (5) or more rule chapters. DFM shall ensure the volume of rules that are reviewed by the agencies in any given year is such that the public can engage and provide meaningful input in any individual rulemaking, with approximately twenty percent (20-percent) of rule chapters subject to review each year;

The Governor’s office has not specifically instructed agencies how to comply with the executive order. Nonetheless, IDWR will be required, beginning in calendar year 2021, to “review” approximately 20% of its rules annually, and to “publish a notice of proposed rulemaking”] Furthermore, IDWR “must perform a retrospective analysis of the rule chapter, . . . and hold, at a minimum, two public hearings that are designed to maximize public participation in the rulemaking process.”

Some questions were raised in the 2020 Legislature about Rule 61.01 (Standards for Suction Dredges) and Rule 61.03 (Mechanized Equipment Prohibited Below High Water Mark) of the Idaho Water Resource Board’s Stream Channel Alteration Rules governing small scale suction dredge mining. As a result, **staff is instructed to consider those two rules in calendar year 2021 pursuant to the Governor’s Executive Order no. 2020-01.**

We recognize that the prioritization of rules related to small scale suction dredging and the possible larger review of stream channel alteration rules may require dedication of significant time, and that the normal duties of stream channel alteration staff may be interrupted.