

FORMER IDAHO FISH AND GAME COMMISSIONERS

FmrIDGFCommissioners@gmail.com

November 17, 2016

Senator Brent Hill, President Pro Tempore
Idaho State Legislature, State Capitol Building
P.O. Box 83720
Boise, Idaho 83720

Dear Senator Hill,

As former Idaho Fish and Game Commissioners from 1972 to 2016, we are increasingly disturbed by the actions and communications of Senator Steve Bair, Chairman of the Senate Resources and Environment Committee.

On October 17, 2016, the Idaho Wildlife Federation issued a press release detailing the results of an Idaho Public Records Act request for documents relating to the reappointment of Commissioners, efforts to change the method of allocating controlled hunt permits and other topics of utmost importance to Idaho sportsmen and women. (A [copy is attached.](#)) Additionally, there are several recent articles in the press relating to these issues. (A [sample is attached.](#)) This new public information, plus personal experience of the former Commissioners, confirms what we have suspected for some time. Senators Bair, Siddoway and Brackett and Representatives Moyle and Wood work in contravention to the plain meaning of the 1938 Citizen's Initiative #1. This Initiative was overwhelmingly passed expressly to remove the direct and prescriptive influence of special interest politics from the day to day management of Idaho's fish and game resources. Our concern for what the Public Records Act information has revealed and our experience observing these Legislators' efforts to micro manage the Fish and Game Department, causes us to take this unprecedented action of writing you.

We believe the root of this problem revolves around the understanding of the intent of Citizen's Initiative #1 and the respective expectations of the Commission, Senator Bair and certain other legislators. Senator Bair has demonstrated he expects the Commission to accept, without question, his representation of legislative policy. On the other hand, the Commission's

expectation is for the Senator to respect the Commission's role to administer policy after engaging license buyers and seeking their opinion. A brief analysis of the context of our concern is attached for your information. Additionally, we suggest you review the emails obtained by the Public Records Act request which can be accessed by the links provided in the attached Idaho Wildlife Federation press release.

We, as former Fish and Game Commissioners, feel strongly and are dedicated to the 1938 Citizen's Initiative Policy Statement as codified in Title 36 to **preserve, protect, perpetuate and manage all wildlife declared the property of the state of Idaho** and the Commission's role to **Administer** such policy. It is within this spirit we respectfully request Senator Bair be replaced as Chairman of the Senate Resources and Environment Committee. Because of Senator Bair's influence as Chairman and his demonstrated bias, we do not feel he can maintain the objectivity to fairly provide oversight of the Fish and Game Department and manage the Commissioner confirmation process. We fear if the chemistry of the Committee is not changed, this issue will not heal or repair itself; the problem-solving process envisioned in Citizen's Initiative #1 will remain elusive.

We trust the Leadership of the Idaho Legislature does not condone Senator Bair's tactics. The most onerous of these tactics include participating in changing the makeup of the Idaho Fish and Game Commission, mandating auction tags to achieve the goals of one individual and insisting on a quid pro quo before supporting a much-needed fee increase for the Department, despite the collective opinion of the 400,000 license buyers of Idaho.

Respectfully,

Alex Irby	Fred Trevey	Gary Power	Keith Carlson
Keith Stonebraker	Kenny Anderson	Mark Doerr	Nancy Hadley
Pete Thompson	Richard Meiers	Tony McDermott	Wayne Wright
Will Godfrey	Will Naillon		

Electronic CC: Bart M. Davis, Majority Leader; Chuck Winder, Assistant Majority Leader; Todd M. Lakey, Majority Caucus Chair; Michelle Stennett, Minority Leader; Cherie Buckner-Webb, Assistant Minority Leader; Grant Burgoyne, Minority Caucus Chair; Governor Otter; Brad Little, Senate President

ANALYSIS

CONTEXT

For nearly the past decade auction tags, Land Owner Appreciation tags (LAP), depredation payments, bonus points for controlled hunt applications and a general fee increase for licenses and tags have been continuing topics of discussion before the Commission, license buyers and the Legislature. In general, the common dominators revolve around money, the special interests of the wealthy and large land owners. Except for wolf management, it is interesting to note that no biological issues have been controversial. Controversy is mainly tied to personal interests of a few members of the Legislature that stand to gain financially and in response to wealthy special interests. There is tension between the Commission and some members of the Legislature on the plain meaning and intent of the 1938 Citizen's Initiative as outlined in Idaho Code Title 36 and the validity of the principles outlined in the North American Model for Wildlife Management. Sen. Bracket was observed commenting the Model is a socialist ideology and he was tired hearing about it from the Commission. Senator Bair commented disdainfully in an email about the Model being "waved" before his committee. The Senators apparently disagree with two of the Model's principles: that wildlife is held in public trust (wildlife are the property of the state --- a feature of Idaho Code Title 36) and hunting opportunity is available for all regardless of social, economic or political status.

It is instructive to understand the dynamics of why certain Legislators continue to attempt to pressure and cajole the Commission to reflect interests other than sportsmen's interests. The bottom line is certain members of the Legislature do not feel they can change the law through legislation without creating unwanted political exposure. Therefore, they have over the past several years, attempted to pressure the Commission to make the changes they cannot do directly. This was vividly displayed when Senator Bair tried to change "may" to "shall" in the law authorizing auction tags. (This is documented in a February 2, 2016 email from Senator Bair to Doug Sayer and in a Lewiston Tribune editorial October 27, 2016---attached.) Should this trend continue, the intent of the 1938 Citizen's Initiative would be incrementally and inexorably changed.

The Commission has been resistive to the requested changes to the auction tag authorization based on clear input from sportsmen and women. This resistance has led to a call by Doug Sayer, a vocal proponent of auction tags, for the Governor to "change the chemistry" of the Commission. The influence of this call can be seen where two Commissioners were simply "invited" to reapply for the position they already held. They are no longer on the Commission.

This sends a chilling message to past, present and future Commissioners that may not agree with current political forces. Emails made public through the Public Records Act show a great deal of interest by Sen. Bair and other legislators in affecting a change of Commission makeup. Also, this same group of legislators met with Governor just prior to the decision to not reappoint the two commissioners. No record of that meeting is available to the public. Interestingly, the Governor has remained silent on reasons for his action—no “show cause” has been forthcoming.

AUCTION TAGS: Idaho has a limited history concerning auction tags. For several years Idaho, has reserved two Bighorn Sheep tags one for a special lottery drawing and one for auction to the highest bidder. (See Press Release July 11, 2016) Additionally, when wolf harvest was first initiated, a special Governor’s tag was auctioned. This was done to raise the profile of the new hunting opportunity and secondarily to raise additional money.

Utah initiated a widespread auction tag system several years ago. The stated objective is to raise funding for wildlife conservation and habitat improvement. The success or failure of this program depends on individual viewpoint. Some say the tradeoff in opportunity to those who cannot afford to compete in buying an auction tag is worth it in overall benefit to wildlife. Others feel they have lost opportunity and choices to hunt as individuals, as family groups and that youth are left out. Many feel the scheme, with its emphasis on trophy hunting, reserves the best opportunities for the wealthy.

The Idaho Legislature, in the absence of a request from the Commission, authorized that the Commission may issue a certain number of auction tags at the Commission’s discretion. The Commission and sportsmen believe this is the appropriate way to provide broad legislative policy direction the Commission can then Administer. Policy based on may issue is consistent with Title 36 which states in part---

(b) Commission to Administer Policy. Because conditions are changing and in changing affect the preservation, protection, and perpetuation of Idaho wildlife, the methods and means of administering and carrying out the state’s policy must be flexible and dependent on the ascertainment of facts which from time to time exist and fix the needs for regulation and control of fishing, hunting, trapping, and other activity relating to wildlife, and because it is inconvenient and impractical for the legislature of the state of Idaho to administer such policy, it shall be the authority, power and duty of the fish and game commission to administer and carry out the policy of the state in accordance with the provisions of the Idaho fish and game code. The commission is not authorized to change such policy but only to administer it.

In 2016 Sen. Bair, at Mr. Sayer's urging, attempted to change the may to shall. Many believe this goes beyond the intent of the 1938 Initiative which was created to remove the direct influence of politics in the day to day management of the Fish and Game Department. Changing the word may to shall is prescriptive and bypasses and removes the Commission from its administrative role. This introduced tension into the Commission-Legislative relationship as the respective expectations of each were at odds. Sen. Bair expected the Commission to accept without question his representation of legislative policy. On the other hand, the Commission's expectation was for the Legislature to respect the Commission's role to administer policy after engaging sportsmen and women seeking their input.

Harvest estimates and hunting opportunity are based upon biologic assessments and allocated primarily to Idaho residents based on the recognition that the wildlife is the property of Idaho. Nonresident quotas and nonresident limits on controlled hunts are well established standards.

Doug Sayer, a wealthy businessman from Blackfoot and trophy hunter, has pushed the Utah auction tag scheme in Idaho for several years. He is on record that---"if the wealthy can help provide increased funding, then auctioning off the public's wildlife is a valid method to raise funds". This is likely true; however, it begs the question more money verses the tradeoff to Idaho culture that values individual, family and youth opportunity over trophy hunting.

There are those that suspect alternative motives---auction tags provide the wealthy a vehicle to go to the front of the line, play by a different set of harvest rules and avoid competing with "ordinary" folks that stand in line for controlled hunt tags. Auction tags have different rules than those that apply to traditional Idaho sportsmen/women: for example, the once in a lifetime harvest restriction for certain trophy species does not apply.

Most feel the public's wildlife should not be for sale to the highest bidder. In his efforts to promote auction tags Mr. Sayer has edited legislation, financed a lobbyist to shepherd his legislation and built a very close relationship with the Governor's office and Sen. Steve Bair, Chairman of the Senate Resources and Environment Committee. This Committee has oversight responsibility over the Department and facilitates the Commissioner confirmation process.

Correspondence highlighted in the Public Records Act request by the Idaho Wildlife Federation demonstrates the exclusiveness of the Sayer/Bair relationship. In large part because of the auction tag issue, Mr. Sayer is on record recommending to the Governor that two Fish and Game Commissioners, the Director and one Deputy Director be replaced or removed. (Sayer email attached.) Within a very short time of Sayer's recommendations to the Governor and a group of legislators visit with the Governor, two Commissioners were informed they would have to reapply for their position---a change from the established process. These two Commissioners are no longer on the Commission. The Director, by law, serves at the discretion of the Commission and remains in his position. The Deputy Director, under state employee rules, is protected from politically motivated removal and remains in position.

Landowner Appreciation Permit (LAP): LAP has been a topic of discussion for many years. The original intent of LAP was to show appreciation to landowners for habitat their land provides wildlife at certain times of the year. Landowners in controlled hunt areas are given a certain number of tags for their personal, family and employee use---they cannot be legally sold. The LAP tag is good for the entire controlled hunt area—not limited to the private land portion. The number of permits is limited by a percentage of the total number of controlled hunt tags. Certain large landowners, including sitting members of the legislature are not satisfied and want to use LAP permits to obtain a monetary return. Land owning members of the Legislature, in their own self-interest, have spearheaded proposed legislation to legalize the sale to the highest bidder their LAP tags. They have introduced the notion they want to sell LAP tags, in part, to offset wildlife depredation to their land.

The water gets a bit muddy as this issue then merges with the intent of the depredation program that is designed to offset the effects of wildlife on crops and other agricultural uses. License buyers do not agree landowners should profit from selling the public resource.

Legalizing the sale of LAP tags raises some interesting questions. Once a LAP tag becomes the property of the landowner or corporation to whom it is issued, why is not the tag an ordinary sportsman/woman draws also their property and could be sold? What are the tax implications?

DEPREDATION PAYMENTS: License buyers contribute to the depredation fund through the purchase of licenses. The Department has a process by which damage is assessed and payments proportioned out. It goes without saying--some are never happy. Some even game the system. Landowners in some cases can get LAP tag(s), make claims for depredation payments and receive Federal crop insurance all on the same area. Depredation payments are part of the context because some Legislators want the ability to make money on LAP tags in addition to depredation payments. Senator Bair has expressed his opinion on this in meetings with Commissioners and in emails obtained through the Public Records Act request.

FEE INCREASE: A book could be written on the ups and downs of fee increase proposals. The Commission's ability to sponsor a fee increase proposal is stymied by one simple fact: It is called "QUID PRO QUO". The involved Legislators expected the Commission to "go along to get along" and give them auctions tags, bonus points and changes to LAP, which they themselves find politically risky, in exchange for a license and tag fee increase for the Department. In 2015 the Commission pulled its fee increase request while refusing to give away that which it did not have to give. License buyers agreed to a fee increase but not to the wish list containing auction tags, bonus points and monetizing LAP tags proposed by Senators Bair, Siddoway, Brackett and Representatives Moyle, Gibbs and Wood. The Commission could not in good faith go against license buyer wishes to satisfy the special and self-interest of these Legislators.

In an email on October 28, 2015 Senator Bair provided his perspective to Doug Sayer indicating, in effect, a fee increase would not be forthcoming unless the Commission softened its position concerning auction tags, LAP, depredation and change their view on the intent of Citizen's Initiative #1.

1938 CITIZEN'S INITIATIVE---Idaho Code Title 36:

In 1938, the people of Idaho voted by Citizen's Initiative to remove the direct influence of politics from the management of Idaho's proclaimed fish and wildlife resources. The Initiative established an independent Commission to administer Legislative policy to be implemented by the Department of Fish and Game. This initiative is codified in Title 36 of Idaho Code. The Initiative, in effect, set up a classic problem solving process. Problem solving becomes difficult when for example: Senator Siddoway in an email on February, 23, 2016 organizes a meeting and states-- "I think we better take a swing back." in response to input to the Senate Resource and Environment Committee by Commission Chairman Doerr. (Emailed input attached) Commissioner Doerr was not reappointed for a second term following Senator Siddoway and others meeting with the Governor.

The Initiative envisioned the Legislature setting broad, versus prescriptive policy (it is acknowledged in the Code it is inconvenient and impractical for the legislature to administer such policy) and the Commission was authorized to administer policy after consulting with stakeholders and using science provided by the Department. The Commission cannot change policy provided by the Legislature. The Fish and Game Commission is somewhat unique in that it goes beyond the traditional advisory role typical for a tax funded agency. The Commission represents a form of governance placed between the Legislature and an agency funded by users without benefit of any tax dollars. The Department reports directly to the Commission. Checks and balances are provided by Commissioner appointment by the Governor and confirmation by the Senate. Some will say the Legislature can do whatever it wants----which is true if it can pass both Houses and obtain the Governor's signature. This leads us to the problem at hand.

PROBLEM STATEMENT

A large part of our concern is represented by some legislators' apparent desire to create prescriptive policy thereby bypassing the Commission and directly micro managing the Department. A parallel concern involves attempts to cajole the Commission into carrying the ball on politically unpopular issues in response to the special interest of wealthy hunters, large influential land owners and the self-interest of some legislators. We view these activities as

contrary to the plain intent of the 1938 Initiative and the principles outlined by the North American Model for Wildlife Management.

George McQuiston Owner/Guide, Challis, Idaho, in an email to Sen. Bair says it well--- "One of the most intriguing things to me about SB1236 is your apparent willingness to abjure the responsibilities which you have clearly delegated to your chosen commissioners, by mandating their actions instead of allowing them to serve the people of the great state of Idaho. I would think by doing their job for them, it sort of defeats the purpose of their (positions) existence."

For the Legislature to provide direct politically motivated prescriptive language is counter to the problem-solving intent of the 1938 Citizen's Initiative. We are troubled by this approach. We do not accept "this is the way things get done" in Boise. To allow this to go unchallenged will only promote more of the same.

The emails obtained by the Public Records Act demonstrate Sen. Bair, Chairman of the Senate Resource and Environment Committee is the focal point of the efforts to circumvent the Commission's lawful role.