

*Subject to the approval of the Natural Resources Interim Committee*

**MINUTES  
NATURAL RESOURCES INTERIM COMMITTEE  
August 6, 2013  
Capitol Building – East Wing – Room EW42  
700 West Jefferson Street  
Boise, Idaho**

**Co-chair Senator Monty Pearce** called the meeting to order at 9:00 a.m. Members present were: Co-chair Representative Dell Raybould, Senators Lee Heider, Jeff Siddoway and Michelle Stennett, Speaker Scott Bedke and Representatives Mike Moyle, Marc Gibbs and Donna Pence. Ad Hoc members present included Senators Dean Cameron, Shawn Keough, Bert Brackett and Roy Lacey and Representatives Ken Andrus, Paul Shepherd and Grant Burgoyne. Senator Steve Bair and Ad Hoc members Representatives JoAn Wood and Frank Henderson were absent and excused. Staff members present were Katharine Gerrity, Ray Houston and Toni Hobbs.

Others present included Director Gary Spackman, Brian Patton and Aaron Golart, Idaho Department of Water Resources; Clive Strong, Attorney General's Office; Roger Chase, Pete VanDer Mellen, Jeff Raybould and Bert Stevenson, Idaho Water Resources Board; John Revier, Congressman Simpson's Office; Brad Griff, Congressman Labrador's Office; Norm Semanko, Idaho Water Users Association; Sharon Kiefer, Department of Fish and Game; Tim Luke and Matt Weaver, Department of Water Resources; James Werntz and Tracy DeGering, Environmental Protection Agency-Idaho; Michael McIntyre, Department of Environmental Quality; Jim Tucker, Rich Hahn and Jon Bowling, Idaho Power; David Miles, City of Meridian; Marie Calloway Kellner, Idaho Conservation League; Jack Lyman, Idaho Mining Association; Julie Sievers and Walt Mullins, Milner Irrigation; Teresa Molitor, Great Feeder Canal Company; Brent Olmstead, Milk Producers of Idaho; Dave Tuthill and Hal Anderson, Idaho Water Engineering; Gail McGarry, Bureau of Reclamation; Alex LeBeau and Jayson Ronk, Idaho Association of Commerce and Industry; Lynn Tominaga and Lincoln Smyser, Idaho Ground water Association; Dan Steenson, Sawtooth Law; Dennis Tanikuni, Idaho Farm Bureau; Stephen Goodson, Governor's Office; Paul Woods, City of Boise; Anita Hamaan, Division of Financial Management; Jonathan Parker, Holland and Hart; Andy Brunelle, Forest Service; Bob Lorkowski, Lower Snake River Aquifer Recharge District; Peter Anderson, Trout Unlimited; Raeleen Welton, Westerberg and Associates; Craig Watt, Ag-Natural Resources Extern; Gary Vuspiva, Well Driller; John Simpson, Barker Rosholt; Tyler Mallard, Risch Pisca; Jerry Deckard, Idaho Prior Appropriation Doctrine Association; Brenda Tominaga, Idaho Irrigation Pumpers Association; Pat Barclay, Idaho Council on Industry and the Environment; Lincoln Smyser, Lobby Idaho, LLC; and Mark Snider and Roger Dittus, United Water Idaho.

NOTE: All copies of presentations, reference materials, and handouts are on file at the Legislative Services Office and are also available online at the Legislative Services Office website, <http://www.legislature.idaho.gov>.

**Co-chair Senator Monty Pearce** called for a silent roll call at 9:05 a.m.

The first speakers to appear before the committee were **Mr. Roger Chase, Chairman of the Idaho Water**

**Resource Board and Mr. Brian Patton, Chief of the Planning Division with the Idaho Department of Water Resources.** Mr. Chase addressed the committee relating to the State Water Plan.

**Mr. Chase** explained the legislative action that was taken in 2013 for the State Water Plan. The Water Resources Board adopted the revised State Water Plan in November 2012, following 37 open working meetings, a 90 day public comment period and seven formal public hearings. Many different and broad interests throughout the state were included in the process. He said that the board submitted the plan to the Legislature prior to the first day of the 2013 Legislative Session and the revised plan took effect without action by the Legislature.

**Mr. Chase** told the committee the board believes that their interaction with the legislative committees could have been better and that they are committed to be more involved in the future. He said that during the hearing in the House Resources Committee, he agreed to review several areas of concern expressed by a number of committee members and determine if changes were necessary. Areas of concern included minimum stream flow policies, aquifer recharge policies, riparian habitat policies, climate variability policies, funding policies and fishery and environmental policies.

**Mr. Chase** noted that if the board changes one word, they have to hold public hearings. He said the challenge is that the process will take time. He told the committee that the board intends to keep the Legislature apprised of the process as they go through it. Due to the public involvement process, they believe that it may be 2015 before changes are presented to the Legislature.

**Mr. Chase** told the committee that Governor Otter requested, in writing, that the board develop a "Sustainability of Water Resources Policy." This policy will be included in the State Water Plan and will be developed in conjunction with other amendments that are recommended to be made to the plan. He stated that there are different water-related issues involving the various areas of the state. **Mr. Chase** noted that there will be costs associated with the continued work. He emphasized that there continue to be other states looking at how they can take Idaho water and stressed that we have to protect our water.

**Mr. Chase** then stood for questions. **Co-chair Raybould** asked if the board could schedule their working committees to meet with the House and Senate Resources Committees, perhaps on several occasions, to discuss the action they are working on. **Mr. Chase** said they would do that and that the board should have done so during the last legislative session.

**Senator Heider** commented that while he was in Las Vegas for a Council of State Governments meeting, they were told that Las Vegas is conserving 25 percent of the water they used to use. He asked whether Idaho is doing that as well. **Mr. Chase** said that we are, and that everyone understands that we have to conserve water. He noted that the Water Resources Board looks at conservation when working on any project.

The next speaker before the committee was **Mr. Gary Spackman, Director of the Idaho Department of Water Resources (IDWR)**. **Director Spackman** provided the committee with information relating to well construction standards as well as statewide water conditions. His complete presentation is available at: <http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

**Director Spackman** explained that well construction permitting began in 1987. He said that in most areas of the state, drillers can pre-purchase ID tags that must be attached to the well casing. The driller activates the permit by notifying the Idaho Department of Water Resources (IDWR) of commencement of construction. He added that this leads to immediate approval for most with no waiting.

**Director Spackman** told the committee that the underlying conditions for streamlined permitting require a standard (minimum) surface seal depth that will most likely encounter a confining layer that will prevent the migration of contaminants into the aquifer. This layer is usually clay. He said that if there is a seal around the well casing, it will largely prevent the movement of contamination down into the aquifer that is being used and is pure enough to provide drinking water and culinary water. **Director Spackman** noted that the current surface seal depth is now 38 feet and that it was once 18 feet. He said that the other underlying condition that was implemented with the support of the well drilling community, was an opportunity for department staff to inspect the surface seal placement at the time it is being placed. The driller has to notify IDWR four hours prior to placement of the seal in order to give the department the opportunity to inspect the placement of the seal.

**Director Spackman** said that the surface seal is important because:

- Ground water is limited;
- Provides drinking water for 95% of Idahoans;
- Human activity is source of most ground water quality degradation;
- Shallow aquifers near surface are most susceptible to contamination;
- Ground water requires less treatment than surface water – no bacteria;
- Ground water is very difficult and expensive to clean up once contaminated;
- Ground water impacts surface water.

**Director Spackman** next addressed well construction rules that were the result of roughly two years of negotiated rulemaking. The rules, he said, were promulgated in 2009. He said that the rules were developed after much compromise for a wide cross-section of stakeholders. He noted that the rules increased the surface seal depth from 18 feet to 38 feet and require a four hour notice to the department before a seal is placed. **Director Spackman** told the committee that the rules also allow for individual waivers of the standard surface seal depth upon request by a driller and a showing of geologic conditions justifying the waiver. He added that the rules also allow for designation of larger areas where a different standard surface seal depth could be recognized. He said that these areas would most likely need a somewhat uniform geology. One such area, he noted to the committee, is in the Rathdrum Prairie.

**Director Spackman** stated in 2013 there was some proposed legislation relating to the reduction of the surface seal depth from 38 feet back to 18 feet, the elimination of the four hour notice requirement and a revised definition for the word “artesian.” He said that there were amendments offered late in the session. The legislation was not passed. He told the committee that the department made some commitments to the proponents of the legislation to identify concerns.

**Director Spackman** said that in attempting to address those concerns, the department started a well construction regulatory initiative and is evaluating the minimum surface sealing depths and regulatory

process for waivers. On June 19, 2013, the IDWR contracted with Dr. Dale Ralston from the University of Idaho to evaluate and peer review the department's well logs used to establish minimum surface depths. Dr. Ralston was also allowed to expand the well log study to better evaluate minimum surface seal depths and worked with regional department staff to evaluate the geology regarding minimum seal depths. He said that Dr. Ralston is in the process of completing his report and that it is anticipated the report will be available before the next legislative session. He added that the report will be distributed to the resources committees, the well drilling community and other interested individuals.

**Director Spackman** told the committee that they also have staff evaluating local and regional geological conditions to see if there are specific areas that can be identified where waivers would be important or where a larger geographical area could be identified. **Director Spackman** told the committee that the department has placed waiver forms on the website and is working on guidance to regional staff regarding the consistency of processing waivers. **Director Spackman** noted that they are also forming a Drillers Advisory Committee that will begin meeting in October.

**Director Spackman** said that one of the concerns expressed to the department is that there are remote areas in Idaho that staff cannot reach within four hours of seal placement. He said that the department is contracting with public health districts to help resolve that issue. These entities include the Eastern Idaho Public Health Districts in Salmon as well as the Idaho North Central District in Latah, Clearwater, Idaho, Nez Perce and Lewis counties.

**Director Spackman** stated that the department has issued guidance to regional offices for implementation of well construction and driller licensing programs to promote statewide consistency. He added that the state office staff is working more closely with the regional offices to support consistency of inspections and enforcement.

**Director Spackman** stood for questions. **Senator Stennett** noted statutory revisions that were made in 2013 regarding underground injection wells and asked the director about proposed revisions. **Director Spackman** said that he understands it involves a one or two word change, primarily a cosmetic fix, because the wording was unacceptable to the EPA. In response to another question from **Senator Stennett**, **Director Spackman** said he would get her the information on underground injection.

**Co-chair Raybould** asked, due to the priority system and the moratorium on the ESPA, how many wells are being drilled there each year, noting that he assumes most are domestic wells. **Director Spackman** agreed that most are domestic wells. He added that he can get information as to the number of wells but that it may be more difficult to get information relating to withdrawal amounts. **Co-chair Raybould** commented that in his opinion domestic wells need to be taken into consideration when addressing recharge. He added that quite a bit of water is taken out of the aquifer associated with domestic wells. **Director Spackman** agreed that a large percentage of wells in the state are domestic wells. He said it was probably 80 to 90 percent.

**Representative Gibbs** asked how many waivers relating to seal depth were issued and whether it was common practice. **Director Spackman** said it was uncommon. Less than a dozen were issued in 2013. **Representative Gibbs** asked how many waivers are granted. **Director Spackman** said it has been a common practice if there is a showing of proper geology. They are trying to encourage the drilling community to use the process. One complaint has been that drillers are not aware waivers are available.

In response to a question from **Co-chair Pearce** associated with costs and training regarding the public health district contracts, **Director Spackman** explained that there are two contracts in place. He said that one contract is with the Salmon area district health office and it has been in place for several years. He noted that the department holds in-office training as well as on-site training. He added that the health districts are primarily observers and the cost in Salmon is around \$20,000 to \$30,000 per year. Another contract was just signed in Grangeville at a similar cost. **Director Spackman** said he would have to review the contracts but he believes the cost is based on time spent.

**Director Spackman** moved on to discuss water supply conditions for 2013. He said that the information is tracked all the time, and added that the department meets with water supply committees and both federal and state entities relating to conditions in Idaho, as well as the western United States. He noted that discussion topics include precipitation, temperature, reservoir levels, river and stream hydrographs, ground water conditions, drought conditions, emergency declarations and a summary of conditions. His complete presentation is available at:

<http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

**Co-chair Raybould** stated that the percentage of normal was changed last year to reflect a different span of time, and that previously we went back into the 1930s. He asked the director to explain what percent of normal is and compare that with previous calculations. **Director Spackman** responded that in forecasting for stream flows at the Heise gage, which they have focused on in many other water matters, they go back thirty years. He said that last year they lopped off some very high water years from the 1970s. In predicting, not only at the Heise gage, but also for the snow water equivalent analysis, if you take the average including the high water years, you end up with an average that is much higher than if you take the high water years out. The percentage of normal is then higher than it would have been. He added that you have to apply that filter as they look at some of the information. The averages are higher than they would have been two or three years ago using the same information.

**Director Spackman** noted that seasonal precipitation from October 1, 2012, through June 30, 2013, is quite different in northern Idaho than in southern Idaho. This is especially true for the month of June. He said that Idaho's present warm temperatures are predicted to last into October.

In terms of water supply, **Director Spackman** showed the committee a depiction of reservoir supply in the Boise and Payette systems. He added that the Payette seems to be healthy in terms of water supply, but that the Boise is declining significantly.

Moving on to the Anderson Ranch Reservoir, **Director Spackman** said that much of the storage has been used already. In terms of stream flows in the Boise River near Twin Springs, the director showed the committee a graph indicating that we are well below average.

**Director Spackman** provided a bar graph depicting historic and forecasted storage and surface water supply in the Boise system. We are well below many previous years. Moving on to Cascade Reservoir, the director stated that the conditions are similar to last year.

**Director Spackman** said that in the Snake River system, the major reservoirs in the system have already been significantly depleted. American Falls is only 24 percent full, Palisades is only 22 percent full and

there is still a lot of irrigation to be conducted. Palisades did not fill this year. The director noted that Jackson Lake is now being drafted to move water downstream for irrigators.

Showing another bar and stem graph, **Director Spackman** discussed the historic and forecasted storage and surface water supply in the Snake River near Heise. The graph depicts that storage and supply are near the low of previous years from 1981 to 2013.

The next graph the director presented was a summary hydrograph of the Snake River near Murphy between 1981 and 2012. He said the department refers to this information every week during the summer, particularly in June and July. These are flows at Murphy gauge and they are monitored to determine whether the state is satisfying its obligation under the Swan Falls Agreement. He added that minimum stream flows are established at Murphy gauge with summertime minimum stream flows set at 3,900 cfs and 5,600 in the wintertime. **Director Spackman** said that in June they dropped down and bounced along above the minimum flow within about 200 to 300 cfs until the middle to end of July. He said that the uptick in the flows is due to some water being released by Idaho Power to generate power. He added that they expect to see some increases due to increased spring flows from the Thousand Springs area and reduced irrigation as people finish irrigating.

**Director Spackman** noted one spring flow graph for Box Canyon near Wendell. He said that Box Canyon has a long period of record. The director indicated that it appears we may be establishing a new low flow rate as of 2012 and 2013. He added that the flow rate of 300 cfs is of significance to them because there are water rights in that area that are quantified at about that amount.

Referencing the Big Wood Basin, **Director Spackman** stated that the graph represents what happened with Magic Reservoir this last year. During 2012 there was a full supply of water. The Big Wood Canal Company, however, had to evacuate space to repair some hydropower facilities. He said that in May, 2013 the demands for irrigation came up and the flows dropped in July, 2013 to base flows. He said this tells him that Magic Reservoir was dry and the Big Wood Canal Company could no longer deliver water. There was a very short time period for irrigation.

**Director Spackman** briefly addressed the Big Lost River near Arco. Bear Lake Reservoir, which he said luckily has several years of storage in it, is now only 55 percent full. He added that we are in a downward trend. As to the Oakley Reservoir, the director also pointed out declines.

**Director Spackman** showed the committee a bar graph associated with historic and forecasted surface water supply in the Weiser River Basin. This year it had the lowest snow water equivalent of any other basin. Moving north, the director said that water came off early in the Salmon River and dropped down much lower than normal. Farther north, waterways seemed to follow more median patterns, such as Lapwai Creek, the Selway River, the Clearwater, the St. Joe, the Coeur d'Alene River and the Spokane River.

**Director Spackman** moved on to discuss some selected well log information. Some of the data shows the declines in shallow aquifers, such as in the Lewiston area. There is some decline occurring in most areas.

The director showed the committee some illustrations depicting drought monitoring in the state. In

addition, **Director Spackman** showed a depiction of the U.S. seasonal drought outlook for July 18, 2013, through October 31, 2013. Idaho is shown to be in an area expected to have persistent or intensified drought conditions. He said that the state has declared drought emergencies in a number of counties this year and he believes that the latest count is 19 counties.

In summary, **Director Spackman** said that:

- Precipitation and streamflow in northern Idaho are near average for the current water year.
- Below normal winter and spring precipitation resulted in reduced runoff and below average reservoir storage volumes in southern Idaho.
- Natural flow in most southern Idaho streams has been below average this summer.
- Above normal summer temperatures and dry conditions have increased the irrigation demand on ground water and depleted reservoir supplies in southern Idaho.
- Moderate to severe drought conditions exist in most of southern Idaho. Emergency drought declarations have been issued for 19 counties. Some reservoirs have been drained.
- Current storage volumes and irrigation demand for the remainder of the season are projected to result in below normal reservoir carryover for the upcoming year.

**Director Spackman** said he is quite concerned about areas where we are very dependent on storage water for irrigation, about the results of another low water year and what it might mean for petitions for delivery calls and orders that require mitigation and what that might require, as well as ground water levels and spring flows in general. He said that we have to carefully watch what is happening on the Snake River with the Swan Falls obligations.

**Director Spackman** then stood for questions. **Representative Burgoyne** commented that there seemed to be a relationship between higher temperatures, accelerated runoff and precipitation and asked for further explanation of any such relationship. **Director Spackman** said that they see trends of earlier runoff occurring and higher temperatures for longer periods of time. He said that such trends do not happen every year and there is nothing to say they won't change.

**Co-chair Raybould** commented that in looking at the chart showing the historic surface water supply at Heise, he has a great deal of optimism for next year. He said that in 1992 there was very little water and then there was a large increase the next year and the following years.

Following a short break, the committee again heard from **Director Spackman**, as well as from **Mr. David Tuthill with Idaho Water Engineering, LLC**, regarding ground water recharge.

**Director Spackman** discussed ground water recharge. His complete presentation is available at: <http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

**Director Spackman** noted that there has been some controversy about recharge. He provided the committee initially with some history. During 2012, there was a lot of storage in some of the upper Snake River reservoirs and many of the user groups wanted to divert storage water that they owned for ground water recharge. He said that as part of that effort, there was a request that came to the department to recognize the efforts and benefits that might accrue as the result of recharge in the form

of a credit to be used or marketed for mitigation at some later time. **Director Spackman** said that he looked at the request and could not find any statutory authority allowing IDWR to recognize credits. He said that he therefore denied the petition except for the request that some recognition be given for existing mitigation obligations. This led him to propose legislation that was presented to the Idaho Water Users Association's legislative committee. He went on to say that the group did not like the legislation but it led them to start a review process and ultimately form a drafting group. The director said that legislation was not ready to be presented during the last session but in the last six to eight months they have made great progress. He indicated that he intended to talk about this legislative effort and the language that has been debated in his presentation to the committee.

The director showed the committee a photograph of water spilling over Milner Dam. He said that Milner is really a divider in the Snake River with waters upstream of Milner being administered separately from waters downstream. In addition, there is a state policy that there should be zero flow at Milner Dam as part of the Swan Falls Agreement. The photograph, he said, shows that water does spill over Milner Dam at times despite the zero flow policy. The director said that part of the policy is to promote the full economic development of the water resources above Milner. He said that Milner Dam creates the backwaters from which many of the major canal systems divert water, such as Northside Canal Company, Twin Falls Canal Company, American Falls Reservoir District No. 2 and the Milner Gooding Canal. The director said that the flow exceedence is often available in the early months of the year.

**Director Spackman** next addressed ground water recharge attributes and concerns. Attributes of recharge include the following:

- Maximize use of Idaho's water resources
- Potential long-term solution or partial solution for declines in the Eastern Snake Plain Aquifer
- Possible source of mitigation for future development

The director said that concerns about recharge include the following:

- Limited quantity of water available
- Sporadic supply
- Limited time within which water can be diverted
- Availability may be restricted to specific river reaches
- Competition for limited supply

**Director Spackman** focused on the issue of competition for a limited supply. He said that one concern associated with competition is that flood water not presently appropriated is stored in reservoirs to fill space vacated if there is a flood control release and water rights for ground water recharge could divert ahead of reservoir fill. The director added that senior ground water and surface water right holders depend on a sustainable aquifer and the ESPA is losing an average of approximately 214,000 acre-feet per year. He added that there is also competition for the water from other prospective users.

**Director Spackman** noted that the drafting groups have struggled with several competition-related questions, including:

- How should physical storage in existing storage reservoirs be protected? Is it more important to store surface water in surface water reservoirs than underground? The director said that they believe it is more important to store the water in surface water reservoirs.
- How should the demand for diverting water for sustaining the aquifer to protect senior water right holders be balanced with a desire to divert water for ground water recharge to support new development? The director said that they are interested in economic development and commerce, and in providing water to communities as they grow, while also protecting senior water right holders.
- With a limited supply of water, where can surface water be diverted from ground water recharge to accomplish the most good? How do we define “most good?”
- What entity is best suited for establishing priorities to address the competing interests in diverting water for ground water recharge? The director said that proposed legislation would vest the responsibilities in the Idaho Water Resource Board.
- If ground water recharge is employed as mitigation for new development, what mechanism should be implemented to track benefits of recharge and ensure accomplishments of multiple goals?

**Director Spackman** told the committee that the current version of the draft legislation provides as follows:

- Proposes significant control and evaluation of appropriations for ground water recharge – either authority of the director to subordinate or condition to ensure maximum benefit.
- Proposes that the Water Resource Board will promulgate rules to ensure that appropriation for ground water recharge and accrual of recharge credits will be consistent with the goals of the State Water Plan and comprehensive aquifer management plans.
- Proposes that the Idaho Water Resource Board rules would establish priorities for appropriation and exercise of water rights for ground water recharge – both rights held by the board or held privately.
- Proposes that the Water Supply Bank would accrue and account for credits resulting from recharge activities.

**Director Spackman** noted that the legislation is focused on the ESPA but it creates a framework for activity to occur statewide. He added that they will continue to have discussions with the water user community regarding the draft legislation and plan to present something to the Legislature in the upcoming session.

**Director Spackman** then stood for questions. **Co-chair Pearce** commented that Idaho is very unique with the aquifer. He asked, since Nebraska has a huge aquifer, whether we have learned anything from them. **Director Spackman** answered that Nebraska’s aquifer continues to decline. He said that Idaho is losing water but we have the opportunity to do something about it. He said that in his opinion, Idaho’s remaining water is a significant resource and if it is mismanaged, the only way to address declines is through curtailment. He said he is optimistic that curtailment will not be necessary.

**Mr. Dave Tuthill**, Idaho Water Engineering, was the next speaker. His complete presentation is available at: <http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

He stated that he agrees with what **Director Spackman** presented to the committee. He indicated that he is part of the working committee that is discussing proposed legislation.

**Mr. Tuthill** noted that generally they have two primary concerns about the legislation which they believe has improved greatly. He said that they believe the legislation needs to provide an ongoing opportunity for agriculture in Idaho, by encouraging the addition of new development where water is available to replace the decline in acreage. In addition, **Mr. Tuthill** said that they believe the legislation needs to provide a structure that allows for checks and balances of good government between IWRB and IDWR.

**Mr. Tuthill** discussed a conference he recently attended relating to agriculture throughout the continent and quoted one of the speakers, Dr. Paul Genho, President, Farmland Reserve, Inc., who stated that “the future of North America is to be the breadbasket of the world.” Dr. Genho’s book, *Agricultural Water: Protecting the Future of our Nation* contains 11 water supply recommendations, one of which is to increase water storage technologies, including underground storage when practical. **Mr. Tuthill** showed the committee a graph depicting the decline of farmland in Idaho. Between 1997 and 2007, we lost approximately 560,000 acres of farmland which represents about 4.6 percent of Idaho’s farmland. As part of this, he told the committee that we lost over 234,000 acres of irrigated farmland. Since that time, we continue to lose farmland acres to other development.

**Mr. Tuthill** stated that Idaho loses about 95 million acre-feet of water per year. He said that, on average, we have about 1.8 million acre-feet of water passing Milner and the median is almost 1 million acre-feet. In comparison, the Boise River has just less than 2 million acre-feet passing at Lucky Peak and, of that, about 1.16 million acre-feet leaves the basin at Parma. He said that, consumptively, we use about .8 million acre-feet in the Boise Basin.

**Mr. Tuthill** said that there are many opportunities for storage around the state. Space is available in aquifers throughout the state. He said that the real question is who is going to make this storage happen. He stated that three possibilities are the private sector, the state government and the federal government. **Mr. Tuthill** added that, historically, most of the storage projects were built by the private sector. Shortly after 1900, when the Bureau of Reclamation was formed, the federal government built a lot of projects, its last major role being Teton Dam. He said that the state government, with the Water Resource Board, has also built projects. He told the committee that, in the future, state government will play a role in projects but there needs to be opportunity and incentive for the private sector to be involved as well. He noted that this should also include public/private partnerships with both sides sponsoring recharge to some extent.

**Mr. Tuthill** addressed the benefits of incidental recharge but noted that incidental recharge is declining. He said that we need to manage recharge now and the state has a role in that process, conducting about 100,000 acre-feet of managed recharge a year. He said that we need to allow opportunity and incentive for the private sector to augment what the state is doing. He showed the committee a list of sectors that would benefit from managed recharge and also ranked them on their ability to pay, with the agricultural sector having the least ability to pay.

**Mr. Tuthill** said that, in terms of Idaho’s economy and the use of water, the classic challenge is between hydropower and irrigation. Both have value to the economy but irrigation has an economic multiplier

effect.

**Mr. Tuthill** concluded by stating that the legislation that is being developed should provide encouragement for both the public sector and the private sector to conduct managed recharge. In addition, we should seek a balance between the Idaho Water Resource Board, as a policymaker, and the Idaho Department of Water Resources, as the administrator.

In response to a question from **Representative Andrus**, **Mr. Tuthill** said that in looking at the opportunity for use of water in Idaho, use of water for agriculture is more helpful to the state than hydropower.

**Representative Burgoyne** asked whether the promotion of sustainability or economic development should take priority. **Mr. Tuthill** responded that he believes there is enough water in the state to do both, given the number of aquifers in the state.

In response to another question from **Representative Burgoyne** relating to the environment being a beneficiary of managed recharge, **Mr. Tuthill** said that the environment is a beneficiary of recharge in that the aquifers leak. If there is managed recharge, there is leakage. Managed recharge keeps water in the system so there is a more sustained flow later on.

**Co-chair Pearce** asked about surface storage. **Mr. Tuthill** said that he is a proponent of surface water storage but that opportunities for surface water storage are limited. He said surface storage adds great benefits to the state.

The committee adjourned for lunch at 12:10 p.m. and reconvened at 1:30 p.m., at which time **Mr. Clive Strong, Division Chief of the Natural Resource Division, Office of the Attorney General**, along with **Mr. Patton**, provided the committee with information associated with Swan Falls minimum flow and the 2013 Snake River forecast. **Mr. Strong's** complete presentation is available at:

<http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

Also available at that site is an overview of the Swan Falls Settlement.

**Mr. Strong** stated that the Swan Falls settlement was intended to achieve a proper balance between agricultural development and hydropower relating to water in the Snake River system. He said that there is a great deal more involved in the settlement than the minimum flow numbers at Murphy. He added that the average daily flow is the observed flow adjusted for Idaho Power operations. The Murphy flow is inextricably linked to the Milner zero flow. **Mr. Strong** said that the Milner zero flow is perhaps the most important but the most misunderstood provision of water management in the Snake River Basin. It does not require the flow be taken to zero. Rather, he said, it is the reflection of a policy, the Two Rivers Policy, that originated in the 1920s when there was a focus on constructing the American Falls Dam and there was an attempt to develop a scheme for the management of the upper Snake River by looking at the geology and hydrology.

**Mr. Strong** went on to note that in the 1920s, it was perceived that the water below Milner was largely inaccessible to development. The approach taken then was to attempt to fully maximize the use of the river before it got to Milner Dam, reducing the flow as nearly as possible to zero in the summer months and capture all the flows above American Falls during the winter months for storage and use. He said

that the contention was that by so doing, they would have the optimum use of the resource. He added that they also concluded that recharge from irrigation at that time would go back into the aquifer and enhance the spring flows. Due to the enhanced spring flows, the impact on hydropower would be relatively small.

**Mr. Strong** said that the policy worked quite well until the 1950s. He reiterated that the premise was that the waters flowing in the stream below Milner Dam were not susceptible of diversion to any considerable amount, and therefore would be of primary use in connection with the production of power. He said that the unforeseen change was ground water pumping. About a million acres of irrigated acreage was developed in the Upper Snake River Basin with the implication being reduced flows in the Thousand Springs reach. There were also conversions to sprinkler irrigation with a resulting reduction in recharge. **Mr. Strong** said that the reaction was not to curtail development, but to continue it.

**Mr. Strong** said that California was looking at water supplies in the Snake River Basin and, in response to that, the Idaho State Water Resources Board was created with the objective of creating a state water plan that would provide for the full utilization of Idaho's water resources. The zero minimum flow was imbedded in the 1976 State Water Plan. The board also realized that if something wasn't done about depletions, we could end up depleting flows below the Thousand Springs reach and negate the benefits of the Two Rivers Policy, that is a stable supply of water for power generation. He said that the 1976 State Water Plan adopted two additional minimum stream flows, 3,300 cfs at Murphy and 4,750 cfs at Weiser. These flows were premised on the belief that if all permits were fully developed these would represent the minimum summertime flows. **Mr. Strong** said that the plan also provided that water in excess of minimums would be available for development and that there was an assumption that hydropower water rights were subordinated to upstream uses.

**Mr. Strong** told the committee that Idaho Power realized it would need additional generational capability and began exploring a coal-fired plant which resulted in a ratepayer action against Idaho Power before the Public Utilities Commission. The allegation was made that the company should not be able to rate base its Swan Falls facility because the company had not protected its early 1900s water rights for that facility. This forced the company, in 1977, into having to bring an action to determine the nature and extent of its water rights at Swan Falls. He said that at the same time there was a debate between the Legislature and the water board as to who held authority to determine water policy in the state. An action was brought challenging the Legislature's ability to amend the State Water Plan.

**Mr. Strong** said that the Idaho Supreme Court decisions that resulted from the lawsuits in the early 1980s made the following findings:

- The authority rested with the Water Resources Board to establish the State Water Plan.
- Recognized the minimum flows in the 1976 State Water Plan.
- Idaho Power's hydropower water rights were not subordinated as the result of the Hell's Canyon licenses.

**Mr. Strong** told the committee that when Hells Canyon Dam was built, there were provisions inserted in most of the water rights licenses and into the Hells Canyon FERC license that provided the company's rights at Hells Canyon were subordinated to upstream consumptive uses. The argument was that this

implicitly subordinated the other water rights but the Supreme Court disagreed. The case was remanded to the district court to determine whether the company had otherwise lost or forfeited its water rights through other actions. This precipitated a series of battles in the Legislature and the courts through 1983 and 1984 that resulted in a stalemate between the company and the state that led to discussions between Governor Evans, Attorney General Jim Jones and Idaho Power's CEO, James Bruce.

**Mr. Strong** said that essentially what the Swan Falls Agreement did was to readjust the Two Rivers Policy. The agreement increased the Murphy minimum stream flow to 3,900 cfs in the summer and 5,600 cfs in the winter. The agreement also reaffirmed the Milner zero flow. He said that they understood that when the flow is zero at Milner, flow at Swan Falls Dam is made up almost entirely of spring flows from the ESPA. He said that another concern was that the company, through its hydropower water rights had effectively become the water master of the river. The company indicated that, to the extent the state wanted to take control of the river, it would hold the state accountable for achieving and maintaining the base flows at the Murphy gage. **Mr. Strong** said that the framework for this management is the State Water Plan.

**Mr. Strong** said that when the plan was being reviewed by FERC, Idaho Power was asked what was going to be the impact on the company's ability to generate power. He said that at that time, Idaho Power responded that the settlement agreement is expected to have no impact on depletions or hydroelectric generation until approximately 2015. He said that where we are today is that the lowest observed actual flow at Murphy in 2013 was at 4,380 cfs. He said this was an observed flow and they haven't backed out fluctuations from the company's facilities. He said this shows we are beginning to approach the minimum flows.

**Mr. Strong** said that curtailment and management are the two options for maintaining the minimum flows at Murphy. **Mr. Strong** said that curtailment is the consequence of failing to take action to protect the minimum flows. Achieving the minimum flows through curtailment involves a large number water rights in the ESPA due to the time frame it takes for that water that is curtailed in the aquifer to accrue to the benefit of the spring flows. **Mr. Strong** added that curtailment is a blunt instrument that has severe economic consequences to the economy as a whole, as well as to individuals, and it does not result in meaningful relief to the power company. Curtailment means that the company may get water in the future when the actual need is more immediate.

**Mr. Strong** said that, consistent with the Swan Falls Agreement, they are looking at the management actions that need to be taken. **Mr. Strong** said that during the last legislative session a significant addition was added to the Snake River section of the water plan that lays out the steps that need to be taken in order to manage our way through the minimum stream flows. He said that this means completion of a measurement and monitoring protocol for the Murphy gage that will help the state evaluate what the adjusted flows are under Swan Falls Agreement. In addition to that, he said that the State Water Plan proposes to develop tools for predicting spring flow trends and to develop an adaptive management strategy to ensure Murphy minimum stream flows. He said that as these are developed, the thought is that they will revise Part B of the plan for the Milner to Murphy reach of the Snake River.

**Mr. Strong** then stood for questions. **Representative Burgoyne** asked whether there are legal or constitutional impediments to using curtailment so that the water ends up being put to its best use. **Mr. Strong** commented that when there were delivery calls from the fish producers in the Hagerman Valley

several years ago, there was a curtailment order that was going to affect at least 100,000 acres of land. He stated that the economic impact became a reality and curtailment was not instituted. The fish hatcheries were acquired, allowing the more productive agricultural lands to stay in place. He said that if curtailment is used, economics will come into play.

**Mr. Brian Patton** was introduced to discuss the IDWR actions related to the Swan Falls Agreement. His complete presentation is available at:

<http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

**Mr. Patton** explained that one of the first IDWR actions related to the Swan Falls Agreement was the formation of Water District 2 in July 2012, located on the Snake River from the Milner Dam to the Swan Falls Dam. The purpose is for the administration of water rights in this reach of the river to ensure delivery of water according to water rights and for the measurement and reporting of diversions. There are about 150 diversions with irrigation rights totaling more than 3,000 cfs. He said that they will be phasing in measurement device installation through 2016. **Mr. Patton** said another action involves a streamflow measurement and monitoring plan. He noted that one of the main issues is how to adjust for effects of Idaho Power operations on minimum flow at Murphy gage. He told the committee that load following operations can occur at Lower Salmon, Bliss, C.J. Strike and Swan Falls. This requires measurement of change in storage at these reservoirs and they have to consider time lag effects on flows at the Murphy gage. He added that a protocol is being developed with Idaho Power, water user representatives and the USGS as a technical advisor. He said that a considerable effort will be spent on how to best measure the change in storage. **Mr. Patton** said that a considerable effort has been spent on how best to measure the change in storage, through either a flow method or a reservoir-stage method.

According to **Mr. Patton**, next steps will include:

- Implementing the protocol using the reservoir-stage method
- Installing several new gages
- Implementing the flow method and compare with reservoir-stage method
- Work with USGS to quantify uncertainty for both methods

**Mr. Patton's** presentation also includes information about the Swan Falls Agreement and the state obligation to ensure minimum stream flows at the Murphy gage while at the same time, 180 miles upstream, provide for full development of the Snake River above Milner Dam. He said that at times this practice reduces the Snake River flow at Milner Dam to zero and when this occurs, flow at Swan Falls Dam is made up almost entirely of spring flows from the ESPA.

**Mr. Patton** told the committee that the implications on a short term basis of the Swan Falls Agreement combined with the Milner zero flow policy is the use of the Water Resource Board's Palisades storage water to maintain flows at Murphy gage if needed. He said that on a long-term basis, the ESPA must be managed to sustain spring flows sufficient to meet the Swan Falls minimum flows.

**Mr. Patton** went on to discuss tools available to sustain spring flows to include:

- Managed aquifer recharge;
- Ground water-to-surface water conversion projects;
- Demand reduction for ground water use;
- Weather modification – more streamflow results in less supplemental ground water pumping.

**Mr. Patton** said that the Comprehensive Aquifer Management Plan (CAMP) for the ESPA is also a tool that can be used. He said that the CAMP lays out a goal for the ESPA water budget change through a series of management actions. **Mr. Patton** pointed out that the Phase One goal of CAMP (200-300 KAF water budget change) is designed to stabilize aquifer storage which should stabilize spring flows and that the Phase Two goal (600 KAF water budget change) is designed to recover some aquifer storage which should recover some spring flows. He said that the funding system contemplated was not enacted and he is not sure where that is headed. He said that there has been progress made by using some Water Resource Board funds to leverage water user funds and by securing federal grants.

**Mr. Patton** told the committee that progress has been made in the CAMP between 2009 and 2012, including an average recharge of 117,111 AF/yr, ground water to surface water conversion projects on 11,612 acres, demand reduction through CREP of 42,000 AF/yr and the installation of 19 remote-operated generators for cloud seeding with Idaho Power working with water users. He added that the real test is the stabilization of the aquifer. He said that he had one of their modelers calculate how much of the flow below Milner is there as the result of CAMP actions. The results show that somewhere around 90 to 100 cfs is at the Murphy gage today because of the CAMP actions.

**Mr. Patton** said that another part of the equation is the Milner to King Hill Part B State Water Plan. He said that it was adopted in 1992 and focused on protected river designations for remaining free-flowing rapids due to pressure from proposed hydropower development on those rapids. It was almost solely focused on protected river designations. He said that to help this fit into the equation, it could be revised and restructured to lay out how the state will maintain Swan Falls minimum flows. He said they could tie minimum flow obligations together with spring flow outcomes from CAMP, develop predictive tools to forecast potential breaches of minimum flows, use the board's Palisades storage, acquire additional storage and conduct other projects that may be necessary to maintain minimum flows. He added that the goal would be to be proactive with a unified plan for managing the combined ESPA-Snake River system to sustain multiple state objectives such as stabilizing the ESPA, Milner zero flow and Swan Falls minimum flows.

**Mr. John Revier with the Office of Congressman Simpson and Mr. Brad Griff with the Office of Congressman Raul Labrador** were the next speakers to brief the committee on the failure of passage of the Farm Bill and what is expected to occur in lieu of that failure of passage.

**Mr. Revier** began with a brief overview of the Farm Bill. He explained that it is an omnibus, multi-year piece of authorizing legislation that governs an array of agricultural and food programs. It is renewed every five years.

He told the committee that since the 1930s, Farm Bills have traditionally focused on farm commodity price and income support for a handful of staple commodities including corn, soybeans, wheat, cotton, rice and dairy. Among recent notable additions have been nutrition assistance, conservation, horticulture and bioenergy programs. **Mr. Revier** noted that the omnibus nature of the Farm Bill can

create broad coalitions of support among sometimes conflicting interests for policies that individually might not survive the legislative process.

**Mr. Revier** explained that the Food, Conservation, and Energy Act of 2008 is the most recent omnibus Farm Bill. It was enacted in June 2008 and succeeded the 2002 Farm Bill, largely keeping in place the direction of the 2002 Farm Bill. Many provisions of the 2008 bill expired in 2012 but were extended for an additional year by the American Taxpayer Relief Act of 2012.

Without a new Farm Bill, or an extension, **Mr. Revier** told the committee that the authority for some programs will expire on September 30, 2013. These programs may cease to operate altogether unless reauthorized or new activities under old programs might not be initiated. Nutrition assistance programs need reauthorization if they are to continue. The farm commodity programs not only expire, but would revert to permanent law dating back to the 1940s.

Both the Senate and House Agriculture Committees began work on their respective versions of the 2013 omnibus Farm Bill in mid-May 2013. On May 14, the Senate committee approved its version and it was passed by the full Senate on June 10, 2013. The House committee completed consideration of its version on May 15, 2013, and floor action began in mid-June. The full House voted to reject the bill on June 20, 2013. Three weeks later, the full House debated a variation of the defeated bill that excluded the nutrition title but included all of the adopted floor amendments to all of the other titles. This revised bill was approved by the House by a 216-208 vote. He said that conference on the two measures is pending.

According to **Mr. Revier**, the largest portion of remaining debate on the Farm Bill centers around funding levels for food stamps. The 2008 Farm Bill included total 10 year cost of \$604 billion. The estimates included an assumption that 67 percent of that cost would be spent on the Supplement Nutrition Assistance Program (food stamps). For comparison, the 2012/2013 bill included \$973 billion over 10 years with estimates that food stamp programs would take up 78 percent of that amount.

He said that given the unprecedented House action to pass a bill that decouples food stamps and commodity programs, the question is whether Congress should move forward with a traditional farm bill or try something new. **Mr. Revier** said that on one hand, as food stamp costs escalate so too does the overall cost of the Farm Bill despite the fact that agricultural programs are not growing at a similar rate. The fact is that the food stamp program is consuming an increasingly larger share of funding in each new farm bill and that distorts the perception of growth in farm programs. On the other hand, he noted, there is concern that decoupling the food stamp program from the agricultural programs will make both of them impossible to pass.

**Mr. Revier** stood for questions. **Senator Siddoway** asked what the debate is like in Congress in regard to whether they should leave the food stamp program in the bill or move it to Health and Welfare. **Mr. Revier** responded that the bill came to the floor with the provisions coupled and he believes there was a general assumption that the bill would pass. He said there was a lot of concern about the cost, particularly relating to food stamps. He thinks that some of the amendments moved people into the “no” category on both sides of the aisle and that crippled the coalition that would have passed the bill. He said that he doesn’t know how Congress is going to handle it.

**Mr. Brad Griff**, reiterated **Mr. Revier’s** comments and added that part of the push this year to separate

the food stamp program from the Farm Bill was so that both could be reformed. He said that when the vote was taken on the original bill, many people were surprised by the number of no votes but they did see a growing coalition to split the nutrition and agricultural portions of the bill. Traditionally, he commented, the programs have been put together providing incentive for an urban-rural coalition. He added that he thinks the price tag on the bill was just too big for many of those voting with less farm spending and more spending for nutrition. **Mr. Griff** said that we now have at least the farm portion of the bill that has passed the House.

In response to a question from **Senator Cameron**, **Mr. Griff** stated that Congressman Labrador supported the farm version of the bill. He has not spoken directly to the Congressman but knows that he is looking for substantial reforms and definitely wants less spending for the nutrition title.

At the request of **Senator Siddoway**, **Mr. Revier** commented that he would get a list of what is included in the Interior Spending Bill, especially with regard to Sage Grouse.

**Mr. Norm Semanko, Executive Director of the Idaho Water Users Association**, was introduced to address the committee in regard to the Food Safety Modernization Act and the Food and Drug Administration's proposed produce rule. He commented that he is also involved with the Food Producers of Idaho and this is an issue that is very important to that group. The Food Safety Modernization Act was passed by Congress and was widely supported by agricultural groups at the national level. Since the act was passed it has come to their attention that there is a problem with the rulemaking as proposed by the Food and Drug Administration (FDA). **Mr. Semanko** noted that there are five sets of rules to be promulgated and the FDA is behind schedule. **Mr. Semanko** told the committee that he would be primarily addressing the produce rule.

He provided a copy of an article by Mr. Scott Campbell that was published in the Advocate entitled *Food Safety Irony: A Bitter Pill to Swallow*. He stated that Mr. Campbell is the chairman of the National Water Resources Association Water Quality Task Force. That group is providing comments relating to the rule.

**Mr. Semanko** stated that the pending proposed rules set growing, harvesting, storing and processing standards for virtually all fruits, vegetables and nuts, normally eaten raw. The proposed rules impose new federal controls relating to agricultural water, biological soil amendments, health and hygiene, animals in growing areas and equipment, tools and buildings. He said that the rule imposes many conditions on food producers. The handout describes these conditions in detail and is available at: <http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

**Mr. Semanko** said that at the start of the growing season, producers of covered crops, including sprouts, leafy greens, melons, tomatoes, peppers, strawberries and onions, among other vegetables, typically consumed in their raw and unprocessed state, must inspect the entire water system under their control to identify any conditions that are reasonably likely to introduce known or foreseeable hazards into or onto covered produce or food contact surfaces. He added that the proposed inspection requires producers to evaluate potential water quality implications arising from neighboring land uses.

Producers must also regularly inspect all water sources to keep them free of debris, trash, domesticated animals and other possible sources of contamination to the extent practicable and able under the circumstances.

**Mr. Semanko** told the committee that the proposed regulations require that producers maintain all water distributions systems, including storage and regular inspection, to prevent systems from being a source of contamination of covered crops. He said that there are over 200 crops covered by this rule. He noted that this requirement is directed at water supply and distribution infrastructure downstream of the source, such as pumps, water lines and spray nozzles. **Mr. Semanko** said that the regulations also require producers to protect regulated crops from contact with pooling water.

**Mr. Semanko** indicated that all producers of covered crops who use surface water for irrigation must test their water every seven days. If tests reveal E. coli units greater than 235 colony forming units per 100mL for any single sample, producers must immediately cease using the water. He stated that the standard is as stringent as Idaho's water quality standard for recreational waters used for public swimming. Before producers can resume use of the water, he said that it must be reinspected, the cause of contamination must be corrected and the water must be retested to verify compliance. Another option is for producers to treat the water with chemicals but, as of yet, no chemicals have been developed or approved for such treatment.

According to **Mr. Semanko**, the FDA projects regulation implementation costs to exceed \$450 million domestically. He said that it is impossible to know what the true financial impact will be until implementation efforts actually occur.

**Mr. Semanko** stated that water quality testing will force many producers to change crops. He said that the production of dry onions in southwest Idaho and southeast Oregon, which is the fifth largest producer in the nation, will cease because of the strict E. coli standards. Because of the extensive reuse of irrigation water in arid climates, virtually no canal distribution system in southwest Idaho or southeast Oregon can satisfy the proposed E. coli standards.

**Mr. Semanko** also noted that since foreign food production will not be subject to these heightened federal restrictions, this might actually increase the presence of foodborne bacteria in our food supply. **Mr. Semanko** also showed several slides showing historical surface water quality in different areas of the state and the presence of E. coli in many of those areas. He added that we deliver water of sufficient quality for its intended purpose, that being agriculture. The quality is not intended to be that found in a swimming pool as the FDA regulations are proposed to provide.

**Mr. Semanko** stood for questions. **Co-chair Pearce** asked what chemicals would be allowed to treat the water. **Mr. Semanko** said there has been supposition about chlorine, but he has a hard time believing that is the answer. He commented that the FDA needs to realize that the status quo for irrigation cannot meet the standard. **Mr. Semanko** noted that the FDA said they have not figured out how they will regulate foreign trade, but says it will do so in the next three to five years. He noted that said two countries have claimed unfair trade practice.

**Senator Bracket** asked whether they were distinguishing between naturally- and non-naturally-occurring sources of E. coli. **Mr. Semanko** said there is no differentiation.

In response to a question from **Senator Stennett**, **Mr. Semanko** explained that the FDA is proposing to adopt a water quality standard issued by the EPA for primary contact recreation. It is not a standard that

the EPA applies to irrigation facilities such as canals and ditches.

Following a short break, **Ms. Sharon Kiefer, Deputy Director of Idaho Fish and Game**, provided the committee with an update relating to department revenue. Her complete presentation is available at: <http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

**Ms. Kiefer** told the committee that she would be addressing some conceptual proposals relating to Fish and Game license revenue and that there will be a very detailed review and potential approval process involved before any proposed legislation is brought before the Legislature. **Ms. Kiefer** explained that Fish and Game license revenue has fluctuated over the last few years with FY 2007 being the high water mark and FY 2011 being the low water mark. She told the committee that there has not been a resident license revenue adjustment since 2005, but that there was a nonresident license revenue adjustment in 2009. She said that the reductions in license revenue between those years has been attributed to declining sales in nonresident hunting licenses, nonresident elk tags and nonresident deer tags. Despite declines in the sale of nonresident elk and deer tags, **Ms. Kiefer** said that license revenue rebounded approximately \$1.5 million in FY 2012 due to improved sales in other areas such as wolf tags and fishing licenses and permits.

**Ms. Kiefer** noted that there is roughly a ten percent gap between Fish and Game's appropriation versus license revenue for FY 2013. She said the department does not spend more than its revenue. She said that the department has employed several tools recognizing revenue trends and have held open license funded vacancies for six months, as much as feasible, while still keeping the work going. In addition, they have reduced fish stocking costs. She said they have also shifted some operational activities to federal funding. She said that the gap is expected to increase somewhat due to changes in employee benefits, such as health care costs. She said that the department has a FY 2015 objective of closing the license revenue gap.

**Ms. Kiefer** said that they have been considering ways to increase the license revenue. She said the department thinks there is potential to sell more licenses at a discounted price. **Ms. Kiefer** said that over a thirteen year period, the department has interacted with 1.7 million customers but only three percent purchase licenses consistently. She added that 40 percent bought a license only once.

**Ms. Kiefer** stated that in order to offset some of the declining revenue the department is looking at some nontraditional methods for selling licenses. She reiterated that the approach is only conceptual at this point in time. She said that these conceptual methods include a traditional fee increase coupled with enhanced commission discount authority. She noted that the commission is presently allowed some discount sideboards relating to tags. They would like to enhance that authority to extend to licenses. She noted that they would like to provide such authority related to the department's every-year customers, locking in current year prices. She said that they are also looking at opportunities for those customers that buy in volume. She added that they are looking at the possibility of online sales. She said that they would like to change buying behavior, incentivized by a fee increase.

**Co-chair Pearce** asked why the department does not produce more fish to help raise revenue. **Ms. Kiefer** stated that the department can only spend what they bring in, even if the appropriation given by the Legislature is higher. She said that another question is whether it is better to have more fish or bigger fish. It is expensive to produce fish so they also need to look at how to produce fish most

efficiently.

**Senator Heider** commented that most people buy fishing or hunting licenses right before the season. He asked how the department plans to get people to buy them early in order to lock in the lower price. **Ms. Kiefer** explained that the proposal would allow people that purchase anytime between April and December to lock in the 2013 price. **Senator Siddoway** asked whether it was just a one-year reduction or ongoing. **Ms. Kiefer** said they were not sure of the details but the commission could issue the discount for up to five years, or the discounts could last as long as the person purchases a license every year.

**Co-chair Raybould** asked whether the department has considered reducing the number of employees due to the decreased revenue. He asked how there can be a \$4 million gap if sales have not gone down. **Ms. Kiefer** said that the decline has been in nonresident licenses. Resident license sales are not declining, but they cost less so the revenue is lower.

In response to a question from **Representative Gibbs**, **Ms. Kiefer** commented that the department is partners with the various vendors that sell licenses and they plan to work together to come up with marketing ideas.

**Senator Cameron** asked about the possibility of automatic renewal of licenses. He said that if it is easy to renew a license, it could be less costly for the department. **Ms. Kiefer** agreed, but added that if someone purchases a license directly from Fish and Game, they cannot currently use a credit card. Also, if the license is purchased online, a fee is charged for using a credit card. She added that the department does not want to limit outside vendors because many people in the state do not have Internet access or they like to have face-to-face interaction.

The final presentation of the day regarding the permit process and regulatory authority relating to suction dredge mining in Idaho was made by **Mr. Tim Luke, Water Compliance Bureau Chief with the Idaho Department of Water Resources**, **Mr. James Werntz, Director of EPA-Idaho Operations** and **Mr. Michael McIntyre, Surface Water Program Manager with the Department of Environmental Quality**. All three of their presentations are available at:  
<http://www.legislature.idaho.gov/sessioninfo/2013/interim/resources.htm>

**Mr. Luke** explained that suction dredge mining in Idaho is regulated by the Idaho Department of Water Resources (IDWR) as a stream channel alteration (SCA) pursuant to the Stream Channel Protection Act and related rules. The Stream Channel Protection Act was created in 1971. Chapter 38, Title 42, Idaho Code, requires permits for SCA, including dredges. IDAPA 37.03.07, in particular Rule 64, deals with minimum standards for suction dredging and non-powered sluice equipment.

The legislative intent of the act stated that "Public health, safety and welfare requires that stream channels and their environments be protected against alteration for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. No alteration of any stream channel shall be made unless approval has been given." This establishes the permitting process that applies to perennial streams.

**Mr. Luke** told the committee that a suction dredge is a machine that moves submerged aggregate from

the stream bottom via a hydraulic suction. The aggregate is processed through an attached sluice box for the recovery of gold and other minerals.

**Mr. Luke** said that there are two categories of dredging per the SCA rules in Idaho, recreational small scale mining and non-recreational or larger scale. Recreational mining rules allow for an engine or motor rated at 15 horsepower or less with a nozzle intake with a diameter of five inches or less. It also allows for non-powered sluice equipment moving more than ¼ cubic yard per hour.

**Mr. Luke** said that their process is to issue a letter permit with instructions that go along with it. The recreational mining letter permit authorizes alteration of a stream channel as defined by the standards. He said that the instructions establish guidelines for recreational mining and provide a list of open and closed streams, seasons of use, definitions and special restrictions. This letter permit applies only to miners following the guidelines listed in the instruction booklet.

**Mr. Luke** said that a letter permit results in an expedited process. The miner must:

- Download/print permit & instructions
- Complete permit & return to IDWR with fee
- Pay the fee = \$10 resident; \$30 non-resident (§ 42-221M)
- Keep a copy of completed permit & instructions

He went on to say that the permit is good for only one year and a permit is required for each dredge operator.

**Mr. Luke** said that the letter permit has been in place since 2010. Prior to that, he said that it required IDWR review and signature approval and it took anywhere from one to seven days to process. He said that the permit also covers the Idaho Department of Lands rules for recreational mining on navigable rivers.

**Mr. Luke** told the committee that the use of any dredge that exceeds a 15 horsepower motor or that has a nozzle with an intake diameter in excess of five inches would require a non-recreational mining permit, requiring a long form regular SCA permit application and review. He said that long form applications may be used for recreational mining in closed streams or when proposing an extended season of operation. He added that very few long form permits are received or issued.

**Mr. Luke** noted that the average revenue generated for recreational mining permits between 2007 and 2010 was approximately \$10,000 per year. He said that the department issued 357 permits in-state and 95 permits out-of-state between April 1 and July 31, 2013.

**Mr. Luke** commented that several reaches of waters that have been closed by the EPA due to endangered species are open under the IDWR based upon recommendation from Fish and Game. Other waters have common overlap. He stated that miners need to work with the federal agencies on a consultation process for Endangered Species Act waters. He added the IDWR does not enforce the EPA NPDES permit.

As for the future status of IDWR permitting, **Mr. Luke** said they currently lack resources for field monitoring and enforcement and are working with Fish and Game for assistance.

**Mr. Michael McIntyre** was the next speaker to address the committee detailing the role and responsibilities of the Idaho Department of Environmental Quality (DEQ) as it pertains to suction dredging in Idaho. He told the committee that, in addition to IDWR's permitting process, there is a general NPDES permit issued by the EPA relating to suction dredging. He said that DEQ's role in the process is the certification of that NPDES permit.

**Mr. McIntyre** indicated that Idaho's authority comes from the Clean Water Act where the state is authorized, under section 401, to issue water quality certifications of NPDES permits that meet the state's water quality standards. If it does not meet standards, the department prescribes conditions so that standards are met. **Mr. McIntyre** also noted that Idaho is one of only four states that does not have primacy for the NPDES program and, due to that fact, the EPA (Region 10 in Seattle) writes all of the NPDES permits in Idaho.

**Mr. McIntyre** stated that DEQ may also deny water certification of permits, but he said that is rarely done. He said the preference is to certify with conditions rather than deny certification.

**Mr. McIntyre** told the committee that in terms of the responsibility of issuing a 401 certification for the suction dredging permit, DEQ worked with the Idaho Department of Lands, the Department of Fish and Game and IDWR in preparing the certification. He said that the public was given an opportunity to provide comment on the draft certification. **Mr. McIntyre** told the committee that the EPA amended their permit and DEQ amended its certification based on public comment. He said there was a second public comment period in May of 2012. Following that, the EPA issued the final Suction Dredging Permit that became effective on May 6<sup>th</sup> of this year. He said that DEQ issued its final certification on March 6<sup>th</sup> of this year.

**Mr. McIntyre** said that DEQ's certification found as follows:

"Based upon its review of the above-referenced permit, associated fact sheet and compiled research pertaining to the effects of suction dredging, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification then there is reasonable assurance the discharge will comply with the applicable requirements of Section 301, 302, 303, 306 and 307 of the Clean Water Act, including the Idaho Water Quality Standards (IDAPA 58.01.02) and other appropriate water quality requirements of State law."

**Mr. McIntyre** concluded by noting some of the condition highlights of the suction dredging certification:

- DEQ issued a Mixing Zone of 500 feet for discharges from dredges
- IDWR Stream Channel Alteration Permit is required
- Fish passage must be provided
- Invasive species recognition
- Streambank mining prohibition
- Mechanized equipment restrictions
- Hazardous material storage

**Mr. McIntyre** stood for questions. In response to a question from **Representative Moyle**, **Mr. McIntyre** said that this permitting process took about three years. He also responded that there is some confusion regarding the process because DEQ only issues the certification, not the permit. He said there is also some frustration because different waters are closed under different permits. He said that another area of confusion is the number of agencies involved, two state agencies and one federal agency. He added that the fees also vary.

**Representative Moyle** asked what streams are the most popular. **Mr. McIntyre** said most people don't indicate where they are doing the dredging, but Grimes Creek and Mores Creek seem to be popular, as well as the south fork of the Payette and the Salmon River between Riggins and White Bird.

**Representative Shepherd** commented that many of his constituents are very concerned about EPA's actions relating to the mining. He said that the concern he has isn't with Idaho's agencies but with the EPA.

**Mr. James Wertz** gave an overview of the EPA's role in suction dredge mining. He said that there are two types of NPDES permits the EPA issues. An individual permit includes municipalities, food processing plants and large mines. There are nearly 200 of these in Idaho. He went on to say that general permits are issued for a specific, similar category of activity for large geographic areas. Examples include pesticide applications, large CAFOs, aquaculture facilities, small suction dredge miners and stormwater.

He reiterated that key roles for Idaho DEQ include:

- Set Water Quality Standards, consistent with the Clean Water Act (CWA);
- Develop TMDLs to address waters where state standards are not being met;
- 401 Certification: Reviews EPA NPDES permits to ensure state standards will be met.

**Mr. Wertz** told the committee that key roles for EPA Region 10 include:

- Develop CWA/NPDES permits in Idaho;
- Conduct Compliance Inspections;
- Enforce CWA/NPDES permit violations.

**Mr. Wertz** said that the goal of the 1972 CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. He said that pollutants cannot be discharged into waters of the United States without going through the process to get a permit. He noted that EPA has concluded that suction dredge mining does result in a point source discharge to surface waters. He added that the definition of "pollutant" in the CWA includes almost anything that could be discharged and includes dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. He said that what comes out of a dredge is considered a pollutant.

**Mr. Wertz** told the committee that in 2010 the EPA developed and published the first draft of the small suction dredge mining permit. He said that there has been a lot of effort in communicating and working

with others in the state, including federal and state agencies and tribes, to do the best they could to develop a permit that could work in the state. Other states have moratoriums. He said they took comments and held public meetings in Idaho. He explained to the committee that the permit is a complicated one. He said that in 2012, based on comments received, they prepared another draft. He said that due to Endangered Species Act issues, it was clear that some waters could not be open for suction dredge mining. The permit took effect on May 6, 2013. The deadline to appeal to the 9<sup>th</sup> Circuit Court was August 2.

**Mr. Werntz** said that the general permit coverage is available, except in the following four categories:

1. **Nationally Protected Areas:** National Parks System Units (i.e., Parks and Preserves), National Monuments, National Sanctuaries, National Wildlife Refuges, National Conservation Areas, National Wilderness Areas, National Wild and Scenic Rivers System;
2. **Areas designated as critical habitat under the Endangered Species Act,** and additional areas listed in the permit where species that are either listed as threatened or endangered under ESA are known to occur;
3. **State Protected Waters:** Withdrawn River Segments, State Protected Rivers, Sediment/Mercury Impaired Streams;
4. **Tribal Reservations.**

**Mr. Werntz** said that the permit was written so that national protected areas are not covered unless the land manager grants permission, and such documentation is provided with the miner's NOI/application.

He said that areas designated as critical habitat under the ESA are not covered unless the USFWS or NMFS have provided a determination to another agency for suction dredging in a specific area, and a miner includes that determination with the NOI/application. Consultation with the agencies has occurred relating to the Lolo and Moose Creek areas, prescribing a number of dredges that can happen in the areas despite the existence of listed species.

He said that where DEQ has completed a TMDL for sediment-impaired water, and it provides for a number of suction dredges or hours of usage, like on Grimes Creek, Mores Creek and Elk Creek, the EPA will incorporate that into their process.

**Mr. Werntz** noted that tribal areas are not covered in the permit.

**Mr. Werntz** told the committee that the permit requires best management practices with regard to chemical, biological and physical issues. He said that in doing so, they recognized that the affected group does not have a lot of means for sampling and monitoring and that is why the EPA went with a best management approach.

**Mr. Werntz** said that EPA's compliance strategy for 2013/2014 includes outreach, education and EPA field presence. He said that civil and criminal penalties will be possible for egregious violations.

**Mr. Wertz** told the committee that there is no fee associated with the general permit. He said that the NOI/application is a one page document with most miners listing multiple locations using latitude/longitude. The EPA permit is linked to the dredge and its location(s) of use.

**Mr. Wertz** said that while EPA's permit does not reflect the exact same list of open and closed waters as IDWR, there are common open areas. The EPA is coordinating with IDWR and the land management agencies on permit implementation.

**Mr. Wertz** went on to say that the EPA has worked hard to provide timely review and processing of miner's NOIs/applications. For the 2013 season to date, the approval/denial ratio is about 1:4. He said that the ratio is expected to improve in 2014 as more miners become familiar with the process. He concluded his remarks by telling the committee that the EPA is required to reissue the general permit in five years, at which time any new data/knowledge will be incorporated.

**Representative Moyle** asked whether anyone appealed the decision to the 9<sup>th</sup> Circuit. **Mr. Wertz** said that they didn't get anything early in the appeal period but he wasn't sure if an appeal had been filed. He said that they should know within days.

The meeting was adjourned by **Co-chair Pearce** at 4:55 p.m.