

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Tuesday, February 13, 2018

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Gibbs, Vice Chairman Gestrin, Representative(s) Moyle, Raybould, Shepherd, Wood, Boyle, Vander Woude, Miller, Burtenshaw, Mendive, Youngblood, Kauffman, Giddings, Blanksma, Erpelding, Rubel, Jordan (Gannon)

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

GUESTS: Marie Kellner and Abigail Tollboy, Idaho Conservation League; Will Hart, Idaho Consumer-Owned Utilities Association; John Williams, Bonneville Power Administration; Lynn Tominaga, Idaho Ground Water Association

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

MOTION: **Rep. Kauffman** made a motion to approve the minutes of the February 5, 2018 meeting. **Motion carried by voice vote.**

HJM 11: **Paul Arrington**, Executive Director and General Counsel, Idaho Water Users Association, stated this Joint Memorial updates **HJM 10** passed in 2014, specifically regarding negotiations with Canada and future implementation of the Columbia River Treaty. He stated this Treaty, which was established in 1964 to manage flood control and provide hydroelectric power, is in effect for 60 years (2024), and can be terminated at any time by either the United States or Canada with a 10-year notice. Even if the Treaty were to end, it would only impact hydropower, not flood control. To date, there have been no notices to terminate. Since 2014, there is agreement the Treaty needs to be updated, but not much action towards that goal has occurred. Mr. Arrington stated when the Treaty was written, there were assumptions made that have proven to not be as accurate as originally thought. Recently, a new negotiator has been appointed to lead the effort to modernize the Treaty including discussion on hydropower, flood control, and a new purpose, ecosystem-based function, being considered. Mr. Arrington stated because there is no clear definition on what ecosystem-based function actually means, and habitat and other ecosystem function areas are already being addressed under current federal and state specific laws and regulations, such as the Endangered Species Act and the Clean Water Act, the sentiment is to not include ecosystem-based function in a modernized or renegotiated Treaty.

Mr. Arrington stated in 2024 the Treaty will need to be updated and restructured to provide a better balance between the two countries. The first issue to be renegotiated in the Treaty, known as the Canadian Entitlement, requires the United States to provide hydropower benefits to Canada. It was believed over the life of the Treaty the hydropower provided would fully compensate Canada for the costs of the new dams constructed for flood control management. At this point in time, Canada has long since recouped those costs but continues to receive the hydropower benefits, at a direct cost to Idaho's rate payers. The second issue is flood control management. The Treaty states Canada guarantees approximately 9 million acre feet of water storage every year in their reservoir systems to eliminate the risk of flooding in the Columbia River Basin. As of 2024, control operations will change from "guaranteed" flood control to "called upon" flood control. Under these circumstances, Canada asserts "called upon" would obligate the United States to use all available water storage before looking to them for help. This includes

reservoirs not historically used or authorized for Columbia River Basin flood control. Mr. Arrington stated this Joint Memorial supports continuing the current operations utilizing only the eight Treaty reservoirs, three of which are in Idaho, rather than increasing any obligations on Idaho's other water storage projects, water facilities, or water users. Negotiations are set to begin this year.

Will Hart, Executive Director, Idaho Consumer-Owned Utilities Association, stated they are **in support** of **HJM 11**. For decades the Columbia River Treaty worked well between the United States and Canada to enhance flood control and power needs of both countries. But, today the power provisions of the Treaty are grossly unbalanced with Canada receiving approximately ten times the benefits the Northwest States receive from coordinated system operations. This imbalance causes a great inequity to public power consumers in Idaho and across the Northwest. Without renegotiation of the hydropower provisions, the region faces a loss of approximately \$1 million dollars every two to three days and the associated carbon-free energy that goes along with that dollar amount.

In response to questions concerning how the Nez Perce Water Rights Agreement would be impacted and why they aren't included in the Idaho Stakeholder list, **Mr. Arrington** stated members from the Nez Perce Tribe were included in the regional recommendation process and assured the committee one of the factors in the efforts to modernize the Treaty is to protect the agreements and understandings from the Nez Perce Water Rights Agreement.

In response to questions concerning ecosystem-based function, **Mr. Hart** explained that although there is some support for ecosystem-based function to be considered in the Treaty, including all five of the Tribes within the Columbia River Basin, Idaho representation does not agree this function should be part of the Treaty renegotiation. Currently 30 cents of every dollar paid by Idaho's utility users goes towards fish mitigation and other conservation measures within the Columbia River Basin.

Marie Kellner, representing the Idaho Conservation League, stated without consideration of ecosystem restoration, they are **in opposition** to **HJM 11**. Ms. Kellner stated this Joint Memorial sets a negative tone by placing Idaho at odds against the majority of the renegotiation parties and undercuts Idaho's ability to be taken seriously and professionally at the renegotiations. Ms. Kellner stated the term ecosystem restoration is a broad term, an umbrella term, that can encompass many possibilities, for instance, prioritizing the health of the Columbia River and its tributaries. Adding ecosystem restoration to the Treaty would mean that Canada would also be responsible to improve the state of imperiled species, which isn't the case now. In conclusion, Ms. Kellner stated making the health of the river a Treaty purpose is not an attack on power production, flood management, or Idaho. Instead, it recognizes that river health is in the same ballpark of value as power production and flood control.

Chairman Gibbs called upon **Mr. Arrington** to conclude his presentation of **HJM 11**. Mr. Arrington stated he will focus his conclusion on the ecosystem-based function discussion. He stated in no way is there any position statement or findings that infer ecosystem-based function is unimportant. There are references to it in the Joint Memorial as well as in the Memorial Resolution. Part of the issue is the term is not clear and everyone has a different interpretation of what it means to them. Idaho has a strong position that the ecosystem-based function concept is important, but from a stakeholder position standpoint do not believe the Treaty is the best place for that discussion. Mr. Arrington did acknowledge that Idaho does sit alone in this decision, but does so to protect state water rights.

MOTION: Rep. Blanksma made a motion to send **HJM 11** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** Reps. **Erpelding, Rubel, and Gannon** requested to be recorded as voting **NAY.** Rep. **Blanksma** will sponsor the bill on the floor.

ADJOURN: There being no more business to come before the committee, the meeting was adjourned at 2:21pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary