

Minutes of the Joint Legislative Oversight Committee
July 14, 2014
WW42, Capitol
Boise, Idaho

Cochair Representative Shirley Ringo called the meeting to order at 1:00 p.m. Attending the meeting were Senators Dean Mortimer (cochair), Michelle Stennett, Elliot Werk and Representatives Maxine Bell, Gayle Batt, and Elaine Smith. Senator Bayer was excused from the meeting. Also present were Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other OPE staff. Audience members included the following:

Curt Franzen, Director, and Barry Burnell, Administrator of the Water Quality Division, Idaho
Department of Environmental Quality
Bill Burns, Administrator, Division of Purchasing
Brad Foltman, former administrator of the Division of Financial Management

APPROVAL OF MINUTES FROM MARCH 19, 2014

Representative Smith moved to approve the minutes of March 19, 2014. Senator Mortimer seconded the motion, and it passed by voice vote.

REPORT RELEASE: CHALLENGES AND APPROACHES TO MEETING WATER QUALITY STANDARDS

Representative Batt moved to receive the report. Senator Werk seconded the motion, and it passed by voice vote.

Cochair Ringo called on Rakesh to introduce the report. Rakesh said the request for the report came from the chairs of the three resource committees: Senator Pearce and Representatives Denney and Raybould. Because of the complexity of the request, the chairs asked the office to work closely with Roger Batt and Dan Steenson, attorneys and water lobbyists, for context. Rakesh said the Department of Environmental Quality (DEQ) was cooperative and helpful to the office as well as more than 50 stakeholder groups. The evaluators were assisted by consultants Brad Foltman and Andy Rowe. Mr. Foltman is a former administrator of the Division of Financial Management and Mr. Rowe is an international expert in environmental issues.

Bryon Welch and Lance McCleve, principal evaluators, presented the findings of the report. They said two of the most significant challenges facing Idaho was determining appropriate water quality standards and finding cost-effective methods to meet standards. They outlined two approaches for overcoming those challenges: use attainability analysis (UAA) and water quality trading programs.

Lance said a UAA was the principal tool that states have for determining and revising the level of protection that a water body needs to support its intended use. Idaho has had more UAAs approved by the EPA than all UAAs submitted by other states in EPA Region 10 (Alaska, Oregon, Washington) combined. Five of the six UAAs that Idaho has submitted have resulted in changes to water quality standards. Despite Idaho's relative success with UAAs, stakeholders

conducting UAAs can be overwhelmed by the process, the high standard of evidence, and the cost of collecting supporting water quality data. Formal guidance from the DEQ would assist stakeholders as they approach and conduct UAAs. Evaluators have recommended the DEQ complete its UAA guidance to help stakeholders navigate the process.

During Lance's presentation, the following questions were answered:

Representative Batt asked about criteria in the DEQ's decision to conduct eight UAAs but send only six to the Environmental Protection Agency (EPA). Lance said the DEQ did not have a formal list of criteria but followed six criteria established by the EPA in deciding whether a UAA should move forward. The DEQ made a judgment call about whether the EPA would approve the two UAAs.

Senator Mortimer asked whether the DEQ had done anything about waters identified in 2005 legislation as candidates for a UAA. Lance said the DEQ relied on advisory groups to monitor water bodies, to relay information, and to conduct UAAs. Senator Mortimer asked whether DEQ maintained a record of activities for these advisory groups. Lance said there was no single repository of records—not at the DEQ and not within individual advisory groups.

Representative Smith asked whether the DEQ had enough staff with expertise to submit UAAs. Lance said Idaho, as well as the rest of the nation, was lacking in expertise. A high level of technical expertise was needed to meet the EPA-required standard of evidence.

Representative Batt asked whether records existed that document requests for the DEQ to conduct UAAs. Lance said the DEQ did not have a good record of requests, which reflected a lack of documentation from watershed and basin groups. Representative Batt asked whether there were any existing rules that required the DEQ to document requests for UAAs. Lance said he was not aware of any.

Continuing with the presentation of the report, Bryon indicated that Idaho had been exploring alternatives for municipalities to implement updates to wastewater treatment facilities in less expensive ways. He said water quality trading was a market-based alternative to traditional pollutant-reduction methods. Despite the state's early involvement in developing water quality trading frameworks, programs had struggled to take hold both nationally and in Idaho. Bryon indicated that several stakeholders in Idaho were wary of trading as a long-term solution to meeting water quality goals.

Senator Werk asked whether trading language could be incorporated into NPDES permits. Bryon said EPA Region 10 authored NPDES permits. The region had indicated to evaluators that when TMDLs and the trading framework were complete, it would be open to including trading language into the permits. Bryon said that when Idaho has full control over the authorship of NPDES, it could incorporate enabling language into the permit to take advantage of trading.

In committee discussion, Senator Werk asked whether Idaho's challenges were different from other states. Is Idaho in a unique position? Lance said the states he talked with in EPA Region 10 expressed similar concerns and challenges. Idaho was, however, one of the few states that had not pursued primacy. Bryon noted that Idaho's irrigation systems made it unique, and its trading framework on the lower Boise River established a national model.

Senator Stennett said a disconnect existed: the DEQ had a high level of UAA approval when compared with other states in Region 10, but the DEQ was required to work with watershed and basin groups who did not have expertise to recommend waters. She asked how Idaho could bring all stakeholders to the same level. Lance said the disconnect for the EPA, the DEQ, and stakeholders was the concept of what constituted a UAA. Stakeholders looked at UAAs in conjunction with a TMDL and may err on the side of choosing a water body. The DEQ and the EPA were susceptible to lawsuits if waters were not appropriately protected. The likely solution to bringing all stakeholders to the same level needed to be an incremental process that strengthened relationships.

Representative Batt said the evaluation established that cost was the impediment to conducting a UAA, but exact costs were unknown. In representing constituents, she found TMDLs and UAAs were a huge cost, not to mention the huge cost to her county of losing a major slaughter house that employed 550 people. She asked the DEQ to discuss specific costs of conducting a UAA. Cochair Ringo called on Mr. Barry Burnell, Administrator, Water Quality Division of the Department of Environmental Quality, to respond. Mr. Burnell discussed efforts the DEQ took when a request for a UAA was submitted, specifically addressing waters listed on page 29 of the report. When tracking time, the DEQ codes for TMDLs and subbasin assessments, but it did not typically code for UAAs. Mr. Burnell said he was unable to identify UAA costs; however, the DEQ was undergoing an effort to track the number of UAA staff hours. Representative Batt asked how the DEQ can say UAAs were too expensive when it does not know the cost and cannot compare this cost with the cost of TMDLs or the cost of losing companies. Mr. Burnell said the DEQ would do what it can with its monitoring staff to evaluate designated uses of water bodies. However, when it evaluates water bodies and finds existing uses, conducting a UAA will not change the water body's status.

In addressing the evaluation, Mr. Burnell thanked OPE for attending meetings and reaching out to stakeholders. He said it was a detailed and diverse review. The DEQ supported the report and agreed with the recommendation and suggestions.

Representative Ringo asked for clarification on removal of existing uses. Mr. Burnell said that if a use was present in November 1975, then it must be protected. If the use was present before 1975 but not present up until 1975, the old existing use was not protected.

Cochair Ringo asked if the Governor's office wanted to comment, and the office declined.

Representative Batt moved to present the report to the three germane committees. Senator Werk seconded the motion, and it passed by voice vote.

Senator Mortimer asked if the committee should follow up in a year. Senator Stennett wondered if there would be a marked difference in a year and wanted to clarify expectations. Senator Mortimer said he would like the following questions addressed:

- If standards are being set on bodies of water, are records being kept?
- Are we responding to advisory groups?
- Are we seeing any resources to conduct UAAs?
- Are there standards?

Senator Mortimer moved to conduct a follow up in one year. Representative Batt seconded the motion, and it passed by voice vote.

Before the break, Cochair Ringo presented Margaret Campbell with a 20-year award for her service at OPE. She said they all knew and appreciated the quality of her work and wanted to recognize and express their gratitude. Rakesh said this month marked the twentieth anniversary of OPE, and Margaret was the first person to be hired. Although she efficiently organizes meetings and information, he said her greatest contributions to OPE are that of copyediting and formatting the reports.

The committee took a 10-minute break.

FOLLOW-UP REPORT RELEASE: STRENGTHENING CONTRACT MANAGEMENT IN IDAHO

Senator Werk moved to receive the report. Senator Stennett seconded the motion, and it passed by voice vote.

Senior Evaluator Amanda Bartlett said the Division of Purchasing was making progress in addressing legislative concerns. It had conducted an internal analysis of contract planning and management practices and formulated a plan to improve the state's contracting process. The division's plan focused on high-dollar service contracts with a value of \$5 million or more. Of the total 831 active contracts under the purview of the division, only 45 contracts met the threshold of \$5 million or more. However, these 45 contracts accounted for \$2.6 billion or more than 80 percent of the total value of all 831 contracts. Under changes to administrative code proposed by the division, these contracts would be subject to enhanced planning and monitoring requirements. Amanda said she considered the proposed changes to be an adequate and practical framework for contract monitoring.

In the initial evaluation, Amanda said evaluators had asked the Legislature to consider amending Idaho Code to require all state agencies, including exempt agencies, to be subject to statewide monitoring for high-risk or high-dollar contracts. Although the Legislature did not amend Idaho Code, it took two specific actions in response:

- Passed HCR 18 in 2013 to direct the Department of Administration to develop a plan to address findings in the evaluation report
- Included intent language in the Department of Administration's fiscal year 2015 appropriations bill (HB 647) requiring the department to develop a best practices checklist and a statewide monitoring system

Of the 831 contracts, Senator Stennett asked how many were not required to follow the division's purchasing rules and how many were not willing to follow rules. Amanda said the 831 contracts were calculated from only those agencies that work with the division. Senator Stennett asked of those unwilling to work with the division, had they shown evidence that they had the ability to implement the contract using best practices? Amanda said the Department of Lands was the only agency not willing to work with the division. Senator Stennett asked if Lands was required to work with the division by rule. Amanda indicated the issue was in a gray area.

Senator Werk noted that this was Amanda's first presentation to the committee. He said the presentation was professional and well done and complimented OPE on the one-page summary. Senator Werk thanked the division for doing an excellent job. He indicated that there was a bipartisan group developing contracting processes for offices of elected officials and invited members of JLOC to join. Senator Werk asked if OPE wanted to develop legislation for recommendations 1.2 (work with the Office of the Attorney General to review Idaho Code and Administrative Rule) and 3.3 (amend Idaho Code to require all agencies, including exempt agencies, to be subject to statewide monitoring for high-risk or high-dollar contracts).

Cochair Ringo said these were worthwhile suggestions to make sure things did not fall through the cracks. She thanked the legislators who brought the request forward.

Senator Mortimer said the division had one recommendation to add a position and asked why the department had not moved forward. Cochair Ringo called on Bill Burns, Administrator, Division of Purchasing, to address the question. Mr. Burns said the division had been looking for feedback from the Legislature. He said the division will be budgeting for a training position in the fiscal year 2016 budget request.

Senator Werk moved to keep the report open and conduct a follow up in one year. Senator Stennett seconded the motion.

Senator Mortimer said he agreed with doing a follow up. He said he will be looking to see how the recommendations and rule changes will be implemented and will be looking at how the division develops best practices and closeout checklists.

The motion to conduct a follow up in one year passed by voice vote.

JLOC AND OPE OPERATIONS

Cochair Ringo said the discussion of office operations had been under consideration for a while. She asked Rakesh to address the committee. Rakesh said he would be bragging about the evaluation function—his only regret was that he had not done this every year since becoming director.

Rakesh discussed key highlights and policy impact of reports released since 2004 as well as findings that identified opportunities for cost savings totaling more than \$74 million. He highlighted national recognitions awarded to OPE since 2003, specifically three awards of significant importance. He ended his presentation outlining the professional standards OPE used to conduct evaluations and emphasized the need for independence to conduct and release quality work.

Senator Werk said the committee had considered changing rules in the past. He said the committee lived in a political world but OPE should not be part of that. He acknowledged new OPE staff. Rakesh introduced Ryan Langrill who had a PhD in economics from George Mason and recently taught at Emory University in Atlanta. Jennifer Tomlinson came to OPE after eight years as a certified planner for the City of Boise. He said both were excellent additions. OPE had 8 FTPs and 9 bodies: 3 of the 9 are part time. He said he had a top notch staff, and the quality of work and productivity were the best he had seen.

Senator Werk said that along with the credibility of OPE, it was equally important for JLOC to have credibility with the Legislature. The number of proposals for evaluation had increased dramatically, which was a strong sign of credibility. In addition, he had not heard grumbling in legislative circles about JLOC's topic selection process—an indication to him that legislators were feeling like they were getting an equal chance.

Rakesh said OPE could not excel without JLOC and legislative leaders—it was a symbiotic relationship. JLOC assigned good studies, and in turn, OPE provided good information. He encouraged members to read articles he had written on evaluator advocacy. The articles communicated more of what OPE did and will help members understand why OPE had been successful.

Senator Mortimer thanked Rakesh and all the staff. He said this was a window to give feedback to the office. He asked what JLOC could do better to get results that evaluators would like to see occur. Rakesh said that members can ask for information any time after a report was released. Not everyone will be interested in every report, but individual members can take reports of interest to germane committees—JLOC could be the OPE emissary for other legislative committees.

Senator Werk said he could not remember whether JLOC had developed legislation associated with a report. Rakesh said that JFAC, through Representative Bell, put intent language in appropriation bills, but he could not remember anything else recently. Senator Werk said that even if the committee had unanimous agreement to bring legislation forward, the danger of walking down that road is then they could start to disagree about the details—the devil is always in the details. He said he would never want to see the committee get into an ideological battle.

Senator Mortimer said he had a question about the gap between reports and legislation. He said Senator Werk's caution was good. The evaluators had the details and yet, how would the committee get the details into legislation. Even though reports themselves generate change, he saw a disconnect between the reports and the changes needing to be done. He wanted to look at the role JLOC and OPE could play in suggesting legislation without getting into political intricacies.

Senator Mortimer said he wanted more to occur because of the amount of work evaluation teams were doing. He said the strength of the reports was getting better and encouraged the office to brainstorm for ways to improve reports and make them more beneficial. He indicated he would like a frank discussion on how to get more legislators actively involved in the reports and whether agencies were taking evaluations seriously enough and making significant change.

Rakesh said he thought JLOC and OPE were doing good work and good things were happening. He said he would communicate with stakeholders and legislators, but he needed JLOC to move forward with legislative action because his ethics and professional standards would not allow him to do so.

Cochair Ringo said after the discussion on cost savings, she realized a great deal had been accomplished. Although everyone wanted more to happen with the report on the Commission on Pardons and Parole, the Justice Commission had been moving forward with information from the report.

Senator Stennett thanked Rakesh for his presentation and said independent oversight was crucial. OPE did an excellent job of providing information, but it was not OPE's place to craft legislation. In addition, OPE made recommendations about how to improve performance, but the Legislature must decide how to enforce. Directors, too, must want to implement recommendations.

Senator Mortimer offered ideas for committee consideration:

- Would it help to have a larger committee?
- Would it help if JLOC met on a more regular basis?
- Should JLOC have a set meeting time as a standing committee?

Senator Mortimer said he thought JLOC should meet three or four times during session. Senator Stennett asked how many times JLOC currently meets. Rakesh said the concept was good to meet regularly through the session. Only once or twice does JLOC meet outside of session; otherwise, all JLOC meetings were during the session—three to five times. The timing of these meetings occurred with the release of a report.

Representative Bell said JLOC was not a germane committee but was a great help to germane committees. She indicated that the decisions of committee size and set meeting times fell to Legislative Council.

Senator Werk said he served on a number of interim committees, and although he was frustrated by the lack of time to talk about processes, he had never been frustrated with JLOC's processes. He said he found eight members was a great number to work with. He reminded the committee that JLOC was not a partisan committee.

Rakesh updated the committee on the current status of reports. He said the office was taking longer to develop the scope of each study to make sure data were available and questions were well formulated. In a few weeks, OPE would send JLOC the draft scope. Rakesh asked for members' detailed input.

Cochair Ringo wrapped up the meeting by saying she had enjoyed working with JLOC members. She said this work had been a great experience.

Representative Bell moved to adjourn. Representative Batt seconded the motion, and it passed by unanimous consent at 4:53 p.m.