

*Subject to approval of the ESPA Working Group*

**MINUTES OF THE AUGUST 2, 2004, MEETING OF THE  
EASTERN SNAKE PLAIN AQUIFER WORKING GROUP  
EXPANDED NATURAL RESOURCES INTERIM COMMITTEE  
9:30 a.m. Burley Inn, Burley Idaho**

The meeting was called to order at 9:30 a.m. by Co-Chairman, Senator Laird Noh. The following working group members were present: Senator Don Burtenshaw, Senator Stanley Williams, Senator Dean Cameron, Senator Brent Hill, Senator Clint Stennett, Co-Chairman Representative Dell Raybould, Representative JoAn Wood, Representative Jack Barraclough, Representative Maxine Bell, Representative Tim Ridinger, and Representative Wendy Jaquet. Other committee members present were: Representative Scott Bedke, Representative Bert Stevenson, and Representative Pete Nielsen. Senator Bert Marley was absent and excused. Representative Leon Smith and Representative Sharon Block were also in attendance.

Additional parties in attendance are set forth in sign up sheets maintained in the records of Legislative Services, marked as Attachment "A" of these minutes.

Following opening remarks of the co-chair, Senator Hill moved, and Senator Burtenshaw seconded, that the minutes of the May 21, 2004, meeting of the working group be approved. The minutes were approved by unanimous vote.

The first speaker to address the committee was Jack Harrison, a subcontractor with HDR/HyQual Engineering, speaking on behalf of A & B Irrigation District. Mr. Harrison provided the working group with a power point presentation. A written copy of Mr. Harrison's power point presentation is on file in the records of Legislative Services, marked as Attachment "B" of these minutes.

Mr. Harrison began by telling the group that A & B's position has not changed. According to Mr. Harrison, A & B maintains that the data indicates current pumping rates are not sustainable and that curtailment of pumping should be the primary solution.

A & B has 300 water users, covers about 66,000 acres and is served by ground water and wastewater. The district has 174 wells at this time, down from 177. A & B's water rights date back to 1948.

According to Mr. Harrison, the data shows a 20 foot decline in the aquifer over a 30 year

period. The groundwater volume delivered has dropped over 12 percent. Mr. Harrison continued that groundwater withdrawal in the Upper Snake increased substantially during the late 1980's and that the groundwater pumping has contributed to the decline in water levels.

Mr. Harrison indicated that the water level declines have resulted in increased costs for A & B water users. According to Mr. Harrison, last winter A & B spent \$280,000 chasing declining water levels which amounted to about \$640 per water user.

In the second part of his presentation, Mr. Harrison commented on IDWR's approach in determining injury by balancing full economic use with the seniority of water rights through application of its rules, policies and model scenarios. He addressed the status of model scenarios and noted that the preliminary conclusion is that the aquifer is near equilibrium. However, according to Mr. Harrison, the data does not appear to support this conclusion and there is a high degree of uncertainty with what he termed a partially documented model. He went on to opine that complex models have a high degree of uncertainty, particularly due to model structure, model parameter values and model forcing functions.

In regard to the model structure, Mr. Harrison queried why the 3000 feet of basalt aquifer is now represented by a 1-layer, 2-D model. In addition, in terms of model parameter values, he questioned if they can serve as the basis for adjusting spring elevations.

Mr. Harrison went on to ask the group to consider whether the water budget provides reliable answers. He noted that the water budget is based on a 22 year period and asked whether the model's 22 years decline represents the aquifers 29 year decline.

In conclusion, Mr. Harrison set forth A & B's actions and positions which include:

Deepening Wells: If wells are deepened, Mr. Harrison noted that pumping costs will increase and less water will be delivered;

Tracking IDWR: Mr. Harrison said the group needs to determine if the model is ready and whether the results represent actual conditions and make sense. He added that documentation is needed;

Assessing Action by Others: Mr. Harrison stated that this area would include aquifer recharge, conversion to sprinkler or back to surface water, and supplementation of spring flows. He said the solutions must address the aquifer declines;

The Bottom Line: Mr. Harrison reiterated his initial statement that in order to fix the declining aquifer, curtailment of pumping, based on priority, should be the primary solution.

During a question and answer period that followed the presentation, Representative Ridinger asked Mr. Harrison whether he believed certain types of irrigation practices have contributed to declines in water supply. Mr. Harrison responded that he believes the data does show a change in deliveries, as well as a change in evapotranspiration (ET) over time, has

contributed to the decline.

Senator Hill asked whether all of the A & B wells were tied to the 1948 water right that Mr. Harrison mentioned during his presentation. Mr. Harrison indicated that it was his belief that they were. Senator Hill followed up, inquiring whether Mr. Harrison was confident that A & B would not be affected if curtailment took place and Mr. Harrison stated that he could not say.

Representative Raybould asked Mr. Harrison where the levels for A & B would be in the event there had not been seepage from irrigation and incidental recharge. Mr. Harrison responded that he considered that issue, that the levels would probably be lower but he would need to get the data.

Representative Barraclough commented that he agreed with Mr. Harrison's comments relating to 3-D vs 2-D models. However, he went on to note that information he has suggests that the deeper you go into the aquifer, the less permeable it is. Once below 1000 to 1200 feet, there is not much flow in the lower basalts and that perhaps the comments regarding the model should be qualified based on that fact. Mr. Harrison responded that there could be vertical gradients in the system. A 2-D model could not reflect those. He could not say whether they would affect the spring flows or calibration. The deeper strata may have higher heads.

Representative Bedke asked Mr. Harrison just what he would consider a reasonable pumping level for A & B in relation to the point at which a junior pumper would be shut off. Mr. Harrison responded that is one of the big questions that has to be addressed. Information they have shows that as declines occur, they have decreased capacity. It costs more to pump. It also costs in abandoned wells and areas that are fully dried up. It is a difficult question to answer in terms of how the economics play out. Costs have been going up for the last thirty years.

Representative Bedke continued that it behooves the parties to start working on that issue. In order to shut someone off, you have to have exceeded the reasonable pumping level. Mr. Harrison agreed that the reasonable pumping level has to be defined.

Senator Williams asked whether Mr. Harrison has considered the effects of the natural barriers in the aquifer, such as the Great Rift. Mr. Harrison indicated he did not have sufficient information to respond to that question at this time.

Senator Cameron asked what number of acres and water users A & B serves. He also asked whether Mr. Harrison's comments were made on behalf of A & B's board. Mr. Harrison noted that A & B serves about 66,000 acres and 300 water users. The position presented has been discussed over the last few weeks with the district's manager, legal counsel and he believes with board members. He went on to state that it is not a new position but rather consistent with A & B's position in 1994 when A & B made a call.

Senator Cameron also asked whether A & B has considered any other option other than curtailment. Roger Ling, counsel for A & B, was recognized to respond and noted that the

position as presented was also addressed in conjunction with the 1994 call. The district did not want to shut anyone down but wanted data. Ground water districts were created due to the call and they anticipated monitoring due to the call. Mr. Ling believes there has not been the kind of follow through that he would prefer. He noted, for example, that the Department used representative wells instead of all wells and it did not actually measure diversions. Mr. Ling continued that A & B wants everyone to be able to irrigate. Meanwhile, however, they know they cannot continue to have the aquifer go down. The district does not know what a reasonable level is and they believe that they have not had the guidance of the Department. The Department looks to them for that information. The costs are high. They do not want to continue to chase the water. They are looking for guidance from the administration but they do not believe the group can ignore the issue of curtailment.

Representative Raybould noted that the mathematics of the aquifer is troubling. If all pumping stopped, and the springs continued in excess of the 1902 levels, the aquifer would go down simply due to the spring flows. The drought has accentuated that decline. The aquifer would move back to levels during the earliest part of the century. Roger Ling responded that the question is legitimate but he questions the analysis. Mr. Ling stated that is no difference in managing the aquifer than there is in managing a stream. It doesn't make a difference what the source of the water in the aquifer is. There are rights to the water when it is there but it still has to be managed. The question is whether we are going to continue to allow it to go down 2.5 to 3 feet per year. The only thing we can control are the diversions and recharge, although recharge is difficult today due to the lack of water available for recharge.

Representative Barraclough talked about the decline of the aquifer and associated costs. He questioned whether wells should have been initially drilled deep enough so that they wouldn't require repeated deepening. He noted that he thinks attributing declines to pumping is short sighted. If all the pumping was stopped, there would still be a decline because the method has been changed. Also, there is the question as to how much of A & B's own pumping has contributed to the decline. He noted that he doesn't think a single answer is the answer and that the feasibility of deepening wells 50 to 100 feet should be looked into.

Mr. Harrison responded that there are some areas where deepening wells is possible but there are also some areas, in his opinion, that it would not provide adequate capacity. Water availability is critical in certain areas. There are, according to Mr. Harrison, a number of factors that contribute but when you manage a system you have to look at the priority date. Recharge has limitations but does have some possibilities. The one thing that can be done, in their opinion, is curtailment.

Representative Bell commented that realistically not many would go back to the old ways of irrigation and asked even if they did, how soon would they anticipate seeing any improvement. Mr. Harrison responded that he was not prepared to respond to that question.

Representative Bedke asked whether he thought we would be better served by establishing reasonable pumping levels through irrigation districts coming up with a number,

lawsuits, or other means, so that people would know where they stand.

Roger Ling responded that he doesn't know the answer and hasn't thought through that issue at this point. Conjunctive management, he said, makes it difficult for people to arbitrarily establish a number. In his opinion, it has not been done because it is difficult to do. He noted that he doesn't think it would make a difference if the water is going out faster than it is coming into the system. He commented that the three abandoned wells in A & B's district were all over 1000 feet deep. They realized that they couldn't wait until everyone went dry to shut some off. It would be difficult for all 174 wells within the district to go deeper.

Director Dreher commented about his concerns regarding how the model was portrayed. He told the group that the technical committee is meeting tomorrow to review the model data and they will provide a report to the larger interim committee regarding the scenarios that were run. A base case scenario was repeatedly run. The conclusion was that the aquifer, at the end of the calibration period in 2002, was at equilibrium. As we go into the scenarios, it is important to keep in mind that the model will not, and was not asked to, predict 2003 and 2004. Director Dreher went on to say that he is not blindly defending the model but is interested in the facts. There are a number of scenarios that simulate curtailment as well as a scenario with no ground water pumping. The model will begin to address some of these questions. He noted that the Department is aware of the issues involving A & B and he discussed some of the scenarios that will be run that seek to answer some questions relating to those issues. The Director concluded that the documentation has not stalled but is continuing to be established.

Tim Deeg, with the Aberdeen-American Falls Ground Water District, and Lynn Carlquist, with the North Snake Ground Water District, were the next speakers to address the group and presented the Proposed Agreement for Long-Term Conjunctive Management for the Eastern Snake River Basin on behalf of the Idaho Ground Water Appropriators (IGWA). Mr. Deeg also noted the contributions of Craig Evans, Bingham Ground Water District, and Dean Stevenson and Orlo Maughan, Magic Valley Ground Water District. He noted that their proposal allows a lot of room for negotiation. A written copy of IGWA's power point presentation is on file in the records of Legislative Services, marked as Attachment "C" of these minutes.

The key points of IGWA's proposal are that water users are faced with a complex problem with many root causes, that there are legal risks for all parties, potentially costly and potentially unfruitful, that a negotiated management solution is in the best interests of all water users, that most goals offered by the spring users during the June 24, 2004, meeting of the working group are reasonable and acceptable, and that goals can best be achieved by way of a cooperative management plan.

The primary elements of such a cooperative management plan include state leadership and support, a secure reliable water supply, and managed recharge for aquifer storage. The plan would also need the ground water user community to maintain and support water supply enhancement projects and cooperative efforts from all water users. IGWA believes the problems are not easily solvable but that it can be done provided there is state leadership and support.

Mr. Deeg and Mr. Carlquist went on to address the historical activities of ground water users. Those activities include the conversion of 9700 acres of land to surface water use, the direct delivery of 10-12,000 af/yr to spring-dependent irrigators through the Sandy Pipe Project in the Hagerman area, voluntary pumping reductions of 35,000 af in 2002, the provision of 54,000 af in 2002-2003 of rental water to canal companies, the re-direction of canal spills to 5 re-regulation ponds for incidental recharge as aquifer storage, and expenditures during the last three years of about 3.5 million dollars on ground water activities.

IGWA proposes the state leadership role include:

- , State-level water management authority
- , Implementation of a managed recharge program
- , Extension services to support local management initiatives
- , Necessary legislative authorizations

In terms of the proposed state-level water management authority, IGWA proposes that the authority be funded with user fees, that it guide and coordinate locally-based initiatives, that it be a clearinghouse for data, tools and information, that it enter into and facilitate necessary agreements and contracts, that it be a point of contact with federal interests and other entities and that it acquire and hold water rights.

IGWA went on to describe the extension services referred to in its proposal. IGWA envisions that the extension services would help identify local scale water management needs and opportunities, be involved with grant/loan/cost-share programs to support local projects, coordinate planning and implementation of local projects, that it administer land set-aside/CRP/CREP programs, and that it assist with the development of measurement and reporting systems for all water users.

IGWA's proposal relating to necessary legislation involves the establishment of a state water management authority for the ESPA, the establishment of funding mechanisms and the assurance of resources, and the removal of impediments to managed recharge.

The proposal also included various ground water user commitments in that ground water users would commit to the following:

- , Maintain existing measures and activities
- , Acquire additional water supplies
- , Seek additional opportunities for conversions and direct deliveries
- , Work with surface water users to eliminate return spills to the river
- , Evaluate set-aside, conversion or acquisition of target wells
- , Pursue set-asides/dry-year leases/subordination agreements

IGWA's expectations for other water users are that they participate in funding of a state water management authority; implement measures to improve water collection, use and re-use;

evaluate opportunities to use substitute supplies; assist in seeking necessary approvals from federal and other agencies; cooperate in making canal system improvements to enhance recharge; provide thorough and accurate monitoring/reporting of water supplies and uses; and that they consider set-asides/dry-year leases/subordinations to reduce water needs.

The presentation concluded with the speakers explaining the ways in which ground water users have been affected by the drought. According to IGWA, two-thirds to three-fourths of ground water users are forced to reduce pumping by throttling back pumps, leaving corners dry, idling fields, deepening wells and changing cropping rotation.

A question and answer period followed the presentation. In terms of the 40,000 af storage provided by North Side Canal Co., Representative Raybould asked if that were to continue in the future where would it come from. Mr. Carlquist responded that they did not know. They believe a water management program would help. Representative Raybould also asked whether it was viable. Mr. Carlquist responded that everyone who has converted has retained the ability to pump ground water. If the drought continues, they would have to go back to that because there wouldn't be enough surface water available. He also noted that North Snake will have to shut down for a week in September because of the fact they used the 40,000 af.

Representative Raybould also asked about whether the group could provide any more details relating to its proposed water management authority. Mr. Carlquist said that they considered IDWR taking that role but they just aren't sure and need the committee's guidance. It has to be an entity that can acquire water rights, enter into contracts and help in the management of water. They see IDWR as being more administrative in nature and there is a question as to whether it would be able to handle the type of management that the group hopes for. Representative Raybould went on to comment on the existence of Water District No. 1. He asked what the advantage to surface water users would be to participate in funding of an additional water management authority. In other words, what would the advantages to surface users be to participate. Mr. Deeg responded and noted that participation would provide a more reliable supply of water, more storage carryover and might help reservoirs like Henry's Lake. Mr. Carlquist went on to note that one of the specifics they have discussed is building a canal system that would provide a larger storage system for all users. Inefficiency of canal systems is a two-edged sword but they could regulate it more efficiently.

Representative Raybould also asked about the impediments to managed recharge. He noted that there are questions relating to Idaho Power and to federal agencies. He asked what other impediments the group knew of. Mr. Deeg responded that there are questions about water supply, testing and monitoring. They need to get past these issues, protecting the public but yet being reasonable.

Representative Raybould then inquired about credits for canal companies that participate in recharge. Mr. Carlquist said they could look at that.

Senator Noh commented that he noticed the one issue the IGWA proposal avoids is that

of curtailment. He recalled that at the last meeting the spring users indicated they would accept the curtailment that they already have experienced for a five year period in order to help stabilize the aquifer. He asked the IGWA representatives what their thoughts on curtailment were. Mr. Carlquist responded that it was a different situation but that they are curtailed now as well, on average to the same degree as the spring users and A & B. They have been participating in curtailment. It has cost them in reduced crops due to an inability to provide enough water. He went on to note that in more instances it will make sense to lay out corners. He said that they were not entirely against curtailment but it is difficult to know who to curtail and when to curtail. If they can afford to avoid hurting the economy by curtailment they will do so. Mr. Deeg added that one has to look across the board. They have people voluntarily helping with mitigation now. He is concerned that if mandatory curtailment is imposed, people will be less likely to voluntarily mitigate. He went on to note that he has tried to get everyone in his district to participate. They know they need to work toward a solution. He continued that the districts have to work together for a solution.

Representative Jaquet asked, in the event a management authority is empowered, whether it might curtail users and whether IGWA considered that possibility. Mr. Carlquist responded that the ground water authority IGWA proposes would not be curtailing users. Curtailment would come from the water master. Representative Jaquet followed up by asking whether the agency would be better suited to manage the water than a newly created authority. Mr. Carlquist responded that they see the Department as an administrative entity but the authority would be providing management. In his opinion, issues relating to curtailment would be left to the Department. They have not defined all the details at this point in time. He continued that the ground water users have tried to work toward a solution informally for three years but they have not been able to do so in large part because they lack the ability to acquire water.

Senator Burtenshaw asked how much of the 40,000 af have they used and whether they have measured the effects on the springs. Mr. Carlquist responded that about 10,000 af are going into the pipeline. The pipeline really doesn't supply spring users but it supplies irrigators that use spring water. They cannot deliver directly to the spring users due to water quality problems. He went on to note that over one-half of the conversions are near the rim. Senator Burtenshaw asked whether we are going to see results. Mr. Carlquist said that they don't know. However, he believes that most of the effect on the Thousand Springs reach will happen in a 1-2 year period because most of the conversions are so close to the rim.

Senator Noh noted that we need good communication between the parties in order to see how the projects are moving ahead. Mr. Carlquist responded that was one of the reasons they have proposed a water management authority.

Representative Barraclough referred to the flownets discussed at previous meetings and commented that the flownet shows that a lot of water from the Raft River Valley affects A & B rather than from Blackfoot-Neeley. He noted that there isn't much recharge area to provide 1000 cfs. He cautioned that when we look at the specific areas we have to look at where the water is coming from.

Representative Jaquet asked why we don't just simply expand the IDWR recharge effort with oversight of the Water Resource Board. Mr. Deeg responded that, in his own opinion, the Department is more of a regulatory body and he sees the management authority as being different from that. He thinks they may be better off with the Water Resource Board but he doesn't have a recommendation at this point and is confident the committee can help with that issue.

Representative Bedke commented that what he is hearing proposed resembles a Water District No. 1, managed upstream from Milner by the Committee of Nine. He asked whether they envisioned it that way. Mr. Deeg responded that they did to a certain degree. They need representation from the various groups, a conjunctive management organization that blends the two together and grapples with issues, water supply being one such issue. He noted that it was a big step for the ground water users to propose this type of organization. Mr. Carlquist added that another important point to keep in mind is that the authority would have to be able to hold water rights.

Mr. Craig Evans, Bingham Ground Water District, added that they wanted to leave the specifics open. They felt that it would be presumptuous of them to fill in all the details if the authority is to manage for the various interests. He also responded to Representative Raybould's inquiry relating to possible credits for recharge. He noted that there isn't nearly as much surface water diverted as there used to be and if there was an incentive, there would probably be a lot more recharge.

Following a break for lunch, Mr. Larry Cope, of Clear Springs Foods, responded to the earlier presentations and proposals. A written copy of his presentation has been marked as Attachment "D" to these minutes and is available in the records of the Legislative Services Office.

Mr. Cope began by restating the expectations of Clear Springs Foods, commented on IGWA's proposal, policies and proposed cooperative management plan and then provided an executive summary for the group's consideration. Mr. Cope also told the group, given the relatively short period of time that they had to review IGWA's proposal, their response should be considered preliminary in nature and subject to supplementation.

Mr. Cope stressed their position that water rights must be protected and administered based on the prior appropriation doctrine. They also stressed that the state must bring the ESPA and Snake River back into balance to bring certainty to water users and related interests, that meaningful action commence by March, 2005, to correct imbalances in the system, that a plan based on confirmed data and best science that forecasts goal achievement be used and that progress be measured by results.

Mr. Cope indicated that areas of commonality include:

Protection of the Prior Appropriation Doctrine

Administration and protection of the aquifer, spring flows and river reaches by the state pursuant to the Prior Appropriation Doctrine and state law  
No one should expect or demand the relinquishment of water rights  
Stabilization of spring discharges is the first step in the restoration of the aquifer, springs, and reach gain.

Mr. Cope went on to set forth the various areas of disagreement with IGWA's noted positions and proposal. In summary (actual written comments are available at the offices of Legislative Services), Clear Springs maintains that:

The ESPA is not hydrologically unique nor are there are unique legal complexities that require a change in water rights administration  
Managed recharge alone is not sufficient in numbers or reliability to accomplish restoration  
Idaho law and policy does not require a senior surface water right to take steps to maximize delivery, diversion, etc.,  
Administrative curtailment of junior ground water pumping will not have serious, widespread and long-term adverse economic impacts on Idaho's economy that will not be offset by benefits of increased spring flows or river reach gains  
Stabilization can occur even if the drought continues but will require greater action and commitments  
Restoration goals need to be based upon objective technical studies, modeling and data, not on subjective economic considerations  
Funding of the stabilization and restoration actions must be the primary responsibility of the state and junior water right holders  
Objective standards must be based on yearly data, not multi-year averages  
Use of storage water for recharge or mitigation presumes that storage water will actually be available, the presumption of which remains questionable  
The measure of any program or actions must be the results attained  
It is inequitable to insist that senior spring users curtail, set aside or take actions which the junior groundwater user would not otherwise take  
Spring users will attempt to act with one voice but, due to fiduciary obligations, that may not always be possible  
Utilization of flow augmentation for recharge may necessitate consultation by federal agencies. The state should take the lead in insuring that water users are not adversely impacted.

Linda Lemmon, Thousand Springs Water Users Association was the next speaker. A written copy of her presentation has been marked as Attachment "E" to these minutes and is available in the records of the Legislative Services Office.

Ms. Lemmon indicated that, although the Thousand Springs Water Users Association is committed to working with the committee and all parties to find a negotiated alternative to conflict, IGWA's present proposal is not acceptable to their group. The Association notes that it

believes the foundation of negotiation must be that there will be no attempt to alter spring water rights as decreed or to alter the prior appropriation doctrine. They also maintain that long term efforts for aquifer recovery and spring restoration, such as recharge, and other projects to increase spring water supplies and improve efficiencies, should be continued and expanded. In addition, it maintains that until the goal of restoring spring supplies to fulfill senior spring rights is achieved, ground water users must be required to mitigate for the depletive effects of their diversions, preferably with water, but, in the interim, until water rights are restored, monetary compensation must be negotiated. They add that federal drought relief should also be aggressively pursued.

Rich Rigby, with the Bureau of Reclamation, was the next speaker to address the working group. He also noted that the Bureau has only had a short time to review IGWA's proposal and at this time is providing only general comments. He reiterated that Reclamation intends to keep an open mind regarding the negotiations and reminded the group about Commissioner John Keys' remarks that were made to the committee at large on May 6.

In terms of managed aquifer recharge, Mr. Rigby reiterated that Reclamation cannot engage the issue without knowing how the parties intend to fulfill the requirements of the Nez Perce Settlement. In addition, in terms of ESA consultation, he told the group that Reclamation is well down the road in completing a consultation on the action defined in the Nez Perce Settlement in which a firm deadline to complete the consultation by March 31, 2005, is established. He noted that a change in how flow augmentation is provided may force a reconsultation on project operations.

In terms of the Winter Water Savings Clauses, Mr. Rigby reminded the group that the necessity of the provisions were recognized by Reclamation, the Secretary of the Interior, the Congress, all spaceholders and Idaho courts. Winter water savings affects the storage reliability of 67 spaceholders, 44 of which have preferred storage and 23 of which have no preferred storage. He also reminded the group that on May 6, 2004, Commissioner Keys said that if any changes were sought it would, in part, require amendment of spaceholder contracts, and that Reclamation is willing to engage the parties in discussions. He also pointed out that it appears the proposed agreement contemplates that Reclamation would change its interpretation of the winter water savings provisions. Mr. Rigby went on to say that Reclamation respectfully submits that there is nothing to reinterpret. The language of the contracts is unambiguous. The way to change how the provisions are administered would be through contract amendments.

Chuck Coiner, Twin Falls Canal Company, was the next speaker. He noted that the prior appropriation doctrine is there for times when water is in short supply. He said it doesn't matter what the cause of that shortage is, the prior appropriation doctrine is how we deal with it. He told the committee that winter water savings is to guarantee Twin Falls Canal Company their water in American Falls but this year, American Falls will not fill.

In terms of a water management authority, Mr. Coiner noted that we already have the IDWR. He doesn't think the state needs another entity but could, rather, focus someone in the

Department on dealing with mitigation and administration of the ESPA.

Mr. Coiner told the group that we need to determine how mitigation water will be distributed amongst the users. During the last two years it was done by natural flow which was good for Twin Falls Canal Company. However, for North Side Canal Company that hasn't been such a good thing because the majority of their water comes from storage. He went on to say that of the 67,000 af of water mitigated over two years, the impacts have come right back on those being mitigated.

Mr. Coiner next addressed the issue of conversions and said that in his opinion there isn't enough surface water available to make those work. He said that there isn't enough water in the storage system to supply the uses we have now and that surface water rights going back to 1895 and 1900 are being curtailed. In strong years there might be enough water but not at this time. He said that they may have to come back to curtailment.

Jerry Rigby, Chairman of the Idaho Water Resource Board, was the next speaker. He suggested that the Board be put on the agenda at a future meeting of the larger committee so that they can tell the committee about the role of the Board and explain exactly what it does.

Jim Tucker, Idaho Power Company, addressed the group next. He told the group that Idaho Power maintains that its water rights are not subordinated to water for recharge. He noted that the company has a fiduciary obligation to protect its water rights.

In response to a question by Representative Nielsen, Mr. Tucker responded that Idaho Power's actual water right at Swan Falls is greater than the 5600 cfs in the winter that was agreed to in the Swan Falls agreement.

Mr. Lynn Tominaga, Idaho Ground Water Appropriators, was the next speaker to address the group. He noted that in 1993, a legislative committee concluded that there was no reason recharge should not be seen as a beneficial use. A primary obstacle was Idaho Power's reticence to consider recharge as a beneficial use unless subordinated to hydropower rights. At that time there were no recharge projects and so the water users agreed with that approach. But now, he noted, they need to take a look at that issue again.

The final speaker before the working group was Charlie Barnes with Congressman Simpson's office. He reminded the group that FSA personnel from D.C. will be in Buhl on August 18<sup>th</sup>.

Following concluding remarks by the co-chairs and a brief discussion regarding the upcoming meeting of the Expanded Natural Resources Interim Committee, the meeting was adjourned by Senator Noh at approximately 3:00 p.m.