

House Resources & Conservation Committee

Minutes
2005



MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 11, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

ABSENT/ Representatives Andrus, Bell, Mitchell and Jacquet

Chairman Stevenson called the meeting to order at 1:35 p.m.

INTRODUCTIONS: Chairman Stevenson asked the Representatives, secretary and guests to introduce him or herself. Chairman Stevenson introduced the Committee page, Laura Heineman of Hagerman.

Guests included: Gayle Batt, Idaho Water Users Association; Ken Assa, Intern with the Idaho Water Users Association; Steve Barton, Idaho Department of Fish and Game; John Watts, Fish and Game Commissioner; and Fred Riggs, of Nezperce.

ORGANIZATIONAL MEETING: Minute Books: Committee minutes are posted on the web and will be included in a CD given to all Legislators at the end of the session. Chairman Stevenson asked Committee members if they wanted to continue keeping minute books. The consensus was to continue keeping minute books.

Administrative Rules: Committee members have been given copies of relevant Administrative Rules. Chairman Stevenson assigned Department of Fish and Game rules to a subcommittee to be chaired by Vice Chair Representative Wood. Other members of the subcommittee include Representatives Barrett, Moyle, Eskridge and Mitchell.

Chairman Stevenson said Outfitter and Guide Licensing Board and Department of Water Resources rules will be considered by the full Committee. Neither the Department of Parks and Recreation or the Department of Lands have rules to be considered this session.

Chairman Wood will notify subcommittee members when a meeting date is set.

Discussion: Chairman Stevenson announced that Fish and Game will give their annual presentation to the Committee on January 19th.

Chairman Stevenson said the Nez Perce Settlement Agreement informational briefing will be scheduled in Committee as soon as possible.

Chairman Stevenson asked Committee members to bring any legislation

they may have before the Committee promptly. He said Administrative Rules would be heard as soon as possible so as not to delay legislative hearings.

QUESTIONS:

Chairman Stevenson called for questions.

Snake River Plain Aquifer: Representative Barraclough asked if there would be a Snake River Plain aquifer report.

Chairman Stevenson said he has heard nothing official, but that the “go-through” is in process.

Representative Raybould said the last full working committee met November 29th. Reports have been submitted from four of five working sub-groups, all except the Eastern Snake Plain group. Another meeting of the full working committee is expected to be held before the end of January.

Chairman Stevenson asked if an economic study would be completed before the report comes to Committee.

Representative Raybould said no. He said two economists are working on a State study that should be complete between the middle to the end of January. It will provide preliminary numbers. Then a third economist will make an evaluation regarding any impact resulting from revenue loss to counties and to the general fund.

Representative Field asked how many acres would be involved.

Representative Raybould said it is not yet known how much water will be available. Offers to sell water to the State were due last Friday, January 7th. He said Clive Strong, Attorney General’s Office, has indicated that a number of offers were submitted.

Agency Reports Chairman Stevenson announced that a report from Species Conservation will be given following the meeting of January 19th.

Chairman Stevenson said reports from the Department of Lands and the Department of Parks and Recreation were not yet scheduled.

ADJOURN:

The meeting adjourned at 1:54 p.m.

Representative Bert Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 13, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Sayler, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representative Bedke

A quorum being present, Chairman Stevenson called the meeting to order at 1:40 p.m. Representative Field (23) made a motion to approve the minutes of Tuesday, January 11, 2005. The motion carried by a voice vote.

25-0101-0401

Administrative Rules, Outfitters and Guides Licensing Board: Jake Howard, Executive Director, Outfitters and Guides Licensing Board, presented rule changes. He said Docket 25-0101-0401 would die as a temporary rule, but would come back as a rule in Docket 25-0101-0402. He asked, therefore, to continue with the docket.

Chairman Stevenson said to continue.

Mr. Howard sequentially explained changes to Administrative Rule without discussion except as noted:

.007.07.b (p.11): In response to a question concerning outfitters employing guides without a license, Mr. Howard said outfitters could borrow a guide for up to fifteen days, but that person must be licensed as a guide.

.002.44 (p.10): Mr. Howard clarified the instance where a river serves as the boundary of two states. He said state requirements for outfitters and guides are not the same. In Idaho, guides must be licensed. Outfitters do have reciprocity with Oregon and Washington where rivers share boundaries.

.007.07.c&d (p.11-12): Mr. Howard said the changes reflected a need to have outfitters not take a liberal interpretation with their guides. They clarify the intention, but still allow flexibility for emergency situations.

Mr. Howard was asked if periodic audits were employed; and to explain the Board's guide amendment process. He said there were periodic audits. There is a formal amendment process that is required after the beginning of the license year. Although the process is formal, it is flexible allowing for the nature of the dynamic industry.

Mr. Howard was asked to justify the fee charged for routine office work. He said it was a cost of recovery fee. A fee has been charged for a long

time, but was increased last year. He said staff was taken away from their general duties. He said special processing fees occurred throughout the season, and estimated there were perhaps 250 amendments last year.

Mr. Howard was asked if it was common for an unlicensed person to lead a hike, and whether the \$100 fee would be restrictive. He said outfitters tried not to use people who aren't trained and licensed, as a public safety policy. He said the industry supported the rule. He said it is not the Board's policy to bring rules not supported by the industry. The rules being presented are clarifications of rules and practices in existence for a long time.

.015.05.06b (p.15): A technical correction was made.

.018.03 (p.16): Mr. Howard was asked to explain the need to reveal privileged sales information, including a purchase price, on a new outfitter application or outfitter amendment application. He said the Board needs to determine the viability of the business. When assets are sold, the Board reviews the sale as part of that process.

In response to a statement that a sales price is a personal risk, rightly belonging to the individual operating the business, and questioning the appropriateness of the Board's oversight, Mr. Howard said the point was not to look at profitability, but to ensure fair value to the buyer. He said it was a benefit to the industry to not have values become so astronomical that new people can't get involved.

A specific sale from District 8 was brought up for discussion where it was thought that the Licensing Board considered the sales price to be too high. Mr. Howard said in that instance the decision was based on conflicting territories among three outfitters, and did not involve the value of the business. Rather it was the conduct of outfitters and the proper use of resources. A territorial adjustment required one of the outfitters to sell a business. The Board decided to re-appropriate territory in order to be fair and equitable to all three outfitters.

Committee members expressed concern that the Outfitters and Guides Licensing Board might be over-reaching their authority by exercising inappropriate control over buyers and sellers in a business transaction. Mr. Howard said the problem in the industry concerns outfitters financing sales to other outfitters. Sellers are foreclosing on defaults, and the Board is put in the situation of having to make an equitable judgement to return the business to the original owner. There is concern about spiraling selling prices, and the creation of license brokers.

Mr. Howard was asked if Board members were industry people. He said there are three outfitters; one member at large, an architect; and one member appointed by the Department of Fish and Game.

Mr. Howard was asked about the confidentiality of information disclosed regarding business transfers. He said the information was confidential.

Steve Scanlin, Attorney for the Outfitters and Guides Licensing Board, told the Committee that the information in question was covered under the Public Records Disclosure Act.

The idea that a sale and subsequent foreclosure tended to create a license broker was questioned. Mr. Howard was asked why it wasn't considered to be protection of an investment; and why it was a concern of the Board. Mr. Howard said the Board was charged with protecting the welfare and safety of the public. Part of that charge was to protect the industry itself. Mr. Howard said considering the cost of a business before issuing a license is a practice the Board has followed for a long time.

Mr. Howard was asked if a new purchaser had to be a licensed outfitter. If the purpose is to insure that an outfitter is qualified, wouldn't the licensing process be enough. It was stated that selling a business was not unlike selling a home; financial information was nobody's business except the parties involved. Mr. Howard said the difference involves a public license and the expectation of public services.

Mr. Howard was asked for clarification as to whether the license was transferred upon the sale of the business. He said No.

Mr. Howard was asked why the public needed more protection than the licensing process. Mr. Scanlin said sellers were making a business out of selling and foreclosing, jacking the prices up each time. He said this happened several times last year. He said the business couldn't support the sales price based on revenue. The Board is trying to head off a "train wreck."

Mr. Scanlin was asked why it was appropriate for the Board to do a financial analysis. He said outfitters were not particularly good businessmen. Repeated problematic sales in the industry have become a problem.

Mr. Scanlin was asked if the Board is involved in establishing a reasonable sales price, was it willing to assume the liability of a failed business. He said if a business fails, the license is reissued to the original operator.

The question was reiterated: If the Board authorizes a purchase price, some guarantee that the business will be successful is implied. Why, therefore, is confidential business information required to be disclosed to the Licensing Board. Mr. Scanlin said that property information is not disclosed to anyone, but used to be sure the buyer has a plan to support the business at the selling price.

The Committee discussed the appropriateness of establishing a sales price based on business revenue. It was pointed out, for instance, that people bought businesses for their children, and were willing to pay large sums. Mr. Howard was asked if a financial disclosure requirement was required upon sale of an outfitter's business. Mr. Howard said yes, and sometimes background checks are required as well.

Mr. Howard was asked if financing had influenced the issuance of a license in the past. He said one time during his term of office. He believes there were other instances prior.

Mr. Howard was asked if the language change would strengthen the Board's position; and why the State was interested in the purchase price.

He said the Board's application was often included in the financing process.

Mr. Howard was told that the Board probably did not have authority to establish a sales price. Its concern is, "can the business be financed at a given price." Mr. Howard said the Board doesn't set the price.

Mr. Howard was asked if free agency is compromised if the Board determines a sales price is too high. He said a licence can't be issued if a buyer can't take possession of the business.

Chairman Stevenson told the Committee there would be no vote on the Outfitters and Guides Licensing Board rules today. Mr. Howard was asked to proceed with the rest of the rules.

.024 (p19): Mr. Howard was asked if the standards for non-use as set forth in this rule fell into the parameters of previous concerns. Mr. Howard was also asked to define "inadequately used." He said these concerns would be discussed in the main part of the rule; but that there were administrative steps dealing with non-use policy.

.028.01.a.i (p.20): Mr. Howard was asked if the word "may" would not properly be "shall." He said the language reflected the Board's desire for additional flexibility.

Mr. Howard was asked the need for all the additional language. He said the volume and complexity of recent sales included issues the Board couldn't address. These rules clarify the process. He said they mirrored a Memo of Understanding from the Federal agency. Mr. Howard was asked about Federal licenses. He said they were different and submitted to Federal agencies separately.

.030.03 (p.22): Mr. Howard was asked the amount of the fee in question. He said the amendment fee for an outfitter was \$200. He was asked if the fee was listed somewhere. He said it was in statute.

.030.03 (p.23): Mr. Howard was asked if this was an entirely new approach, since the language didn't relate. He said yes. The old process was no longer in use, and was archaic. Mr. Howard was asked if a fifteen percent fee was high, and why it was non-refundable. He said it is a cost recovery fee, as well as a way to raise revenue. There has been a problem using the waiting list indiscriminately. The Committee discussed methods of administering the waiting list.

.059.01 (p.27): The Committee had questions about dividing rivers into sections, and how violations were addressed. Mr. Howard said outfitters can only operate within the parameters as outlined. If parameters are not clearly included, the outfitter can't operate. A license is needed for each section.

Chairman Stevenson interrupted the discussion. He appointed a Subcommittee (Representatives Roberts (chair), Barrett, Jacquet) to meet with Mr. Howard. The Subcommittee will report back to the full Committee relative to the Outfitters and Guides Licensing Board rules.

ANNOUNCEMENT

Chairman Stevenson announced that the Committee would hear the Nez Perce Settlement Agreement briefing Monday, January 17th.

37-0307-0201

Administrative Rules, Department of Water Resources: Karl Dreher, Director, Idaho Department of Water Resources, brought one temporary rule seeking continuance. The original rule was adopted in 2002, continued through 2003 and 2004. The rule stems from budget challenges in 2001. A point was reached where making small cuts from many programs no longer allowed the agency to function. Mr. Dreher made a priority listing of programs to determine which of the various programs could be consolidated.

He worked closely with the Corps of Engineers to determine if the number of Stream Channel Permits could be reduced by using 404 Permits as substitutes. Fewer staff positions would be required.

.05 (p.7): These instances allow an entity to satisfy State requirements by securing a 404 Permit. Mr. Dreher said the temporary rule was requested because he plans to request General Fund appropriations to support these positions again, as there is public support to do so. He asked the Committee to authorize the temporary rule.

Mr. Dreher was asked the volume of applications received, and whether staffing was adequate. He said there was not adequate staff. The rule was first-in/first-out. Exceptions were made where public welfare or safety was affected, or in extreme hardship. A routine application may take well over a year.

Mr. Dreher was asked how difficult the 404 application was to understand. He said the 404 Permit was not a direct substitute for a Stream Channel Permit, and that an entity would need to have a 404 Permit in any case. The Corp of Engineers simply agreed that rather than require two permit procedures, the Corp would issue the 404 Permit or the State would issue the Stream Channel Permit. Both the State and the Corp would recognize the other.

Mr. Dreher was asked if the 404 Permit would allow repair where channel banks had washed out. He said the 404 Permit suffices when something is being placed in the waters. In any emergency case, however, a permit would be issued. He emphasized that the routine cases are the ones being ignored.

Mr. Dreher was asked to clarify the instance where canal companies clean rights of way. He said there is a specific exclusion in law allowing canal companies to maintain rights of ways. He said he was not certain how much longer the exclusion would apply.

Mr. Dreher was asked if there was a significant amount of illegal alteration that occurred. He said there are three high profile cases now: 1) Silver Creek, 2) the Snake River and 3) the South Fork of the Snake River. He said all resulted from the actions of canal or irrigation companies, all exceeded the exclusion, and all could have been prevented had the permit program been operating. Mr. Dreher said the State serves as a buffer to the Federal program; and that the Federal program has sizeable penalties.

Mr. Dreher was asked how difficult it was to procure a 404 Permit. He said it was getting harder and can take many months.

Mr. Dreher was asked how many positions were needed to handle the workload. He said a minimum of six. He was asked if staffing requirements could be reduced if only one permit was needed. He said yes; that was the direction the agency was heading, but never quite got there.

MOTION: Representative Raybould made a motion to approve docket 37-0307-0201. Representative Mitchell clarified that the motion was to approve the extension for another year. The motion carried by voice vote.

ADJOURN: The meeting adjourned at 3:44 p.m.

Representative Bert Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 17, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Sayler, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representative Eskridge

A quorum being present, Chairman Stevenson called the meeting to order at 1:33 p.m.

Chairman Stevenson welcomed the guests who came to hear the briefing on the Nez Perce Settlement Agreement. He explained how the issue would continue through the Legislature.

Each Committee has been given the Idaho Rangeland Resources Commission 2005 Report (Exhibit 1). Chairman Stevenson asked for it to be perused. It is somewhat unusual in that it goes to several Committees. Contact him if you want the report presented in Committee.

NEZ PERCE SETTLEMENT AGREEMENT

Clive Strong, Deputy Attorney General, Chief of the Natural Resources Section, presented the Nez Perce Settlement Agreement. His presentation covered three topic areas: 1) How we came to this point in time, 2) the components of the Snake River Water Rights Agreement, and 3) a discussion of options from this point forward.

Prior to this meeting, Committee members were given a notebook, Snake River Water Rights Agreement of 2004 (Exhibit 2); and Mr. Strong's presentation summary, Summary of Nez Perce Termsheet (Exhibit 3). Please refer to the Termsheet for an accurate summary, and to the notebook for a complete description of the settlement agreement. Questions from Committee members were taken during the discussion. How we came to this point in time: Mr. Strong said State water law is based upon "first in time and first in right" principle. Under Federal law, the United States retains the authority to over rule state water law. The federal reserved water rights doctrine arose from an early United States Supreme Court case regarding the Fort Peck Reservation in Montana. In the Winters' case, the Supreme Court said the United States must have intended to reserve water for the Tribe because in absence of the water the purpose of the reservation would have been entirely defeated. Thus, the Court held that a water right was created under federal law when the reservation was created.

One object of the Snake River Adjudication was to resolve state and federal claims to the waters in the State of Idaho. The state joined the United States in the state court adjudication for purposes of quantifying Federal Reserve water claims.

One provision of the Nez Perce Treaty provides that the Nez Perce tribe has an exclusive right to take fish from all streams within or bordering the reservation. The treaty also provides that the tribe has the right to fish at all usual and customary fishing sites within its aboriginal territory.

The United States and the Tribe claim that the federal government intended to reserve water to preserve these fishing rights. In total, there are 1,133 Snake River instream flow water right claims. Mr. Strong also described the United States' and Tribe's springs and fountain claims and claims for consumptive uses.

Mr. Strong was asked why the priority date of 1855 is used, since the reservation was reduced in 1863. He said the premise is that since the tribes were in the United States prior to non-Indian settlement, their settlement on the land is considered to be from time immemorial.

Mr. Strong was asked why the authority from an earlier treaty superseded a later treaty. He said rights under the 1855 treaty not inconsistent the 1863 treaty were preserved.

Mr. Strong continued his presentation explaining how the State got to the point of adjudication. In the 1990's the parties attempted to negotiate a resolution of the Tribe's water right claims. They were not successful and active litigation was pursued from 1995-1997 to resolve the claims. In 1998, the Idaho Power Company and some Upper Snake River irrigation interests met with the tribes to reinstate negotiations. The flow augmentation program required by the biological opinion for the BOR projects and demands to increase flows under this program, created a reason to expand the negotiations to include ESA and tribal claims in order to provide certainty to the water users.

Idaho Power, the Federal Claims Coalition and the Tribe requested the Court to order mediation. Frances McGovern of Duke University Law School was appointed mediator. The Court imposed a confidentiality order for the purpose of providing an opportunity to discuss claims in a non-threatening environment without prejudice to any party's litigation position. All water right holders were given the opportunity to participate in the mediation. While the negotiations were subject to a confidentiality order, it was understood that any proposed resolution would be subject to governmental review.

Mr. Strong was asked why the Bureau of Land Management (BLM) lands were involved in the water rights case; and why Native Americans were allowed to fish outside the boundaries of the reservation. He said off reservation fishing rights were reserved under the treaty. The tribe has the right to fish at all usual and accustomed fishing sites. BLM lands were included in the settlement to settle the Tribe's breach of trust claims against the United States.

The components of the Snake River Water Rights Agreement: Mr. Strong said the second topic of his presentation was outlined in his handout. Summary of Nez Perce Termsheet (Exhibit 3), nos. 1-3.

Mr. Strong described the provisions of the Nez Perce Tribal component. Mr. Strong was asked if springs and fountains on federal lands were being quantified and the amount of the total cfs of the claims. He said yes; but it was hard to quantify the total amount of cfs because of the varying flows of the springs and fountains. He said each claim is limited to one-half of the stream flow, which is a relatively small amount of water.

Mr. Strong was asked if cfs for fish flush would be an additional allocation. Mr. Strong said the flow augmentation was limited to the acquisition of 60,000 af between Milner and Murphy and that this water would be rented through the State water bank. He said under the Snake River flow component of the settlement, augmentation flow is not guaranteed. There is only an opportunity for the government to rent water.

There was a question relative to the last item on page 2 of the Snake River Water Rights Agreement of 2004 (Exhibit 2), as to why the Lewiston Orchards Irrigation District (LOID) was not resolved. Mr. Strong said the parties were unable to reach agreement on this issue and it was being addressed through the consultation process for a biological opinion for the LOID project. Under the Endangered Species Act (ESA), discretionary actions of a federal agency over a federal project are required to go through a consultation.

Mr. Strong was asked if the LOID is owned by the Bureau of Reclamation. He said the federal government is the owner.

Mr. Strong was asked if Legislative action would be cancelled, or disrupted, by Judge Redden's opinion. He said the biological opinion could be challenged. While there is no guarantee against litigation, a court gives deference to an agency's biological opinion.

Mr. Strong was asked why certain lands are in the agreement. He said the BLM lands open for exchange were described in a map in the handout. All BLM lands open for selection are within boundaries set by the 1863 treaty.

Mr. Strong was questioned about management of the federal hatcheries. Mr. Strong said presently the Kooskia hatchery is under the Department of Fish and Game management. Since the IDFG no longer has any interest in managing the hatchery, the agreement proposes tribal management of this hatchery. Ownership of the Kooskia hatchery would remain in the United States even though the management of the facility would shift to the Tribe. The federal government agreed to share management of the Dworshak hatchery with the Tribe.

Mr. Strong was asked about clipping the fins of hatchery fish. He said issues regarding fishery management would be addressed under existing memorandums of agreement.

Mr. Strong was asked to speak to several issues that would not be settled in the agreement with the tribe. He said the settlement only reserved the Dworshak mitigation issue. All water rights issues are resolved by the settlement.

Mr. Strong was asked to discuss how Dworshak reservoir recreation was addressed. He said the agreement provides for a Memorandum of Agreement to address recreation and resident fishery issues associated with Dworshak reservoir.

Mr. Strong was asked to address the issue of PILT payments to counties. Mr. Strong said counties receiving payments from the federal government based on the amount of federal lands in the county, called PILT payments would be compensated for lost payments. Mr. Strong said that the federal government had determined the BLM land transfer would have no impact on Idaho or Clearwater counties' PILT payments. An \$11,000 annual impact would be expected in Nez Perce and Lewis counties. In order to address impacts to counties from the BLM land transfer, Congress appropriated \$200,000.

Mr. Strong was asked if PILT payments were at a fully funded or a capped level. He said the agreement assumes current PILT payment levels.

Mrs. Strong addressed the Salmon/Clearwater component of the agreement. He said instream flows would be established under state law.

Mr. Strong said the Salmon/Clearwater component had two elements – state instream flows and Section 6 Cooperative Agreements under the ESA. He said the instream flow program was an outgrowth of the State's negotiation position that it would not recognize any federal

instream flow water right claims. The State agreed to establish certain instream flows under state law in the Salmon and Clearwater basins in lieu of any federal instream flows. The state instream flows would be created pursuant to state law and the Tribe will have no ownership interest in any of the instream flows. While the State agreed to consult with the Nez Perce Tribe prior to changing the state instream flows in the future, the State has the sovereign right to change these flows at any time in the future.

Mr. Strong described the difference between the A and B list streams. He said the state instream flows would be subordinated to future domestic, commercial, municipal and industrial water rights and would have a priority date as of the date of the agreement. A list streams would also be subordinated to a specific amount of water for future agricultural uses. Mr. Strong summarized that any water rights with a priority date prior to the date of the agreement would be senior and unaffected and any water rights for domestic, commercial, municipal and industrial water rights would be unaffected by the agreement as well as water for certain future agricultural water rights.

Representative Wood asked how the instream flows related to wilderness areas since the Idaho Supreme Court had rejected federal reserved water rights for these areas. Mr. Strong responded that Representative Wood was correct that the Idaho Supreme Court had rejected federal reserved water rights for wilderness areas. He explained that the instream flows in the agreement within wilderness areas were being established under state law.

Mr. Strong then explained that B list streams consisted of approximately 20 streams that were fully developed. He said that the instream flows for these streams would be like the Lemhi instream flow. The flow would be satisfied through market-based mechanisms such as the state water bank. These instream flows would be junior to all existing water rights and would have no effect upon them. In addition, the instream flows would be subordinated to future domestic, commercial, municipal and industrial uses. Mr. Strong also explained that the instream flows would be established through consultation with local stakeholders.

Mr. Strong then explained that all existing state minimum stream flows would remain unchanged. He gave as examples, the existing Clearwater, Lemhi and Pahsimeroi minimum stream flows.

Mr. Strong provided a background for the proposed Cooperative Agreements under Section 6 of the Endangered Species Act. He explained that the Upper Snake River Bureau of Reclamation projects had to go through consultation under Section 7 of the ESA because they are federal projects. Water users in the Salmon and Clearwater divert directly from the stream so they are not required to go through consultation; however, they are subject to liability under Section 9 of the ESA. Mr. Strong discussed the Verl Jones case as an example of how a private water user might be prevented from diverting water under the ESA. He said the purpose of the Cooperative Agreement program for instream flows was to provide incidental take coverage for private water right holders similar to that being made available to in the Upper Snake River Basin. Mr. Strong emphasized that participation in the Section 6 Cooperative Agreement program is entirely voluntary. No one is

required to participate, and if they elect to not participate it would not change their existing situation.

Mr. Strong described the habitat trust fund that will be made available to local landowners. He said that \$25 million would be under State control and that \$13 million would be under tribal control.

Mr. Strong discussed the Idaho Forestry Program. He said the program is entirely voluntary. He also said that the term sheet made clear that the State is not conceding that the existing forest practices act and regulations are insufficient to avoid take of listed species. Mr. Strong also stated that the measures in the term sheet built upon the existing forest practices act and did not in any way change the forest practices act or implementing regulations. The only difference is, that if some decides or elects to participate in the program, they will get incidental take coverage by agreeing to implement the additional voluntary measures.

Mr. Strong said that the State had agreed to enroll state endowment lands in the Idaho Forestry Program. Director Wiggins had determined that the measures would have no real effect on the return to the endowments because the department already did most of the measures called for by the term sheet. He said that application of the measures to the state endowment lands at Priest Lake had already headed off a potential lawsuit under the ESA regarding these lands.

Representative Raybould said there had been some suggestion that the term sheet would change the definition of streams under the forest practices act. Mr. Strong said the agreement does not change the forest practices act or its regulations in any way. He said the Class IIa definition is for the purposes of the agreement only.

Representative Roberts asked if a landowner is at any greater risk if he does not sign up for the forestry program. Mr. Strong said that everyone has the same risk today of being sued for a taking and that the agreement does not change that risk in any way for a non-enrollee. He said that the enrollee is just buying additional insurance against ESA takings claims.

Mr. Strong described the Section 6 habitat improvement program and the federal dollars that would be available to implement the program. Representative Barrett reminded the committee that the federal dollars we're gathering up are paid by the same people that are taxed.

Mr. Strong explained the Upper Snake River component. He said the agreement provided for a thirty-year biological opinion. He said there is no guarantee of a specific amount of water; however, the term sheet provided for an increase in scheduled water rental payments to provide an incentive for participation in the flow augmentation program.

Mr. Strong was asked why the flow augmentation program was necessary now that the federal court had determined that hatchery and wild fish should be listed together. Mr. Strong said that the issue of flow augmentation was evolving and that the federal agencies now believe flow augmentation is needed to address temperature issues. He said that in order to get a settlement the parties had to agree to some flow

augmentation.

Mr. Strong was asked if the flow augmentation program would go away if the salmon and steelhead were delisted. Mr. Strong said yes.

Mr. Strong was asked why the flow augmentation was included in the term sheet when scientists disagree about its need. Mr. Strong said that it was included because it was necessary to get a settlement and it represented a balancing of the risk of losing in litigation with the opportunity for achieve a greater level of certainty under an agreement.

Mr. Strong was asked why a dollar amount for mitigation was not included for the Dworshak project. He said no specific amount was included because the memorandum of agreement was intended to address the recreational concerns of the local citizens.

Mr. Strong was asked to discuss the Cascade reservoir impacts. Mr. Strong said that a provision was included in the term sheet to provide water in drought years for Payette water users. He said that no specific mitigation fund was included because the storage water used from Cascade for flow augmentation is uncontracted space

Mr. Strong was questioned about the ability of third parties to challenge the biological opinion. He said that the biological opinion could be challenged but a court would accord deference to the agency's decision.

Mr. Strong concluded that the term sheet would result in a permanent dismissal of all tribal instream flow claims and all springs and fountain claims on state and private lands. The agreement would provide for up to thirty-years of incidental take coverage under the ESA.

Mr. Strong then summarized that the question of whether to approve the agreement turned on an evaluation of the benefits of the agreement versus the litigation risk. He outlined a likely litigation scenario.

Mr. Strong was asked what the total cost of the settlement would be to the state. He said that the term sheet created two costs to the State. The State will have to provide a twenty-five percent in-kind match for the habitat trust fund. He said the agreement would also likely require additional staffing for the affected agencies.

Mr. Strong was asked what precedent the agreement would have for other bodies of water. He said that the settlement would not have any precedent for other bodies of water. Mr. Strong said the Shoshone-Bannock claims had been finally resolved by the SRBA district court. He also said the agreement would have no effect on the state's ownership of the northern two-thirds of Lake Coeur d'Alene. Mr. Strong said that the United States Supreme Court's decision disposed of the Coeur d'Alene Tribe's claim of ownership to the northern two-thirds of Lake Coeur d'Alene.

Mr. Strong was asked about representation of recreational interests in the negotiations. He said only claimants in the adjudication had a right to participate in the negotiations.

In response to a question about challenges to the operation of Dworshak

reservoir, Mr. Strong said the agreement would help to limit the Corps discretion over releases from the reservoir. He said the negotiations provided an opportunity to provide some protection for recreation interests.

Mr. Strong was asked to explain Judge Wood's decision. He said that Judge Wood's did not find a legal basis for the United States' and Tribe's off-reservation instream flow claims.

Mr. Strong was asked whether the water appurtenant to land given up by the 1863 Nez Perce Treaty was given up. He said the water rights provided for in the agreement were for lands that remain in tribal ownership.

Representative Roberts asked Mr. Strong if Idaho Code § 42-1763B would be open for amendment. He said that the section is always open for amendment by the Legislature but that he could not say what effect an amendment would have on the agreement.

Representative Roberts asked if there couldn't be a permanent shaping agreement for Cascade Reservoir. Mr. Strong said that shaping of flows out of Cascade must be done in an agreement with Idaho Power Company. He said he did not know whether it was possible to negotiate a shaping agreement before the agreement was approved. Mr. Strong said, however, that the current section protects the minimum operating pool.

Mr. Strong was asked what issues would have to be revisited in thirty-years. He said only the consultation on the Upper Snake River projects and the Section 6 agreements. Mr. Strong said until the status of the species changes, these issues would continue to exist.

Mr. Strong thanked the Committee and told the members he was available for any questions, and to feel free to call him.

DISCUSSION:

Chairman Stevenson announced that the Department of Fish and Game presentation would be given in Committee January 19th, and the two new Commissioners would be introduced. Two RS's brought by Fish and Game will also be considered that day.

The Chairman was asked what opportunity people would have to present opposing views to the Committee. Chairman Stevenson said legislation would come to the Committee in the form of an RS. The RS will be presented in Committee. If approved, there will be a full hearing, probably held in the Gold Room or the largest facility that can be located. Everyone who desires to testify will have an opportunity to do so. Depending on the number of people signed to testify, there may be a time limit imposed. Committee members will have an opportunity to ask questions. In other words, the Nez Perce Settlement Agreement will be handled the same as other Legislation.

The Chairman was asked, in this case where substantial community input can be expected, if hearings could be held in different parts of the state. People otherwise not able to speak on the issue would be given an opportunity for input. Chairman Stevenson said while the Legislature is in session, that format could only be done weekends. To his knowledge it had never been done.

The statement was made that every possible way to hear from citizens should be pursued, because of the magnitude of the issue and the impact to the state. Chairman Stevenson said he would take the matter into consideration. He said input was not as one-sided as might be thought since groups around the state have taken the issue to their constituencies (i.e., the Grange and the Farm Bureau). Chairman Stevenson said he would take the issue to leadership. He said the hearing would be scheduled so as to hear from as many people as possible.

ADJOURN: The meeting adjourned at 3:22 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 19, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Sayler, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representatives Andrus and Field (23)

GUESTS: Please refer to the Committee sign-in sheet.

A quorum being present, Chairman Stevenson called the meeting to order at 1:40 p.m. He welcomed the Commissioners from the Idaho Department of Fish and Game.

**IDFG
PRESENTATION:** The following informational materials were distributed to the committee:

1. IDFG 2004 Significant Accomplishments (Exhibit 1)
2. Idaho Fish and Game Regions and Game Management Units (Exhibit 2. a map)
3. Idaho Fish and Game Regions and Legislative Districts (Exhibit 3, a map)
4. Idaho's Mule Deer Initiative (Exhibit 4)
5. Response to Comments Concerning Pending Rules Governing the Classification and Protection of Wildlife (Exhibit 5)
6. Idaho Wolf Fact Sheet (Exhibit 6)
7. 2003-2004 Wolf Activity, (Exhibit 7, a map)
8. Fish and Game: Selected Statistics (Exhibit 8)
9. Wildlife License Plate Calendar Year Sales Summary (Exhibit 9)

Steven Huffaker, Director, IDFG, gave an overview of the year's accomplishments. He said the Department's work would continue in 2005 with emphasis on highest priorities, including the mule deer initiative, wolf management, communication with the public, the retention of young people, and the *Access Yes!* and law enforcement programs.

The Department has funding from the U. S. Congress to use for wildlife conservation strategies. Work is in progress to develop a list of rare species. Mr. Huffaker said the funding represented an opportunity to prevent crisis management in this area.

Terry Mansfield, Deputy Director, IDFG, introduced the IDFG Commissioners to the Committee: Nancy A. Hadley, Alex Irby, John Watts, Cameron Wheeler, and Marcus J. Gibbs. Two new IDFG Commissioners, Dr. Wayne Wright and Gary Power, introduced themselves.

Chairman Stevenson acknowledged Commissioner Wheeler, a former

Idaho Representative and past-Chairman of the House Resources and Conservation Committee.

Director Huffaker referred to (Exhibit 5), summarizing the action taken to classify the wolf as a big game animal. He said state management is the most convenient and expedient way to manage the wolf.

Jim Unsworth, Biologist, IDFG, gave an overview of Idaho's Mule Deer Initiative. See (Exhibit 4). He said it is first and foremost an action program. Aerial surveys contribute to management programs and provide good information from ten areas through the state. Dr. Unsworth said that game animals are the bread-and-butter of the wildlife programs--mule deer first and foremost

Steve Nadeau, Biologist, IDFG, gave a briefing on wolves in Idaho. See (Exhibits 5, 6 and 7). He said IDFG has provided an opportunity for the public to give and receive information through public reports and a website report form. About 500 online wolf reports have been received. Wolf counts have improved since 2003 due to increased IDFG efforts, public input, and better communication with outfitters and the Nez Perce tribe. IDFG employees at the field level are now able to respond to public concerns quickly and effectively. Mr. Nadeau said that new federal funding made it possible to increase big game population aerial surveys and to restructure large carnivore research. He summarized the wolf monitoring and management program.

Questions: Mr. Nadeau was asked if there were now enough wolves to sustain a harvest. He said yes, if they were delisted. Currently a harvest is not possible.

Mr. Nadeau was asked if the Nez Perce tribe is giving more accurate information now that the state is involved. He said yes. The tribe did the best they could in the past. Now there are more personnel and better field information.

Mr. Nadeau was asked what was being done about the wolves on the Snake River in Minidoka County. He said he was not aware of any wolves there. He said this time of year, wolves range broadly. If any public reports are received, an attempt will be made to verify the information.

Mr. Nadeau was asked what was being done to let land owners and citizens know what their rights are and how to protect their private property. He said regional offices address public concerns, and disseminate information.

Mr. Nadeau was asked about the status of the Jack O'Connor project. He said he knew it was on-going, and deferred to Alex Irby. Mr. Irby said it is located on a beautiful site in Hellsgate Park, not too far from where Mr. O'Connor lived. A building has been purchased. Over two million dollars are still needed, and fund-raising is in progress.

Chairman Stevenson thanked the Department for their report.

RS14470

Steven Huffaker, Director, Idaho Department of Fish and Game (IDFG), presented RS14470 concerning resale and wholesale buying and selling

of steelhead trout. He said steelhead were being sold locally and resold without being inspected. Several years ago, legislation was passed to protect the public in just this situation. At that time, there were no commercial chinook salmon. RS14470 brings nothing new; but adds chinook salmon caught in legal tribal fisheries to existing statute.

Mr. Huffaker was asked if this legislation and existing Idaho Code 36-501 deals with the sale of salmon within tribal lands. He said yes. Mr. Huffaker was asked about tax liabilities. He said he didn't know what tax liabilities might apply. Mr. Huffaker was asked if he would object to an amendment clarifying that steelhead trout sold outside tribal lands be subject to a tax. He said he would agree with whatever the Legislature deemed appropriate. Discussion followed.

Steve Barton, Intergovernmental Policy Coordinator, IDFG, told the Committee that RS14470 did not apply to the tribal member. It applies to the person buying the fish from the tribal member. He said the wholesaler that resells the fish already has a sales use tax that would apply.

Representative Jones said he believed the agency bill should be introduced the way it was prepared. Even if there is a tax issue, it should be addressed in another part of the Code.

Representative Moyle said another RS can be brought if there is support for an amendment.

MOTION: Representative Jones made a motion to introduce RS14470 for printing. The motion passed by voice vote.

RS14474 Steven Huffaker, Director, Idaho Department of Fish and Game (IDFG), presented RS14474, saying it resulted from an omission from Idaho Code 36-1403. The word "trapping" has been added, which will standardize protocols for all privilege revocation procedures.

MOTION: Representative Roberts made a motion to introduce RS14474 and send to the second reading calendar. The motion passed by voice vote, Representative Barrett being recorded as voting NAY.

Chairman Stevenson asked Representative Roberts to carry when the bill goes to the floor.

MINUTES: Representative Wood made a motion to approve the minutes of January

DISCUSSION: Chairman Stevenson said there would be no meeting Friday, January 21, 2005.

With regard to the open question from the meeting of January 17, Chairman Stevenson told the Committee that Leadership thought it was not appropriate to hold Committee Hearings on the Nez Perce Settlement Agreement at various locations throughout the state. Public meetings on the issue will be held in Committee in Boise. He said any Committee members wanting to hold town hall meetings in their own communities, or elsewhere, were free to do so.

Chairman Stevenson asked Representative Roberts not to set a Subcommittee meeting for Outfitters and Guides Licensing Board Administrative Rules until after Thursday because their Board is meeting. They may want to address their rules in a different manner.

Chairman Stevenson said Mr. Caswell would present a briefing on Species Conservation at the regular Committee meeting of January 25, 2005.

ADJOURN: The meeting adjourned at: 3:22 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

**HOUSE RESOURCES & CONSERVATION COMMITTEE
WOOD SUBCOMMITTEE**

DATE: January 24, 2005

TIME: 3:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Wood, Representatives Barrett, Moyle, Eskridge, Mitchell

**ABSENT/
EXCUSED:** Representative Mitchell

GUESTS: Please refer to the Sign-In Sheet.

Chairman Wood called the Subcommittee to order at 3:38 p.m. She said the Subcommittee would review the Idaho Department of Fish and Game (IDFG) Administrative rules; comments would be entered into the record.

The following people were present to represent IDFG: Steven Barton, Intergovernmental Policy Coordinator, W. Dallas Burkhalter, Deputy Attorney General; and Steven Huffaker, Director.

**DOCKET
13-0102-0401:** Rules Governing Public Safety Mr. Burkhalter clarified testing procedures for online computer courses. He said the requirements were equivalent to the old hunter's safety course. A written test is completed, and a field day is required to demonstrate firearms safety.

MOTION: Representative Barrett made a motion to accept Docket 13-0102-0401 and send to Committee with a DO PASS recommendation. The motion passed by voice vote.

**DOCKET
13-0104-0401:** Rules Governing Licensing Correction are made to correct a clerical error, returning to the original language.

MOTION: Representative Eskridge made a motion to accept Docket 13-0104-0401 and send to Committee with a DO PASS recommendation. The motion passed by voice vote.

**DOCKET
13-0106-0401:** Rules Governing Classification and Protections of Wildlife: Mr. Burkhalter said Scientific Collecting Permits, issued by the Director, allowed the taking of wildlife pursuant to the condition of the permit. He said they usually were issued to allow taking animals for research and educational purposes.

The Subcommittee's primary concern with Docket 13-0106-0401 was the classification of the gray wolf in this rule. Some members of

the Committee disagreed with listing the gray wolf under Section .100.d (p.14). Questions were asked about listing the gray wolf in that section as opposed to classifying the gray wolf as a furbearing animal or as a predator.

Mr. Huffaker said classifying the wolf as wildlife allowed more flexibility and management authority control, with the ultimate management goal being delisting the gray wolf. He said when the Commission made the decision to classify the gray wolf as big game, it took into consideration a need to facilitate the U. S. Fish and Wildlife Service's (USFWS or the Service) acceptance of the management plan. The intention is to manage the wolf on the same basis as black bears and mountain lions. Mr. Huffaker said this classification represents the most expedient route to federal acceptance of the state management plan.

The management plan allows the Commission full authority to specify methods of take for any animal classified as big game. Mr. Huffaker said the time to address controlling the wolf is when the wolf is delisted and under state management.

The Committee expressed concern that big game animals could not presently be taken by trap or snare. Mr. Huffaker said "this rule is for now." He anticipates the rule will be able to be changed to allow trapping. He said the objective now is for the state to demonstrate to the federal government that it will control and manage wolves, if they are delisted and removed from the endangered species list. He said when the wolf is delisted, it would be appropriate to consider rulemaking for methods of take. Until then, the gray wolf can't be taken, and it is not appropriate to make rules in that regard.

Mr. Huffaker was asked to clarify why the wolf was not classified both as a furbearing and big game animal, since that expanded classification had been discussed by IDFG. He said the Commission didn't think it was the most efficient way to get the wolf off the endangered species list. Mr. Huffaker said the intent was to stay as low key as possible and still demonstrate that the state intended to manage the wolf as a game animal and not as vermin.

Mr. Huffaker was asked why the gray wolf wasn't called a predator. He said the wolf is a predator, but not for the purpose of classification. Idaho Code § 36-201 lists predatory animals to include only: coyote, jackrabbit, skunk, weasel and starling. In the Code a predator can be taken at any time of year, any place, by any method. He said predator classification is not appropriate for the gray wolf because it would trigger a strong reaction by the Service. Creating a special predator classification was discussed.

Chairman Wood referred to three letters and a petition from constituents opposing the classification of the gray wolf as a big

game animal. (Exhibits 1, 2, 3 & 4) She said most people do not consider the wolf a big game animal, and it should not be listed as one. She noted that outfitters and guides were not in support of the classification. Mr. Huffaker said he didn't understand why they were not, as they currently sell mountain lion, bear hides, skulls, etc.

Steve Barton told the Committee he thought general misunderstanding was a result of people not realizing that future action is based on current rule. As a result people want action that wouldn't apply until some future point in time when the wolf is delisted. Under the management plan, the Commission would have full range of authority to designate any methods of take it deems necessary, which could include trapping and snares. Mr. Burkhalter said the Legislature would have an opportunity to review methods of take through rule-marking action.

Representative Barrett asked why anything had to be done now, if the changes are intended to "mollycoddle" the Service. There is a management plan in place already.

A special predator classification was discussed. Mr. Huffaker said the only place referencing "special predator" was in the state wildlife plan. In Code there is no definition for a special class of predator. He said it was not in Idaho's best interest to classify the gray wolf as a predator when it could be classified as a big game animal and be managed in exactly the same way.

Chairman Wood called for public testimony.

Judy Bartlett, representing the Idaho Farm Bureau, spoke against Docket 13-0106-0401. She said there was discussion about controlled take, and whether the gray wolf could be a special class of predator before IDFG made the classification. Ms. Bartlett said it would be as easy to make a special classification for the gray wolf as to adopt this docket. Ms. Bartlett said passing Docket 13-0106-0401 would be harmful to agriculture.

Representative Barrett asked for clarification as to why the management plan was adopted in its present form. She expressed the opinion that a special predator classification should be created to manage the wolf as a predator as well as a big game animal.

Jim Caswell, Administrator, Office of Species Conservation, said his concern was that Idaho classify the wolf now. There is a state plan ratified by the Legislature, accepted by the Secretary of the Interior, including a 10J rule change. Idaho needs to be flexible in rulemaking. He referred to the state of Wyoming as an example of what could happen if it was not. Mr. Caswell said if there was not support to classify the gray wolf as a game species, then the Code needs to be changed to give management flexibility to the IDFG.

Chairman Wood said there had been a history of success asking the Service for changes. Mr. Huffaker disagreed. In response to discussion, Mr. Caswell said Idaho Code § 36-201 establishes classification parameters. With the exception of predatory animals, the Commission is authorized to define game in the state, including furbearing and big game animals. Since the Commission can't unprotect an animal or classify it as a predator, it didn't pursue that course of action.

Discussion considered making statutory change.

Jack Oyler, representing Sportsmen for Fish and Wildlife, spoke in opposition to Docket 13-0106-0401. He said discussion in Committee focused on public lands and didn't represent sportsmen's interests. He said the classification issue sounded like semantics, if no action needed to be taken now.

Stan Boyd, representing the Idaho Wool Growers Association and the Idaho Cattle Association, spoke in support of Docket 13-0106-0401. He said he participated in drafting the management plan. The plan was intended to be conservative, giving rights back to the state but staying within federal guidelines. He said if the gray wolf was to be classified as a predator, there would be trouble with the Service. If it is classified as big game, the state will have management authority to address public concerns later.

Representative Eskridge asked Mr. Boyd if he felt there was a problem using the word, "predator." Mr. Boyd said yes. Concerns could be resolved as a management issue rather than a classification issue.

Discussion of alternative actions continued .

Language changes have been made to Docket 13-0106-0401 reflecting changes in standard scientific taxonomy. The list (p.14-25) has not been revisited for fifteen years, and has been brought current.

MOTION: Representative Eskidge made a motion to send Docket 13-0106-

SUBSTITUTE MOTION: Representative Barrett made a substitute motion to send Docket 13-0106-0401 to Committee with a recommendation DO PASS, except for Section .100.d (p.14).

Discussion: Representative Barrett said if a statutory change could be made to reflect a special class of predator in the management plan, she saw no reason to classify the wolf as big game now.

Mr. Caswell said it would show bad faith with the Service.

**AMENDED
SUBSTITUTE
MOTION:**

Representative Moyle made an amended substitute motion to accept Docket 13-0106-0401 and send to Committee with a DO PASS recommendation, except for Section .100.d (p.14), which will be held in Subcommittee time certain at the call of the Chair.

Members of the Subcommittee discussed the option of amending statute or creating a new statute, in a manner that keeps faith with the federal government.

Vote: The Amended Substitute Motion passed by unanimous voice vote.

DOCKET

Rules Governing the Taking of Upland Game Animals No

MOTION:

Representative Eskridge made a motion to accept Docket 13-0107-0401 and send to Committee with a DO PASS recommendation. The motion passed by voice vote.

Discussion: Representative Barrett said that her objection was the same as noted.

The motion passed by voice vote, Representative Barrett voting NAY, Chairman Wood withholding her vote.

**DOCKET
13-0108-0401:**

Rules Governing the Taking of Big Game Animals in the State of Idaho: Discussion: The main issue was classification of the gray wolf, since the big game classification carried over from previous rules.

In response to a question about changes to motorized vehicle use restrictions, Mr. Burkhalter said vehicle restrictions are identified in Section .03 (p.50). He said information was available to the public in a brochure, free of charge, in all department offices.

Representative Moyle asked why the Legislature does not have input. Mr. Burkhalter said the Commission treated use restrictions as a biologic change. Because it applies to each hunting season, it is handled by proclamation instead of rule. Representative Moyle said he wanted an opportunity to have input. Mr. Burkhalter said the Commission would be addressing the issue in March. Legislative input would not be timely.

Representatives Wood and Barrett expressed concern about the motorized vehicle rule as written, stating that it did not reflect changes that were to be made in response to the concerns last session of Mayor Stan Davis of Salmon--specifically, Section .411 (p.49). Mr. Burkhalter said Mayor Davis's problems are with the Service, not with the state.

Jack Oyler asked about 2477 road closures. Access is being taken away from sportsmen. He said IDFG should be doing more to actively open 2477 roads.

Concerns about ATV use during hunting season were discussed. Mr. Burkhalter said the Commission has authority over hunters, but not motorized vehicles in general. He noted that IDFG has a lawsuit involving a 2477 issue.

Representative Moyle asked if the Commission would address motorized vehicle use restrictions, and bring rule changes next year to allow Legislative input. Mr. Burkhalter said yes.

MOTION: Representative Barrett made a motion to accept Docket 13-0108-0401 and send to Committee with a DO PASS recommendation, except Section .010k (p.34).

The motion passed by unanimous voice vote.

DOCKET 13-0109-0401: Rules Governing the Taking of Game Birds in the State of Idaho : Discussion. It was noted that Docket 13-0109-0401 contained the motorized vehicle language previously discussed.

MOTION: Representative Eskridge made a motion to accept Docket 13-0109-0401 and send to Committee with a DO PASS recommendation.

The motion passed by unanimous voice vote.

DOCKET 13-0111-0401: Rules Governing Fish: Mr. Burkhalter said the definition of family fishing waters in Section .05 (p.77) intended to apply simple rules to some waters where people can “show up and just fish.”

In response to a question about keeping marked fish (p.83), Mr. Burkhalter said, under court order (U.S. v Oregon), all fish with an adipose fin had to be released.

MOTION: Representative Moyle made a motion to accept Docket 13-0111-0401 and send to Committee with a DO PASS recommendation.

The motion passed by unanimous voice vote.

DOCKET 13-0112-0401: Rules Governing Commercial Fishing: Mr. Burkhalter said changes to Docket 13-0112-0401 correct rules from last session. The specific issue was netting lake trout in the northern part of the state. The change is reflected in Section .04 (p.90), Rod and Reel for Lake Trout Only.

MOTION: Representative Moyle made a motion to accept Docket 13-0112-0401 and send to Committee with a DO PASS recommendation.

The motion passed by unanimous voice vote.

DOCKET Rules Governing the Taking of Migratory Birds in the State of Idaho:
13-0113-0401: Mr. Burkhalter said a recommendation has been made to name a chapter for the American Crow (p.93-4).

MOTION: Representative Moyle made a motion to accept Docket 13-0113-0401 and send to Committee with a DO PASS recommendation.

The motion passed by unanimous voice vote.

DOCKET Rules Governing Falconry in the State of Idaho: No discussion.
13-0114-0401:

MOTION: Representative Eskridge made a motion to accept Docket 13-0114-0401 and send to Committee with a DO PASS recommendation.

The motion passed by unanimous voice vote.

DOCKET The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals: Mr. Burkhalter said, depending on what classification the Legislature wanted, the gray wolf could be included in this docket after the state has management authority.
13-0116-0401:

MOTION: Representative Moyle made a motion to accept Docket 13-0116-0401 and send to Committee with a DO PASS recommendation.

The motion passed by unanimous voice vote.

DOCKET Rules for Operating, Discontinuing, and Suspending Vendors: Mr. Burkhalter said the department has an agreement with license vendors.
13-0119-0401:

The Committee voiced concerns about requiring a social security number in the application process. Mr. Burkhalter said IDFG is complying with Idaho Code § 73-122, which requires a social security number for a recreational license. Mr. Barton said the social security number was not printed and, once entered into the system, was formatted in a blank field. He said the social security number was collected in compliance with federal law.

The Committee discussed historic precedent dating from a Federal Welfare Reform Act defining deadbeat parents. The state was required to collect social security numbers in order to receive federal funding. Mr. Burkhalter said the concern here was not to comply with federal law, but with state statute which says the social security number will be taken for all recreational licenses, among others.

MOTION: Representative Eskridge made a motion to accept Docket 13-0119-

0401 and send to Committee with a DO PASS recommendation.

SUBSTITUTE MOTION: Representative Barrett made a substitute motion to send Docket 13-0119-0401 to Committee without recommendation for discussion.

The motion passed by unanimous voice vote.

ADJOURN: The Subcommittee adjourned at 5:48 p.m.

Representative JoAn E. Wood
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 25, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

GUESTS: Please see the Sign-In Sheet.

**ABSENT/
EXCUSED:** Representative Barraclough

A quorum being present, the meeting was called to order at 1:35 p.m. The Secretary took a silent role call.

Representative Mitchell said Jack O'Connor, Hunting Heritage & Education Center (Exhibit 1) comes to Committee in response to a request made at the meeting of January 19, 2005.

DOCKET
25-0101-0401: Outfitters and Guides Licensing Board (OGLB) Administrative Rules: Jake Howard, Executive Director, asked the Committee to withdraw the OGLB rules packet in its entirety. The request comes at the request of the Board. He apologized to the Committee for the confusion. The OGLB will return next session with a rules package. Chairman Stevenson asked Mr. Howard if a similar procedure would take place in the Senate. He said yes.

DOCKET
25-0101-0402:

MOTION: Representative Barrett made a motion to reject the Outfitters and Guides Licensing Board Administrative Rules in their entirety as requested.

Motion carried by voice vote.

**SPECIES
CONSERVATION
REPORT:** The Species Conservation Briefing was presented by Jim Caswell, Administrator, Office of Species Conservation (OSC). He distributed information to the Committee as follows:

1. Final Rule Compared to the 1994 Experimental Population Special Rules and the 2003 4(d) Rule (Exhibit 2)
2. Letter to the Honorable Gale A. Norton (Exhibit 3)
3. Memorandum of Agreement between the State of Idaho and the Nez Perce Tribe (Exhibit 4)
4. Pacific Coast Salmon Recovery Fund (Exhibit 5)

5. Pacific Coast Salmon Recovery Fund Projects (Exhibit 6)
6. Bull Trout Chronology 1-12-05 (Exhibit 7)

Mr. Caswell gave a summary orientation. He said he would take questions during the presentation.

Wolf Conservation and Related Activities: Please refer to Exhibits 2, 3 and 4. Mr. Caswell was asked the definition of NEPS. He said the acronym stood for Non-Essential Experimental Populations.

With regard to Exhibit 2, Mr. Caswell noted that the rule applied to Idaho and Montana, but not Wyoming. On the second page, numbered 65, the old rule said a wolf had to be engaged with the animal. The new rule does not require engagement. The wolf could just be snapping at the animal. The definition of livestock has been expanded to include goats, llamas, and even pets. This is a major change applicable to the private property regulations.

Mr. Caswell briefed the Committee on the rule as it applies to public land. He said the rules applied to permittees, including outfitters, doing lawful business on public land. Where there have been persistent problems, a permit can be issued authorizing the permittee to kill wolves, even if they aren't necessarily threatening livestock at the time of the kill. Mr. Caswell said the state, as well as a private individual, needed a permit to take a listed animal. IDFG, for instance, needs a take permit when moving salmon to ensure compliance should a salmon die en route.

Mr. Caswell was asked to define physical evidence (Exhibit 2, p.65). He said it could include a carcass, prints, and so on. He said physical evidence would only be an issue where there was an on-going investigation. Until the rule is tested, there is no way to know how the definition will be interpreted. He expects no problems where the situation is logical. If, for example, "you are three ridges over from your place and your stock, and you kill a wolf," there will probably be an investigation. He said he didn't think physical evidence would be an issue unless the investigating officer found something really wrong.

Mr. Caswell was asked if dogs meant stock dogs, or if pet dogs were included (Exhibit 2, p.65). He said all dogs were included. The reference above refers to private land. On public land the rationale is that most people stay with their dogs. Therefore the threat of predation is low. Dogs, even outfitted dogs, are not covered on public land.

Mr. Caswell was asked how long it would take to get permission to take "problem wolves." He said, now, a person just has to ask. He expects the situation will not change. A written permit is issued. Mr. Caswell clarified that he was not talking about getting a permit

to kill a wolf that is harassing livestock on private land. A permit is not needed in that situation. He refers to chronic problem situations where a permit can be issued to kill wolves away from private land, even away from where livestock may be presently grazing, and the wolf is not in the act of menacing livestock.

Mr. Caswell, talking about the Memorandum of Agreement (MOA) with the Secretary of the Interior, said the next step in the on-going process was to determine how much, and exactly what, the state wants to manage under a management plan. A subcommittee has been established and will make a proposal within the next two to three months. He said his personal opinion was that the state should assume as much control as possible. Mr. Caswell said it is important, however, to consider all aspects of the management plan (including negative impacts to other projects, staffing requirements, and liabilities assumed) in light of available resources. Mr. Caswell said it is fairly easy now to use the Service as a protecting shield.

Budgetary implications were discussed. Mr. Caswell said the federal government has been responsive to budget requests in the past. He sees no reason for that to change. This year, Federal 2005, \$1.5 million dollars were requested; \$1.2 million were funded.

Mr. Caswell was asked if the state would relate to the federal government as a designated agent, and what the relationship would be to the tribes. He said the state would be a designated agent until the wolf was delisted. The federal government would still have control, but with a very real difference: Reporting periods would be less frequent, therefore the state would have more day-to-day management authority. Mr. Caswell said the rule allows the tribes to develop wolf management plans and pursue approval for them on their reservations, but not off the reservations. He said, in the case of the Nez Perce tribe, the state would work with the tribe under the auspices of an MOA (Exhibit 4). The MOA will address what roles and responsibilities the tribe will assume on reservation land. The state would be the tribe's agent. Mr. Caswell said that approval over reservation plans was one of the authorities the state should seek from the Service.

Pacific Coastal Salmon Recovery Fund Program: (See Exhibits 5 and 6.) Mr. Caswell outlined the history of the fund. The fund was created in the 2000 Congress, but Idaho was not included. In 2004 Idaho received \$4.9 million for projects to recover salmon and steelhead. The program has five objectives: Salmon habitat restoration; planning; enhancement; research, monitoring and evaluation; and education and public outreach.

Mr. Caswell said an MOA was developed with the National Marine

Fisheries Service (NOAA). The MOA directed how money will be spent and defined the decision making process. A Board was established. Projects were solicited and forty-seven projects were submitted from across the state. Twenty-two projects were awarded funds (Exhibit 6). The entire process was completed in a three-month time frame. Mr. Caswell said \$4.5 million has been awarded for 2005 projects. He expects funding decisions will be made by mid-may.

Jeff Allen , Policy Adviser, OSC: Mr. Allen answered funding questions. He said the program had a detailed accounting system—not only tracking dollars, but also outcomes basin-wide.

Mr. Caswell explained how funds were processed through the JFAC appropriation process.

In response to a question regarding spawning activity on the Moen Ranch, Mr. Caswell said the ranch provided critical spawning habitat for salmon, steelhead and bull trout. Mr. Caswell discussed ownership, easement and involvement of the Nature Conservancy on Moen Ranch land (Exhibit 6).

Mr. Caswell was asked about road decommissioning (Exhibit 6). He said the program was larger than just this one program. The referenced roads are all old channel roads.

Bull Trout: Mr. Caswell said the bull trout recovery plan had two main points: 1) A critical habitat program has been completed and finalized. Public and agency input made a difference in the final product. 2) the recovery plan is in process. A status review has been petitioned. Mr. Caswell said the Endangered Species Act (ESA) requires a status review every five years on every listed animal. He said the review had not been done until now in a manner that met ESA requirements. The status review process is underway.

Sage Grouse: Mr. Caswell was asked why the bird was not delisted. He said there is a state plan predicated on potentially delisting the bird. A meeting of the Sage Grouse Advisory Group will be held toward the end of February with the objective of finding common ground. The panel will look at the extinction risk in Idaho, and prioritize threats to the species.

Mr. Caswell said a science panel will meet February 1st and 2nd to establish a process for slick spot peppergrass similar to that for the sage grouse.

Questions: Mr. Caswell gave a brief overview of the Governor's MOA (Exhibit 4). It addresses four major concerns: 1) management, 2) maps, 3) "for cause" language in the termination

clause, and 4) the configuration of the policy group addressed in the document. He said an unacceptable proposal was taken back to the tribe last March. Negotiations were discontinued for awhile, but have been resumed. Mr. Caswell briefly summarized the current status. Mr. Caswell was asked about Legislative input to the MOA (Exhibit 4). He said the Legislature did have input, but MOA's are executive branch issues. Mr. Caswell was asked what the tribe would do to promote the wolf management plan. He said, after management responsibilities are defined and assumed by the state, public outreach and information will be promulgated. The tribe will participate. Mr. Caswell was asked if there was recourse should the tribe not follow through on the agreement. He said the agreement could be terminated.

Mr. Caswell was asked if federal money would come through the JFAC appropriation process. He said yes. The process will be similar to the Pacific Coast Salmon Recovery Fund.

Chairman Stevenson announced the agenda for the meeting of Thursday, January 27th. He asked Committee Members to bring any legislation they may have forward now. He said February 11th is the last day to introduce legislation.

ADJOURN: The meeting adjourned at 2:54 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 27, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Sayler, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representative Jones

GUESTS: Please see Sign-In Sheet.

A quorum being present, the meeting was called to order at 1:44 p.m.

A motion was made by Representative Sayler to approve the minutes of January 17, January 19 and January 25. The Motion passed by voice vote.

RS14386C1: Denise Mills, Assistant Director, Department of Lands, presented RS14386C1 (Exhibit 1). Ms. Mills answered questions pertaining to waiver permits for owners of existing and unchanged navigational and non-navigational encroachments constructed prior to 1974. She said since a fee was not charged before 1974, any modification prior to that date would be grandfathered. Fees would apply to any new or modified construction subsequent to the 1974 deadline.

Representative Roberts asked if the fiscal impact statement should be changed to reflect fees. Ms. Mills said fees would not be charged for encroachments where there are no modification. What group represented most applications. Discussion followed.

Ms. Mills was asked to define "modification." She said it does not include normal maintenance. It means to change the nature of the structure.

MOTION: A motion was made by Representative Jaquet to amend the fiscal impact statement and introduce RS14386C1 to print.

Discussion: The department will add language to the Statement of Purpose to address the Committee's concern.

The motion passed by voice vote.

RS14388: Ron Litz, Assistant Director, Department of Lands, Coeur d'Alene, said RS14388 corrects an inconsistency in statute to accurately reflect that the State Board of Scaling Practices meets two times a year.

MOTION: Representative Bedke made a motion to introduce RS14388 to the second reading calendar.

The motion passed by voice vote. It will be carried on the floor by Representative Saylor.

RS14482: Ron Litz, Assistant Director, Department of Lands, Coeur d'Alene, said RS14382 corrected an error made in the 57th Legislature. It makes language consistent with the intent of Idaho Code § 38-111. Private owners of forest lands of small acreages 25 acres or less were inadvertently overlooked in previous legislation. As a result, their annual assessment was not increased as it should have been.

Mr. Litz was asked if the statute, with the oversight, was actually fair. Should small landowners be charged less? Mr. Litz said usually small landowners have improvements that are more expensive to protect. It is thought equitable to increase the assessment as intended.

Mr. Litz was asked if the people affected were aware of the intended change. He said a meeting had been held. He had expected, but did not receive, a letter of support. Mr. Litz provided a letter from the 57th Legislature showing that, though the increase was not welcomed by small land owners, it was considered to be justified. (Exhibit 2).

MOTION: A motion was made by Representative Barrett to introduce RS14482 to print.

The motion passed by voice vote.

RS14444C1: Dean Sangrey, Deputy Director, IDPR, introduced the new Director, Bob Meinen, and Chuck Wells from the Recreation Trail Program.

Mr. Sangrey presented RS14444C1. He said it corrected inconsistencies within statute relative to Grant Advisory Committees working for the Parks Board and the Department of Administration Funding Programs. Areas affected by discrepancies include committee member compensation, varying term lengths for appointed committee members, and inconsistency in appointment authority.

Mr. Sangrey said the fiscal impact statement referred to a projected annual cost of \$6,200, and included a twenty five dollar honorarium for committee members and their associated expenses. Discussion about the language in the Statement of Purpose followed.

Mr. Sangrey was asked if he wanted the language in the fiscal impact statement changed to include "plus related actual and necessary expenses." He said yes.

MOTION: Motion was made by Representative Field (23) to introduce RS14444C1 to print, adding the language "plus related actual and necessary expenses" to the fiscal impact statement.

The motion passed by voice vote.

RS14510: Dean Sangrey, Deputy Director, IDPR, introduced RS14510 addressing problems associated with a new, larger class of recreational vehicle called UTV's. He said trails and roads throughout the state are not constructed

to support the use of UTV's. Owners are not able to get UTV's legally licensed to operate on public highways because the Department of Transportation refuses to license or title them. The public is in an untenable position because UTV's are readily available to purchase, but they cannot be used except on private land.

Mr. Sangrey said RS14510 provides for UTV registration, similar to that now available for motorcycles and snowmobiles. It provides an opportunity for their legal recreational use on certain state and federal roads. There was discussion concerning permitted off-road uses for vehicles.

Johnnie Harris, business owner, Boise, representing auto dealers, said he owns a UTV and has read the applicable rules. He said, under existing rules, UTV's cannot be used except for agricultural endeavors. That is a problem because they are intended for recreational use.

There was discussion about the definitions of UTV, ATV and OHV (utility-type vehicle, all-terrain vehicle, off-highway vehicle, respectively).

Mr. Sangrey was asked where in the state UTV's would be legal to operate. He said IDPR does not expect to enlarge their trail system to serve these units. Some public roads would be identified for legal usage (i.e. forest service roads, Bureau of Land Management (BLM) roads).

Mr. Sangrey was asked about signage. He said no problems were expected. Current signage practices would suffice.

Mr. Sangrey was asked about the use of golf carts on public roads. He said there was no intention to include golf carts as recreational vehicles on public roads.

MOTION: Representative Field (23) made a motion to introduce RS14510 to print.

The motion passed by voice vote.

Chairman Stevenson said the Committee would meet Monday, January 31st and Tuesday, February 1st. There will be no meeting Friday, January 28th.

ADJOURN: The meeting adjourned at 2:30 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 31, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representatives Barraclough, Eskridge and Jones

A quorum being present, the meeting was called to order at 1:40 p.m.

Representative Field (23) made a motion that the minutes of January 27, 2005 be approved. The motion passed by voice vote.

Chairman Stevenson made reference to a letter dated January 27, 2005 from Deputy Attorney General Clive Strong. It refers to, and repudiates, an Idaho Farm Bureau article entitled "Lawmaker Want Statewide Hearings on Nez Perce Agreement." Mr. Strong's letter and a copy of the article are submitted for the record (Exhibit 1).

RS14657: Representative JoAn E. Wood, Rigby (35) presented RS14657, a memorial to Congress and the States of Wyoming, Utah, and the Idaho Congressional Delegation. The memorial requests that investments made in recent years by local government and the three states be considered as the local match for a requested Corps of Engineers feasibility study of the Bear River, and a possible feasibility study related to flood control above Bear Lake. Rep. Wood said the measure was considered by the full interim water committee during the summer of 2004, with unanimous approval.

MOTION: A motion was made by Representative Barrett to introduce RS14657 to print.

The motion passed by voice vote.

RS14658: Representative Elaine Smith, Pocatello (30), presented RS14658 amending Idaho Code § 67-4223, authorizing the Idaho Department of Parks and Recreation Board to provide for a reduction of no more than fifty percent of the fee charged for recreational vehicle camping for any senior citizen who possesses a valid federal "Golden Age Passport," effective Sunday night through Thursday night. She said RS14658 was brought at the request of the Traveling Sam's Club of Pocatello. RS14658 does not mandate the reduction, but allows the Board the flexibility to implement it. Representative Smith said, if the RS is submitted to print, there will be a discussion about state park utilization rates in Idaho.

There was discussion about possible fiscal impacts of the legislation.

MOTION: A motion was made by Representative Saylor to include the fiscal impact of the legislation in the Statement of Purpose and send RS14658 to print.

The motion passed by voice vote.

H0020: Virgil Moore, Chief, Bureau of Fisheries, Idaho Department of Fish and Game (IDFG), referred to a FAX, that he had not seen before the Committee meeting, from the Nez Perce Tribal Executive Committee (Exhibit 2). He said he would like the department to withdraw H0020, in order to have time to consider the request thoroughly and to communicate with the Tribe. Mr. Moore said H0020 was a housekeeping bill that would include Chinook Salmon in retail and wholesale buy/resell activity.

Mr. Moore requested the Committee to hold the bill to time certain. He will return to Committee, communicating the Tribe's requests or concerns at that time.

MOTION: Representative Moyle made a motion to HOLD H0020 to time certain until February 7, 2005.

The motion passed by voice vote.

H0021: Chairman Stevenson asked for a motion to send H0021 to Second Reading Calendar. The Committee previously heard H0021 as RS14470; it was sent to Second Reading. It comes to Committee today as a systemic error. Discussion followed.

MOTION: Representative Jacquet made a motion to send H0021 to the floor with a DO PASS recommendation.

The motion passed by voice vote.

Announcements: Chairman Stevenson reminded Committee members of the meeting tomorrow, February 1, 2005. The Tamarack Resort will make a presentation. Two RS's are scheduled.

ADJOURN: The meeting adjourned at 1:54 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 1, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representative Eskridge

A quorum being present, the meeting was called to order at 1:34 p.m. The secretary took a silent roll call.

Representative Field (23) made a motion to approve the minutes of January 31, 2005. The motion passed by voice vote.

Chairman Stevenson introduced Scott Turlington.

**TAMARACK
REPORT:**

Scott Turlington, Director, External Relations, Tamarack Resort LLC, thanked the Committee for its invitation to make a Tamarack Resort presentation. He introduced Denise Mills, Assistant Director, Idaho Department of Lands, and Chuck Goodenough, Deputy Secretary of State.

Mr. Turlington presented an overview of Tamarack Resort, and reviewed the accomplishments of the past year. The resort is the newest, fully permitted and constructed resort to open in the west in twenty-three years. The focus is to provide recreational opportunities for families. Tamarack is a new-style, boutique resort—meaning it is smaller and more intimate than other destinations resorts in the west. Tamarack is also unique in that it offers a “trifecta” of recreational opportunities: mountain, meadow and lake. Recently, Tamarack has received national press coverage in U.S.A. Today and the New York Times. The resort is marketing to seventeen cities around the county that have non-stop flights into the Boise airport. For those guests coming from out of state, wanting to experience other ski opportunities, all Idaho resorts have been cooperative and welcoming.

Mr. Turlington said the Tamarack master plan has 2,043 living units approved by Valley County, including a variety of accommodations—town homes, condos, hotels, and 350 estate lots for private homes. The master plan time-line envisions a 10-year build out plan.

Recreation opportunities include 700 acres with 30 km of groomed ski trails—Nordic and Alpine; snowboarding and free-riding areas; 10 km of snowshoe trails; ski lessons; hiking trails; various dining choices; the Wild Horse Youth Activity Center, providing daycare for children from infancy to age sixteen; and retail improvements. A Robert Trent Jones II signature

18 hole golf course is completed. It will open this summer.

Ski improvements now include a magic carpet for the beginning ski hill; intermediate and black diamond ski trails; a 500 foot super pipe with 18 foot walls and 16 degree pitch (comparable to the Park City pipe); a 10 acre terrain park for snowboarders and free riders; and extensive snow making potential.

The heart of the "first generation" village is named Discovery Square. It is comprised of improvements totaling 47,000 square feet. The dome structures have a 25-year life span. They have made it possible for the resort to open quickly and continue a long-term build out program. The permanent village will be built around Discovery Square. There are seven food facilities—offering choices from fine dining to a latte bar; a ski shop; Crane Creek Market selling groceries; a medical clinic staffed by the Cascade Medical Clinic, in conjunction with St. Alphonse's Hospital in Boise; and retail establishments. Discovery Square represents an investment of approximately \$8 million dollars.

Mr. Turlington described the types of accommodations available for rental and purchase at Tamarack; and explained the rental potential for property owners. Sixty-two cottages are fully completed; of those, forty-five are in the rental program.

There have been three real estate releases, all of which sold out: January 2004, \$46 million dollars; June 2004, \$33 million dollars; and January 2005, \$91.5 million dollars. All funds have been invested back into resort construction. The Members' Lodge is under construction. It will be a six-story structure; the bottom two stories are completed. \$20 million dollars of real estate revenue has been sold in the Members' Lodge. Mr. Turlington said building projects in 2005-2006 include additional ski runs, two or three ski lifts, additional construction in the permanent village, and trails for hiking and biking. Another real estate release is expected mid-summer 2005.

Chairman Stevenson asked if the 49-year lease, approved last session, had given the intended benefits. Mr. Turlington said it had been timely and critical, allowing for long-term planning and financial commitments. He commended the Committee on behalf of the Tamarack team, for their foresight in approving the legislation.

Representative Field (23) asked what percentage of real estate sales were to Idahoans. Mr. Turlington said about 30%, a figure that has held true through all real estate releases.

Chairman Stevenson asked if the work force was from Idaho. Mr. Turlington said Idahoans were hired to the highest extent possible. Some specialty work cannot be hired from Idaho businesses. He said there have been as many as 603 construction workers on site; the average is between 300-350 workers at any given time. Tamarack has relied on the Department of Commerce, and word of mouth to get the employment message out. There are approximately 300 full-time employees today; six months ago there were about 80. Many seasonal employees will be carried over to summer employment opportunities. Mr. Turlington said the resort paid "decent wages."

Representative Jaquet commended Mr. Turlington for his presentation, and for the favorable national coverage in U.S.A. Today and the New York Times.

Representative Mitchell commended Mr. Turlington on the busses in use by the resort and asked about traffic issues, present and anticipated. Mr. Turlington said, under the capital contribution agreement with Valley County, Tamarack provides buses three days a week from Donnelly. It also busses from Boise three days a week. There is an agreement with the Department of Transportation to improve the Donnelly junction with Highway 55 when both parties agree the appropriate time has come.

Representative Roberts thanked Mr. Turlington for his presentation. He said he lives close to the resort and recognizes the economic boost Tamarack gives to the entire valley. It provides employment for people chronically out of work, and has secondary effects outweighing anything mentioned in the presentation today. Mr. Turlington said the state has been a good landlord.

Representative Shepherd (8) told Mr. Turlington his presentation was informative and enjoyable. He said there was a widespread positive impact in his district, including his own business and those of all other contractors he knew.

Chairman Stevenson thanked Mr. Turlington for making the Tamarack presentation to the Committee, and Ms. Mills and Mr. Goodenough for being in attendance.

RS14614: Representative Richard "Rich" Wills (22), Glens Ferry, presented RS14614. It provides an opportunity for certain Idaho Conservation Officers to receive their badges, handcuffs and duty weapons upon retirement. It is not an automatic event, but is bestowed after a peer review and fifteen years of meritorious service. The award is patterned after that allowed state police officers. Representative Wills noted that Representative Moyle should be listed as co-sponsor to RS14614.

MOTION: A motion was made by Representative Mitchell to introduce RS14614 to print.

The motion passed by voice vote. Representative Wood voting NAY for the record.

RS14727: Representative Paul E. Shepherd (8), Riggins presented RS14727. It expands allowable acreage for shooting preserves from a 1600 acre limit to a 4000 acre limit. Grandfather rights are retained on the original 1600 acres, and would not apply to the additional acreage. Representative Shepherd said there is support from the Fish and Game Commission. In his area (District 8), the legislation would allow an entire ranch, rather than just part, to be used in this manner. There is an economic advantage to landowners and communities. He said there is also an opportunity to promote the tourist industry in Idaho.

MOTION: A motion was made by Representative Shepherd to send RS14727 to

print.

Discussion followed: Representative Cuddy brought the same legislation last session. It was passed by the House. The Committee discussed the motion itself, unusual in that it was made by the sponsor. The Chairman allowed the motion to stand.

The motion passed by voice vote.

ADJOURN:

Announcements: Chairman Stevenson reminded the Committee that the meeting of February 3, 2005 will be held in the Borah Building 2nd floor conference room. It will be the annual Idaho Council on Industry and Environment Workshop.

The last day to hear RS's in Resources and Conservation Committee will be February 11, 2005.

Three RS's on the Nez Perce Settlement Agreement water issues are forthcoming. There will be no public hearings when the RS's are brought to Committee. Tentatively these RS's are scheduled for Wednesday, February 9, 2005.

The meeting adjourned at 2:16 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 3, 2005

TIME: 1:30

PLACE: Borah Building, 2nd Floor Conference Room

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representatives Barrett, Denney, Eskridge and Mitchell

A quorum being present, the meeting was called to order at 1:37 p.m. The secretary took a silent roll call. Chairman Stevenson welcomed guests, the Idaho Council on Industry and Environment (ICIE), guest speakers and members of the House and Senate in the audience. He introduced former Representative Emerson Smock, past Chairman of the Environmental Committee in the House.

Announcements: The minutes of February 1, 2005 will be held for approval until February 7, 2005. Committee members were asked to bring any outstanding RS's to Committee by February 9th, if possible.

**IDAHO COUNCIL
ON INDUSTRY
AND
ENVIRONMENT
GOLD ROOM
WORKSHOP:**

Chairman Stevenson turned the meeting over to Norm Semanko, ICIE President, Idaho Water Users Association. Mr. Semanko said ICIE's mission is to promote the use of facts and science and to promote balanced discussion with policy makers and the public. He gave an historic overview of the Idaho Council on Industry and Environment from its inception in 1990. He gave an overview of past workshop topics, which have been as diverse as recycling, hazardous waste management, access to federal lands, the Interior Columbia Basin Ecosystem Management project, biotechnology, and risk management. This year's topic is an update on air quality in the Treasure Valley, and an exploratory conversation of what might be done about it while maintaining a strong economy. He said the information is germane beyond the Treasure Valley.

Mr. Semanko briefly introduced program speakers: Mike McGown, Boise Regional Administrator at DEQ; Beth Elroy, Environmental Manager, Micron Technologies; Matt Stoll, Executive Director of the Community Planning Association (COMPASS); and Kelli Fairless, Executive Director of ValleyRide.

DEQ: Mike McGown, Boise Regional Administrator, DEQ, gave a power point presentation entitled, "Air Quality in the Treasure Valley" (Exhibit 1).

Questions from the Committee: Mr. McGown was asked if, with the new car standards, we are winning the war with lower emissions though there are more cars. He said yes. In spite of more vehicles, emissions are lower through projected 2020.

Mr. McGown was asked if he would implement vehicle testing in Canyon County and, if so, what would he test for. He said the 20-year old Ada County program, to deal with carbon monoxide, is twenty years old. It has been upgraded, but not for new pollutants such as PM_{2.5}. He would like to test for new pollutants.

Mr. McGown was asked about vapor recovery. He said there are two stages. Stage one occurs in the process of moving fuels back and forth. Stage two is a result of torn boots and nozzles, etc. He said Stage one recovery is of concern.

**MICRON
TECHNOLOGIES:**

Beth Elroy, Environmental Manager, Micron Technologies, gave an overview of current emission concerns in the Treasure Valley. She said, nationwide, emissions have been reduced fifty percent. She said the Treasure Valley has 30,000 tons of volatile organic compound emissions (VOC) annually from various sources; only 4% of those are caused by industrial sources. There are 20,000 tons of nitrogen oxides emissions (NOX); 7% of those are caused by industry. Ms. Elroy said VOC emissions represent 3% of total emissions; NOX emissions represent 2% of total emissions.

Ms. Elroy used the Amalgamated Sugar facility in Nampa as an example of an industrial facility upgrading its plant in order improve air quality. She said \$12 million dollars were spent at Amalgamated to achieve .012% reduction in VOC emissions and .7% reduction in NOX emissions.

Ms. Elroy said many working groups and conferences have addressed emission problems in the Treasure Valley, including the IDEQ Environmental Group and the Governor's Conference. The goal has been to address local problems and make recommendations. To date, no recommendations have been implemented as a result of this activity.

In summary, Ms. Elroy said large sums of money have been spent on equipment to reduce emissions in the Treasure valley; emissions have been reduced; air quality planning activity is on-going, with many groups addressing relevant issues; recommendations have resulted from planning activity, but no recommendations have been implemented. She said the Big Payette Lake Water Quality Council has been an effective agent to improve water quality; there are lessons learned that need to be applied to air quality.

Ms. Elroy said several groups, almost a dozen, are working on air quality in the Treasure Valley. A collaborative effort is needed, and has been recommended in the form of legislation for a Treasure Valley Air Quality Council. It would improve communication and end duplication of effort.

Ms. Elroy thanked the Committee for sponsoring the ICIE Workshop.

Questions from the Committee: Ms. Elroy was asked why recommendations made by various entities were not acted on; and how she would recommend moving from planning to implementation. Ms. Elroy did not address the first question, but recommended the creation of the Treasure Valley Air Quality Council as the vehicle to move forward.

Ms. Elroy was asked if the Council would have the authority to implement

recommendations. She said the Council would present a plan to the Legislature for approval.

COMPASS:

Matt Stoll, Executive Director, Community Planning Association of Southwest Idaho (COMPASS), gave a power point presentation entitled, "Minimizing Transportation's Impact on the Treasure Valley's Air." He said COMPASS was the metropolitan planning organization for northern Ada County and the Nampa urbanized area. COMPASS analyzes long- and short-term transportation plans, congestion management plans, and transportation-related air quality issues. He gave an overview of current and forecasted planning topics (Exhibit 2).

Questions from the Committee: Mr. Stoll was asked if a plan had been considered to reroute I-84. He said yes, it was being analyzed and compared with the cost of a new principal arterial bypass around the east-west corridor.

VALLEYRIDE:

Kelli Fairless, Executive Director of ValleyRide, gave a power point presentation entitled, "Shaping the Future of Public Transportation in the Treasure Valley." Valley Regional Transit is the regional public transportation authority for Ada and Canyon Counties. Her presentation focused on how public transportation could be effective in improving air quality in the valley today and in the future (Exhibit 3). Ms. Fairless noted that public transportation is a long-term investment in air quality. She said it was important to begin planning and implementing services today, and to see public transportation as part of the transportation system.

Questions from the Committee: Ms. Fairless was asked if Garvey bonds funded an overpass, would it result in less money for the transit budget in the Treasure Valley. She said she didn't know. She said transit is far behind the rest of the transportation system because transit is underutilized in the Treasure Valley. Because it is underutilized, transit is underfunded since funding is partially based on service provided. Ms. Fairless said capital issues aren't as critical as the utilization issue.

Ms. Fairless was asked about funding sources. She said there was approximately \$3 million in federal funding annually, an amount based on population and the amount of service provided. She said the Treasure Valley was under-serviced.

Ms. Fairless was asked about using Transit Grant Anticipation Notes (GANS). She said the relevant issue in using GANS for infrastructure funding, was to have a stable funding source, because a method of repayment has to be identified.

Referring to other cities with public transportation systems, used as examples in the presentation, Ms. Fairless was asked if they were self-sustaining once they were up and running. Ms. Fairless said no public transportation system in the United States was self-sustaining. She pointed out that roads weren't self-sustaining either.

Chairman Stevenson asked for questions from the audience: A question was asked about the effectiveness of vehicle emission testing in Ada County. Mike McGown said a person is required to spend up to \$200 to remedy vehicular emission problems. If that amount doesn't correct the

problem, the vehicle is given a waiver for a year. He said most vehicles with serious emission problems don't last a year. Another person in the audience said, in Utah, vehicles not passing an emission test could not be registered or driven on public roads at all.

Chairman Stevenson thanked the speakers on behalf of the Committee.

Norm Semanko thanked the Committee, guests, Pat Barclay, the Executive Director of ICIE, and the sponsors who made the event possible: Monsanto Corp., Amalgamated Sugar, Idaho Sugarbeet Growers Association, Idaho Grain Producers Association, Boise Cascade Corporation, Barclay Media/Public Relations, Intermountain Forest Association, Idaho Mining Association, Idaho Water Users Association, Idaho Department of Environmental Quality, Perkins Coie, Farmers and Merchants State Bank, and the Idaho Cattle Association.

ADJOURN: The meeting adjourned at 3:06 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 7, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** None.

A quorum being present, the meeting was called to order at 1:32 p.m.

A motion was made by Representative Field to approve the minutes of February 3, 2005. The motion passed by voice vote.

A motion was made by Representative Saylor to approve the minutes of February 1, 2005. The motion passed by voice vote.

**WOOD
SUBCOMMITTEE
ON IDFG
ADMINISTRATIVE
RULES:** Representative JoAn E. Wood addressed the Committee as Chairman of the Idaho Department of Fish and Game (IDFG) Administrative Rules Subcommittee. She reported that a letter has been given to Chairman Stevenson requesting leave to sit in Subcommittee for an additional meeting, after which Docket 13-0119-0401 will be brought back to the full Committee with no recommendation (Exhibit 1).

MOTION/VOTE: Representative Wood made a motion to accept the Subcommittee letter.

Motion passed by voice vote.

**WOLF
MANAGEMENT
UPDATE:** Chairman Stevenson asked Jeff Allen, Policy Adviser, Office of Species Conservation, to give a report briefly on the recent court ruling regarding wolf management. Mr. Allen distributed a "Wolf Management Update" (Exhibit 2). He will return to Committee when there is a definitive answer about how the ruling will affect wolves in Idaho north of Interstate 90.

RS14806: Representative Mike Moyle presented RS14806 amending Idaho Code § 36-201 to authorize all methods of take for the management of wolves in accordance with existing laws or approved management plans regardless of the classification assigned to the wolves.

MOTION/VOTE: A motion was made by Representative Wood to introduce RS14806 for print.

The motion passed by voice vote.

RS14809: Representative Mike Moyle presented RS14809 amending Idaho Code § 36-1101 to clarify that specified law shall not limit or prohibit the lawful control of wolves through the use of helicopters if deemed necessary by

federal or state agencies in accordance with existing laws or management plans.

MOTION/VOTE: A motion was made by Representative Field (23) to introduce RS14809 for print.

The motion passed by voice vote.

RS14826: Cameron Wheeler, Idaho Department of Fish and Game (IDFG) Commission, distributed "Presentation to the House Resources and Conservation Committee" (Exhibit 3). Commissioner Wheeler gave an overview of sportsmen activities supported by IDFG. He said the philosophical position of the Commission is to promote the credibility of the department by proceeding with honesty and integrity, and providing "straight answers." He spoke anecdotally of several ways programs could be implemented under the parameters of RS14826. Commissioner Wheeler said IDFG needs additional funding; it would not be good to have the public perceive the department to be underfunded and inadequate. He asked Committee members to think about the philosophical concept of selling wildlife as public policy. Commissioner Wheeler said it is not known what opposition there may be to the 10J Wolf Management issue, but IDFG is prepared to do what has to be done to control wolves.

Chairman Stevenson invited Commissioner Wheeler back to Committee for the hearing should RS14826 be introduced for print. Commissioner Wheeler said he felt RS14826 was justified based on public support, and the funding infusion was justified looking to the future of the department.

MOTION: A motion was made by Representative Raybould to introduce RS14826 for print.

Discussion/Questions: Commissioner Wheeler was asked to justify the \$200 increase in some licenses; and to clarify the use of \$600,000 received from the federal government. Commissioner Wheeler deferred to Director Stephen Huffaker. Director Huffaker said the \$200 increase is to non-resident trophy species licenses. Every license and tag is increased the same percentage. The \$600,000 received from the federal government is from a state matching program. The matching program money has been appropriated during the last eight or nine years; it funds all of the department's rare species work. He said sportsmen license money does not fund rare species activity.

Stephen Huffaker, Director, IDFG, distributed "Fee Adjustment Proposal" to the Committee (Exhibit 4). Mr. Huffaker said the last increase in sportsmen license fees was made in 2000. At that time, the department promised not to return to the Legislature until 2006; this is the legislative session setting fees for 2006. IDFG is a self-funded agency. Funding for other agencies occurs when their budgets are approved. Mr. Huffaker said there have been inflationary, employee compensation and other uncontrollable increases in costs during the past five years, but no commensurate increase in revenue to the department. See the graph (Exhibit 4, pg. 3).

Discussion/Questions: Mr. Huffaker was asked the amount of the free

fund balance for 2005. He said the projected figure was \$2 million. He was asked what it would be for 2004. He said it is a negative -\$1 million.

Mr. Huffaker was asked why the increase to resident license fees was higher than non-resident fees. He said increases reflect a flat 13.7% plus a twenty-five cent vendor fee increase. The entire twenty-five cents is to be given to the vendor; presently the vendor fee is shared. The factor that increased resident fees more than non-resident is the twenty-five cent vendor fee.

Mr. Huffaker was asked what input had been received from sportsmen and hunters. He said the proposed fee increase has been "on the street" for six months. The vast majority of sportsmen and organizations understand the need for the fee increase, and the need to fund the department adequately.

Mr. Huffaker was questioned about the distribution of the vendor fee given the language in Idaho Code § 36-306. He said the intention is for the vendor to receive the entire twenty-five cent fee, that intention to be set forth in rule and not in law.

VOTE: Chairman Stevenson called for a vote. The motion to introduce RS14826 for print passed by voice vote. Representatives WOOD and BARRETT voting NAY for the record.

H0020: Steve Barton, Intergovernmental Policy Coordinator, IDFG, asked the Committee to hold H0020 in Committee. The bill addressing retail and wholesale buying and selling of steelhead trout came before the Committee on January 19th as RS14470, and as a bill on January 31st.

Mr. Barton was asked if the bill was to be held for time certain or for the entire session. He said for the entire session.

MOTION/VOTE: A motion was made by Representative Field (23) to HOLD H0020 in Committee.

The motion carried by voice vote.

H0091: Representative Mike Moyle, presented H0091 providing that dedicated Idaho conservation officers receive their badge, handcuffs, and duty weapon upon retirement. He said this was a way to show appreciation and support similar to that shown police officers.

Questions and discussion: Rep. Moyle was asked if the IDFG officers wanted a law enforcement connotation. He said yes, conservation officers have the same authority and more, since they can act throughout the entire state. They, as well as police officers, put their lives on the line every day.

Committee members discussed the duties and authorities of conservation officers, weapon replacement policy and cost, and making weapons available to be purchased rather than gifted. Several Committee members had reservations about legislating "gifts" to be purchased with public funds, especially weapons.

Representative Moyle was asked about the definition of “meritorious” as used in the legislation. He said it was the definition promulgated by the Office of Professional Standards.

MOTION:

A motion was made by Representative Mitchell to send HB0091 to the floor with a DO PASS recommendation.

Discussion/Questions: Representative Moyle was asked to explain the \$2,000 figure used in the fiscal note. He said it represented the average cost based on retirements for the past ten years.

SUBSTITUTE MOTION:

Representative Roberts made a substitute motion to HOLD H0091 in Committee.

He prefaced his motion, saying it should not be construed to mean he thought less of conservation officers in the state than police officers. He said he felt it was appropriate for fellow-workers to “pass the plate” to fund gifts for meritorious service, but was a misdirected public policy to legislate the use of tax dollars.

Discussion: Representative Mitchell spoke against the substitute motion, saying many weapons are damaged in the course of use; many officers do not turn in requests for reimbursement. Many weapons are sold; the badges are of no use. He said RS14614 would not cost the state much.

Representative Field (23) spoke in favor of the original motion saying the award was not mandatory, but for meritorious service.

Representative Barrett spoke in support of the substitute motion saying she might vote differently if the award went to a public vote. She said awarding the badge was fine, but said the weapon should be purchased.

Representative Barraclough spoke in support of the original motion, referencing news articles published in the past few days that revisited the Bill Pogue and Conley Elms murders in 1981, both conservation officers.

Representative Wills was asked to explain the rationale behind RS14614, and if it could logically be extended to mean a state worker could expect to receive a computer for meritorious service. Representative Wills recalled his experience and involvement with the Pogue and Elms murders. Conservation officers carry weapons to protect their lives. He said conservation officers dedicate their lives 24-7, and the award is deserved.

Representative Andrus spoke against the original motion saying he believed giving a weapon at retirement sent the wrong message. He realizes the conservation officer’s situation, and intends no disrespect.

Representative Roberts spoke against the original motion saying he served in a law enforcement capacity for several years. He said it is appropriate for fellow workers to join together to make a donation to purchase a weapon, but it is not good public policy to use tax dollars or fees for that purpose.

Representative Jaquet called for a roll call vote.

**ROLL CALL
VOTE:**

On the Substitute Motion, voting AYE—Representatives Wood, Barrett, Eskridge, Roberts, Andrus and Shepherd (8). Voting NAY—Representatives Stevenson, Field (23), Jones, Bell, Barraclough, Denney, Moyle, Raybould, Bedke, Sayler, Jaquet and Mitchell. **MOTION FAILED 6-12.**

On the Original Motion, voting AYE—Representatives Stevenson, Field (23), Jones, Bell, Barraclough, Denney, Moyle, Raybould, Bedke, Sayler, Jaquet and Mitchell. Voting NAY—Representatives Wood, Barrett, Eskridge, Roberts, Andrus and Shepherd (8). **MOTION PASSED 12-6.** Representative Wills will carry on the floor. February 8, 2005

HJM001:

Representative JoAn E. Wood presented HJM001, saying the memorial came from the Bear River working group. The memorial asks the U.S. Congress to take into account money already spent by Idaho, Utah and Wyoming as the local match to make the requested Corps of Engineers feasibility study.

MOTION/VOTE:

A motion was made by Representative Field to send HJM001 to the floor with a DO PASS recommendation.

The motion carried by voice vote. Representative Wood will carry on the floor.

Announcements: Chairman Stevenson asked Committee members to bring any outstanding RS's forward. He said he still hoped to have the water RS's on Wednesday, January 9th. He said the Committee may need to meet Friday, January 11th.

ADJOURN:

The meeting adjourned at 2:42 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 9, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** None.

GUESTS: See sign-in sheet (Exhibit 1).

A quorum being present, the meeting was called to order at 1:35 p.m.

A motion was made by Representative Wood to approve the Wood Subcommittee minutes of January 24, 2005. The motion passed by voice vote.

A motion was made by Representative Saylor to approve the Committee minutes of February 7, 2005. The motion passed by voice vote.

Chairman Stevenson told the Committee and guests that a two-day public hearing would be held on the Snake River Water Rights Agreement legislation, in the basement of the J. R. Williams building. The public will have an opportunity to testify at the public hearing on February 22nd beginning at 2:00 p.m. and February 23rd beginning at 1:30 p.m. The agenda will be posted to the Internet.

Chairman Stevenson asked Representative Raybould to present the three RS*s relating to the Snake River Water Rights Agreement of 2004 to the Committee.

R514671C3: Representative Dell Raybould said the purpose of RS14671C3 is to approve, ratify and confirm the Snake River Water Rights Agreement of 2004. It authorizes and directs the Governor and the executive branch agencies with obligations under the agreement to execute and perform all actions consistent with this act that are necessary to implement the agreement. Representative Raybould read the Statement of Purpose attached to RS1461 C3 (Exhibit 2). He said this is the first of three bills having to do with the Snake River Water Rights Agreement of 2004 to be considered by the Legislature this session.

MOTION/VOTE: Representative Jones made a motion to introduce RS14671C3 for print.

Discussion/questions: Representative Roberts asked for more specificity in the fiscal impact when the bill comes to Committee. Representative Raybould said he believed specificity was provided in the notebook entitled Snake River Water Rights Agreement of 2004 (see Exhibit 2 in the minutes of January 17, 2005). He said the people who compiled the fiscal reports would be available to testify during the public hearing.

The motion to introduce RS14671C3 for print passed by voice vote. Representative BARRETT voted NAY for the record.

RS14888C3: RS14888C3 amending Idaho Code § 42-1763B to authorize rental of water by the Bureau of Reclamation consistent with the terms of the Snake River Water Rights Agreement of 2004 (the Agreement). Representative Raybould said the Agreement had three components: the Nez Perce Tribal component, the Salmon/Clearwater component, and the Snake River Flow component. He said this bill implements the Snake River Flow component of the Agreement. Flow augmentation for anadromous fish have been authorized for the past nine years, three years at a time. RS14888C3 requires the flow augmentation to continue for the length of the Agreement. Representative Raybould said if the Agreement is terminated for any reason, the legislation promulgated in RS14888C3 becomes null and void. He said there is no impact to the general fund. To summarize, Representative Raybould said RS14888C3 basically continues for the term of the Agreement what has been done for the past nine years.

MOTION/VOTE: Representative Bedke made a motion to introduce RS14888C3 for print.

Discussion/questions: Representative Raybould was asked why additional water to augment flows for anadromous fish was needed, especially since wild and hatchery fish really were the same and not endangered. He said salmon still are on the endangered species list; until they are removed the biological opinion the state operates under requires flow augmentation water. Representative Raybould was asked what would happen if the salmon were delisted, when the flow augmentation water was part of a thirty-year agreement. He said the legislation specifically says the water is not required if the species is delisted

The motion passed by voice vote. Representatives BARRETT and WOOD voted NAY for the record.

RS14927C1: Representative Dell Raybould presented RS14927C1 which establishes the Snake River Water Rights Agreement of 2004 minimum stream flow water rights adopted by the Idaho Water Resource Board. The Board holds the minimum stream flow rights in trust for the people of Idaho. A resolution was distributed to Committee members: Resolution: In the matter of the establishment of minimum stream flow water rights provided for in the Snake River Water Rights Agreement of 2004 (the Resolution), with a stream flow chart attached (Exhibit 3). Representative Raybould said the Resolution recommended a waiver to the Water Resource Board, of fees required to file the claims for instream flows.

MOTION/VOTE: Representative Field made a motion to send RS14927C1 to print.

Discussion/questions: Representative Raybould was asked if the language “change and consult,” as set forth in RS14927C1, pg. 2, section was needed (Exhibit 4). He referred to the “Mediators Term Sheet, Section 1, Snake River Water Rights Agreement of 2004 (see Exhibit 2 in the minutes of January 17, 2005), providing for the possibility of a future Memorandum of Agreement to be voluntarily made among participants of stream flow water rights.

The motion passed by voice vote. Representatives BARRETT and WOOD voted NAY for the record.

Chairman Stevenson told the Committee and guests that representatives from the Attorney General’s office, the Governor’s office, Idaho Department of Water Resources and the Nez Perce tribe would be available to answer questions at the public hearings.

**CHENOWITH
INTRODUCTION**

Chairman Stevenson introduced Helen Chenowith, former Congresswoman from Idaho, who came into the room during discussion. He welcomed her to the Committee and thanked her for long service to the state of Idaho.

H0132:

Representative Mike Moyle presented H0132 providing that all methods of take shall be authorized for the management of wolves in accordance with existing laws or approved management plans regardless of the classification assigned to wolves. He said, this year, the Idaho Department of Fish and Game proposes to list the wolf as a big game animal. There has been concern that the proposal might limit the state’s ability to control wolves. H0132 clarifies the state’s intention that wolves will be controlled if needed, in any way needed.

MOTION/VOTE:

Representative Wood made a motion to send HOI 32 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Representative Moyle will carry on the floor.

H0133:

Representative Mike Moyle presented H0133 clarifying that specified law shall not limit or prohibit the lawful control of wolves through the use of helicopters if deemed necessary by federal or state agencies in accordance with existing laws or management plans.

MOTION/VOTE:

Representative Roberts made a motion to send H0133 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Representative Moyle will carry on the floor.

Announcements: Chairman Stevenson said there would be no meeting Friday, February 11th unless RS’s were received in Committee by Thursday afternoon.

The Idaho Department of Fish and Game fee legislation will be heard on February 17th.

ADJOURN: The meeting adjourned at 2:03 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 15, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representatives Bell and Roberts.

GUESTS: Students from Bishop Kelly High School. Please see the sign-in sheet.

The meeting was called to order at 1:35 p.m. The secretary took a silent roll call.

Chairman Stevenson welcomed students in attendance from Bishop Kelly High School.

Representative Wood made a motion to approve the minutes of February 9, 2005. The motion passed by voice vote.

H67: Ron Litz, Assistant Director, Idaho Department of Lands (IDL), presented H67. He said Idaho Code § 38-134 was modified during the last session to allow the State Board of Land Commissioners to increase assessments. H67 corrects an oversight. Previous legislation increasing assessment rates neglected to include private owners of forest lands 25 acres or less. H67 makes the assessment consistent for all land owners. Mr. Litz entered a letter into the record from Arleen Pence, Executive Vice President, Idaho Forest Owners Association (IFOA) (Exhibit 2). The letter acknowledges IFOA's support for the assessment increase.

Questions/discussion: Mr. Litz was asked how the assessment fees were used. He said they were used solely for the administration and enforcement of the Idaho Forest Practices Act.

MOTION/VOTE: Representative Wood made a motion to send H67 to the floor with a DO PASS recommendation. The motion passed by voice vote. H67 will be carried to the floor by Representative Saylor.

H70: Dean Sangrey, Deputy Director, Idaho Department of Parks and Recreation (IDPR), presented H70 correcting inconsistencies in statutory guidelines established for the Grant Advisory Committees assisting the IDPR Board, and establishing guidelines. He said it was a housekeeping bill. Mr. Sangrey reviewed the changes H70 would make to Idaho statute.

Questions/discussion: Mr. Sangrey was asked why this Board received

both compensation and related expenses. He said the fiscal note estimate, \$6,200, included the total annual compensation for all committees. It reflects a figure including a \$25 per day honorarium plus per diem expenses.

Mr. Sangrey was asked how many committees were under IDPR jurisdiction. He said there were five advisory committees: Recreation and Trails, Waterway, Off-Road Motor Vehicles, Recreational Vehicles, and Land-Water Conservation Fund.

MOTION: Representative Field made a motion to send H70 to the floor with a DO PASS recommendation

Questions/discussion: Mr. Sangrey was asked if compensation in the amount of \$6,200 was just for the Off-Road Motor Vehicle Advisory Committee; and if that amount included compensation as well as expenses. Mr. Sangrey said H70 specifically addressed the Off-Road Motor Vehicle Advisory Committee. The total anticipated compensation for all five advisory groups, including the Off-Road Motor Vehicle Advisory Committee, is estimated at \$6,200.

The motion passed by voice vote. Representative Mitchell will carry H70 on the floor.

H71: Denise Mills, Assistant Director, Idaho Department of Lands (IDL), presented H71 requiring owners of existing and unchanged navigational and non-navigational encroachments constructed prior to December 31, 1974 to provide the IDL substantive documentation of their age so that those encroachments can be permitted. Ms. Mills presented a copy of her testimony for the record (Exhibit 3).

Questions/discussion: Ms. Mills was told there seemed to be contradictions in the fee structure; she was asked for clarification. She said an owner constructing a dock or bulkhead after December 31, 1974 was required to pay a fee with an application for new construction or modification to existing improvements. She said owners that had a dock or encroachment prior to that date would have an opportunity to grandfather their improvements. A permit would be issued, but those owners would not be required to pay the fee that owners have been required to pay since January 1, 1975.

As a point of discussion in Committee it was stated that many docks probably exist that are neither permitted nor reported. Ms. Mills said the Lake Protection Act, when passed, did require owners to provide information to IDL establishing construction dates prior to December 31, 1974. She said H71 clarifies and establishes a process reaffirming that older facilities are not illegal and are permitted.

As a point of discussion in Committee it was stated that an inadvertent outcome of H71 might be a reporting requirement that would become an issue with constituents.

Ms. Mills was asked if it was true that reporting was required after January 1, 1975. She said not necessarily because owners who didn't

notify IDL of docks constructed prior to January 1, 1975 might not have been in compliance with reporting procedures. She said she could research the issue and report back to Committee.

As a point of discussion in Committee it was stated that constituents would want to see an "even playing field." If encroachments later than January 1, 1975 were not in compliance with reporting procedures, H71 would not "even the playing field."

As a point of discussion in Committee it was stated that there might not be many docks standing that were constructed prior to January 1, 1975. Ms. Mills said there was evidence from field activity and aerial photos that 12-15 percent of docks on Bear Lake appear to be constructed prior to 1975. She said there was no way to know about modifications and repairs that might have been made to those structures.

Ms. Mills was asked if H71 would apply to Henry's Lake, which is a private reservoir. She said IDL does review and issue permits for encroachments around Henry's Lake for waterfront properties IDL has jurisdiction over. She said there were also Parks and Recreation properties at Henry's Lake.

MOTION/VOTE: Representative Jaquet made a motion to send H71 to the floor with a DO PASS recommendation.

Chairman Stevenson called for a voice vote. The voice vote was inconclusive. Chairman Stevenson called for a show of hands AYE and NAY.

The motion failed 6-10. H71 will be HELD IN COMMITTEE.

Announcements: Chairman Stevenson said H145*, S1032 and S1033 would be heard in Committee Thursday, February 17th.

ADJOURN: The meeting adjourned at 2:02 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

* should be H134

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 17, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representative Field (23)

A quorum being present, the meeting was called to order at 1:36 p.m.

Representative Saylor made a motion to approve the minutes of February 15, 2005. The motion passed by voice vote.

Chairman Stevenson welcomed guests and Susan Werlinger, past Secretary to the Committee.

Chairman Stevenson told the Committee that hearings on the Snake River Water Rights Agreement of 2004 would be held at Boise State University in the Jordan-D room; information is included in Committee folders. He said the agenda for the hearings had not yet been finalized. That information will be given to Committee members at the meeting on Monday, February 21st.

Chairman Stevenson thanked Laura Heineman, Committee page for the first part of the Legislative Session. The Committee signed and presented a card to Laura, and wished her well.

GUESTS: Please see the sign-up sheet (Exhibit 1).

H134: Marcus Gibbs, Commissioner, Idaho Department of Fish and Game (IDFG), spoke in favor of H134. He introduced Commissioners John Watts and Gary Powers from the Salmon Region. Commissioner Gibbs said the Commissioners voted unanimously in support of H134, and he asked the Committee to introduce it to print. He introduced Director Huffaker, who presented H134.

Steve Huffaker, Director, IDFG, presented H134. He distributed House Bill 134–Fish and Game Fee Adjustment (Exhibit 2), and Working Together, a letter from the Idaho Fish and Game Advisory Committee in support of H134 (Exhibit 3). Mr. Huffaker explained IDFG has had no fee increase since the 1999 Legislature. In the near future, the department's ability to provide services will be compromised. He said H134 proposes a modest fee increase which will provide relief from inflationary increases in the IDFG budget. Mr. Huffaker said there would be people saying the increase would price hunters out of the market. By way of making a comparison, he said both Colorado and Montana will be seeking a 50%

increase in the cost of licenses and tags. Mr. Huffaker said hunting and fishing in Idaho is a bargain. The fee increase for residents is a 13.7% increase across the board plus a 25 cent vendor fee. For non-residents, the increase is more, but is based on the ratio that currently exists between resident and non-resident fees. Mr. Huffaker explained the fee structure for trophy species.

Public Testimony:

- PRO:** Bob Minter, President, Ada County Fish and Game League, spoke in favor of H134 saying H134 has been discussed in his group since last fall. It is recognized to be an inflationary adjustment, and is supported by the League. He said the league worked well with IDFG. Mr. Minter said the department deserved this fee increase and asked that the Committee approve the legislation.
- PRO:** Rod Davidson, Lobbyist, Idaho Wildlife Federation, spoke in favor of H134 saying the increase is justified. Mr. Davidson left written testimony (Exhibit 4).
- PRO:** Jerry Bullock, Vice President, Idaho Chapter, Safari Club Intl, spoke in favor of H134 saying the bill had the unanimous support of their Board. He said IDFG was a good steward to wildlife in the state, and an inflationary adjustment was needed. The fee increase did not represent a major change, but simply made whole an inflationary loss. He said IDFG was a cooperative group. IDFG and the Idaho Chapter, Safari Club do not always agree, but work closely and cooperatively.
- PRO:** Jim Mathias, Snake River Cutthroats, a Trout Unlimited Chapter, spoke in favor of H134 saying the fee increase was discussed by their board and found to be a needed inflationary increase. He said recent data shows hunting and fishing to be a three-quarter billion dollar industry in Idaho. If the IDFG were a corporation, it would need to be adequately staffed; similarly the IDFG needs to be adequately staffed and properly funded. Mr. Mathias said his group did not always agree with IDFG, but found the department to be well-informed, undertaking worthwhile projects, approachable, and always willing to listen. He urged support of H134 as it stands. Mr. Mathias submitted a letter from the Idaho Council of Trout Unlimited in support of HB 134 (Exhibit 5)
- PRO:** Larry Raganit, Board Member, B.A.S.S., spoke in favor of H134 saying B.A.S.S. represented 4,000 people, 1,500 in the Boise area. The group promotes fishing and conservation programs for youth, with the objective of passing sportsmanship on to future generations.
- PRO:** Thomas Judge, President, Idaho State Bowhunters, spoke in favor of H134 saying his group represented 1,500 members, and affiliate regions representing several thousand members. He said last January, at the general membership meeting, there was unanimous support for this fee increase. He said his group has enjoyed a good relationship with IDFG over a forty year period. He said IDFG needs to be fully funded in order to keep services to sportsmen.

PRO: Douglas J. Schleis, Idaho Walleye Unlimited, and Delta Waterfowl, spoke in favor of H134 saying the overwhelming majority of sportsmen support the fee increase in order to keep IDFG programs at their current level. He said IDFG was not looking to add new programs, and their last fee increase was effective May 1, 2000. Mr. Schleis said IDFG were not spending money foolishly. He said he has not talked to any sportsman against the fee increase. It is a break-even increase, only covering inflationary increases in their budget.

PRO/CON: Ron Matthews, Idaho Community Action Network, said his organization represented the poor and working poor in Idaho. He said he was not testifying either PRO or CON. He said his organization had 8,000 members this year, up from 6,000 members last year—and that number is a small percentage of the poor and working poor in Idaho. Mr. Matthews told the committee poverty in Idaho is defined as 185% of the federal poverty level. Poor people need extra food. Mr. Matthews asked that IDFG put in place a low income package for people on fixed and low incomes. He said IDFG already has programs in place for the disabled and elderly. Mr. Matthews told the committee the poor in Idaho are an increasing problem. He said H134 was another small step to price people out of a decent standard of living. Mr. Matthews said his group met with IDFG to talk about a program for the poor and hungry; and that discussion soon segued to a discussion of “roadkill and poached animals.” He said his group planned to attend all commission meetings in order to bring the needs of the poor, those on fixed incomes, and the hungry to the forefront.

Mr. Matthews was asked the definition of poverty in Idaho, in dollars. He deferred the question to Anna Walling, Idaho Community Action Network, who said about \$1,300 per month for a family of two. That is the figure the State Food Bank recognizes as the poverty level. Mr. Matthews left written testimony (Exhibit 6).

PRO: Cherie Barton, President, Idaho Wildlife Federation, spoke in favor of H134 saying the organization was state-wide and represented most districts in the state. She said she testified at the request of the Board of Directors who unanimously supported the bill. She said the fee increase was needed by the department. As a reality check, it was not even close to the cost of purchasing one CD, but more like buying one mocha coffee. She said her organization was committed to preserving Idaho wildlife and natural resources.

PRO: Greg Briggs, Southeast Idaho Chapter, Pheasants Forever, spoke in favor of H134 saying he spoke for their board. He said the organization had a close relationship with IDFG.

CON: John Weston, Citizen, spoke against H134 saying he represented himself, a sixth generation Idahoan and sportsman. He said the problem was that IDFG does not run a balanced budget, or have foresight and accountability for their programs. He said H134 would increase fees this year after lowering them last session. He said the permit fee would be \$8.50, an increase of 30%; no reference was made to sage grouse or sharp tail; and that fees were being charged that had not been approved by the Legislature. Mr. Weston said IDFG needed watchdog oversight to

make a five-year plan. He said the H134 fee increase wouldn't take effect until January 1, but would go into effect July 1, and would only actually be in effect for six months. He said it was a waste of the Committee's time to make six month budgets. Mr. Weston submitted written testimony (Exhibit 7).

PRO: Chuck Middleton, President, Idaho Foundation North American Wild Sheep, spoke in favor of H134 saying their membership supported the fee increase unanimously. He said the Foundation appreciated IDFG's work during the past few years.

Mr. Middleton was asked about the Sage Mountain Project. He said there had been some disbursement of sheep into Nevada from Sage Mountain.

PRO: William Sorenson, Deer Hunters of Idaho, spoke in favor of H134 saying most deer hunters in Idaho had no objection to the fee increase at this time. He said he would not repeat former testimony and thanked the Committee.

CON: Nate Helms, Executive Director, Sportsmen for Fish and Wildlife-Idaho, spoke against H134 saying the Board carefully worded their objection. Their objection was not to the fee increase, but to the proposal as written. He thanked IDFG for meeting with his group, and said there was a better understanding of IDFG and the department's accounting practices as a result.

Mr. Helms was asked what objection there was to H134. He said his group wanted to participate in saying where fee increase money was spent.

Mr. Helms was asked if his group was involved with the IDFG budget prior to coming to the Legislature. He said, to some extent, yes; but their board historically has not been involved. Mr. Helms said their organization was relatively new. He said IDFG had reviewed their concerns and questions.

PRO: Grant Simons, Executive Director, Idaho Outfitters and Guides Association (IOGA) spoke in favor of H134 saying IOGA represented half the licensed outfitter businesses in the state and some licensed guides. He said IDFG needed funds to effectively manage the wolf in Idaho.

Mr. Simons was told that H134 fee increases were not meant for wolf management. Wolf management is funded with federal money. He said he knew that to be the case, but IDFG programs managing ungulate herds contribute to wolf management in an indirect way. He said IDFG document the impact of wolves on specific ungulate herds, and IOGA's primary concern was that the documentation be assertive. He said it was necessary to have accurate herd information in order to make good decisions.

The comment was made that sportsmen should not pay for wolf management through fee increases. Mr. Huffaker was asked if fee increase money was targeted for wolf management. Mr. Huffaker said wolf management was funded with federal dollars, but that when IDFG counts deer and elk on winter range, they also count wolves if they see

them.

The statement was made that the fee increase in H134 should not have anything to do with wolf management. Mr. Simons said their concern was that an aggressive stance be taken to manage wolves over the next ten years in order to sustain the small businesses relying on quality animals in ungulate herds. He said the fee increase in H134 was really an inflationary adjustment to the IDFG budget that makes sense to IOGA.

PRO:

Travis Bullock, Outfitter, IOGA, spoke in favor of H134 saying he was a fifth generation Idahoan and first generation outfitter. He said the fee increase was moderate, keeping in mind that the non-resident increase is about ten times more than the resident increase. He said the quality of the resource needed to be kept high in order to promote business, and that the quality of animals in Idaho was not good compared to those in neighboring states. He said about sixty percent of Idaho outfitter and guide business came from deer and elk hunting.

Discussion/questions: Mr. Huffaker was asked to explain why the fee increase was taking place in the middle of the year. He said new fees would go into effect July 1, as would all other legislation passed this session. He said when a fee increase is expected, the bargain shopper will buy before the price goes up. Those people who wait will be charged the higher fee: there is an advantage to buying early, or a disadvantage to buying late.

Mr. Huffaker was asked to explain the fee increase for Taxidermist-Fur Buyer License (p2, line 32). He said the increase came at the request of Senator Schroeder, at the request of taxidermists and fur buyers. He said it seems out of line compared to others because taxidermists and fur buyers would like a five-year license. He believed the request came from resident commercial people to increase fees for the non-resident industry.

Mr. Huffaker was asked about the fee for a life-time hunting license, which wasn't included in the language of H134. He said a life-time license fee would increase when other fees take effect, based on the same fee structure. When asked for a code reference, Mr. Huffaker said he believed it was 36-411.

Steve Barton, Intergovernmental Policy Coordinator, IDFG, was asked if the tags for bobcat, lynx and beaver were per animal. He said yes, and there was a "not to exceed" requirement. He said IDFG has had the ability to set these fees for many years, and the fee has not been at the maximum amount allowed.

Mr. Barton was asked to explain last year's process, that put the burden more on individuals drawing the hunt than on individuals applying. He said it was an unintended consequence from last year, but that H134 applied one rate of increase across the board.

Mr. Barton was asked about the sage grouse permit, and why it was necessary to purchase a migratory wildlife endorsement not mentioned in H134. He said that authority was found in 36-306 dealing with the vendor issuance fee. The Federal Migratory Harvest Information Program is another requirement. He said some states charge the fee, some do not.

Idaho does not specify a charge other than the vendor issuance fee—part of which goes to the vendor, and part to IDFG. He said the process was nothing new, but that people were realizing a permit was required to hunt migratory birds, including doves.

MOTION:

Representative Moyle made a motion to HOLD H134 TIME CERTAIN UNTIL MARCH 1, 2005.

Discussion/questions: Representative Moyle said it was not his intent to kill the bill.

Representative Barrett said she could support the bill but needed more time to hear from individuals and other groups. She said there were concerns that were not addressed in H134.

Representative Andrus said there had been a lot of input from hunters in his district who were not uniformly against the fee increase, but were concerned. He said he would like time to discuss H134 with IDFG, and was not sure that a March 1st date would give enough time.

Representative Bedke spoke in favor of the motion. He said he was not against the fee increase based on what had been said at the hearing. An inflationary cost increase is not the issue. He said the question is where additional funds would be spent. He said some redirection of funds might be necessary.

Chairman Stevenson asked Representative Moyle if his motion intended another full hearing, or would be limited to the department. Representative Moyle said it was intended to be limited to the department.

Mr. Huffaker was asked to explain the department's budget process and how priorities were established. He said the Commission begins to review the 2007 budget in April, and the discussion continues until next fall.

Mr. Huffaker was asked if the public had an opportunity to participate in the process. He said yes, there are multiple meetings usually in each region, there is a web-site posting and ample opportunity for input.

Representative Roberts said he supported the motion but that Representative Andrus raised a good point. A March 1st date might not give enough time. He asked if H134 could be held an additional week. Chairman Stevenson said the Committee could do that.

Representative Jones said he supported the motion, and cautioned the Committee about extending time certain beyond March 1st because of legislative schedules.

Representative Barraclough supported the motion saying many people wanted to know how the fee increase would be used.

Representative Barrett said March 1st seemed too soon to accomplish what needed to be done. She said she wanted to know how the money was going to be spent.

VOTE:

The motion to HOLD H134 TIME CERTAIN UNTIL MARCH 1, 2005

passed by voice vote.

S1032:

Steven Huffaker, Director, Idaho Department of Fish and Game (IDFG), presented S1032 saying it corrected a loop hole that had existed for a few years. S1032 states that many overt poaching incidents that are obviously flagrant acts by any other definition of “flagrancy” will be treated as if they were simple violations. The change will close a loop hole that enables poachers that have committed an overt, intentional act of poaching to be treated the same in court as a violator that committed much less of an intentional act. Mr. Huffaker cited some examples. He said Fish and Game officers used discretion around poorly defined unit boundaries.

Discussion/questions: Mr. Huffaker was asked how many incidents were involved, and if the situation was serious. He said the bill was brought forward at the request of Citizens Against Poaching, but there had been only a handful of citations written for the offense.

Mr. Huffaker was asked if the violators were Idahoans or non-residents. He said the biggest problem existed in the Salmon area where hunters from Montana came over the divide to hunt in Idaho.

Mr. Huffaker was asked if losing a license for a lifetime wasn't a severe penalty. He said he was not aware of that penalty ever being given; most violations result in the loss of license for from one to three years.

The statement was made that while a lifetime penalty normally doesn't happen, the language is still there to revoke a license “up to and including a person's lifetime.” The Committee discussed statutory language changes that might resolve the issue. It was felt that the strong language currently in statute was a deterrent to people who were not deterred by fines.

Representative Wood, said she could not support S1032 the way it was written.

A discussion ensued about the definition of “flagrancy.”

Mr. Huffaker was asked how many incidents had occurred, and how common it was to give a lifetime penalty. He said he didn't know how many incidents, and he knew of no case where a license was revoked for a lifetime.

MOTION/VOTE:

Representative Mitchell made a motion to send S1032 to the floor with a DO PASS recommendation.

Discussion/questions: It was stated that current language supported the judge, and that it was necessary to trust the judges.

Representative Barrett said she opposed sending S1032 to the floor because the bill didn't originate with IDFG.

The motion to send S1032 to the floor with a DO PASS recommendation. passed by voice vote, Representatives Andrus, Barrett, Bedke, Moyle, Roberts, Shepherd (8), and Wood voting NAY for the record.

Representative Jones will carry SB1032 on the floor.

S1033: Steven Huffaker, Director, Idaho Department of Fish and Game (IDFG), presented S1033 that allows the Director to order the closure of an open season, or reduce the bag or possession limit (which are both defined terms).

MOTION/VOTE: Representative Wood made a motion to send S1033 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Representative Wood will carry S1033 on the floor.

Announcements/discussion: Chairman Stevenson announced the schedule for the Snake River Water Rights Agreement of 2004 to be held at Boise State University, Jordan-D, on Tuesday, February 22nd, and Wednesday, February 23rd.

The question was asked if a vote would be taken on the three bills at that time. Chairman Stevenson said yes. He told the Committee that leadership had authorized Idaho Public Television to provide a live web-cast throughout the state.

ADJOURN: The meeting adjourned at 3:30 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 21, 2005

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representatives Roberts and Bell

GUESTS: See the sign-in sheet.

A quorum being present, the meeting was called to order at 1:38 p.m. There were no minutes to approve.

Chairman Stevenson reviewed the up-coming hearings for the Snake River Water Rights Agreement of 2004, to be held at Boise State University, Student Union, Jordan-D room.

Committee members asked questions about the format for public testimony.

Chairman Stevenson concluded the water hearing discussion saying it was important to maintain the credibility of the process, to give an opportunity for public testimony and keep it balanced.

Chairman Stevenson introduced the new Committee page, Valerie Bedke from Oakley.

H92: Representative Paul E. Shepherd (8) presented H92 that expands allowable acreage for shooting preserves. The bill allows an increase from the existing 1600 acre limit to a 4000 acre limit. Grandfather rights would be retained on the original 1600 acres but would not apply to the additional acreage. Representative Shepherd said the legislation promoted jobs.

Discussion/questions: Representative Shepherd was asked why the upper limit was set at 4000. He said the Idaho Department of Fish and Game (IDFG) requested that number. Steven Huffaker, Director, IDFG, said the request that came to the department was to increase acreage from 1600 to 4000. He said it was also the longstanding position of IDFG to limit the amount of land taken from public access and from wildlife preserves.

**MOTION/VOTE
H92:** Representative Moyle made a motion to send HB92 to the floor with a DO PASS RECOMMENDATION.

Discussion/questions: None.

The motion passed by voice vote. Representative Shepherd (8) will carry.

H229:

Representative Elaine Smith (30) presented H229 saying the bill was a replacement for H83, previously in Committee. H229 authorizes the Idaho Department of Parks and Recreation (IDPR) to provide for a reduction of no more than fifty percent of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any senior citizen who possesses a valid federal "Golden Age Passport," or who possesses a special park pass issued by any state which similarly recognizes senior citizens. Representative Smith reviewed the bill.

Discussion/questions: Representative Smith was asked if other states could be expected to offer a reciprocal benefit to Idahoans. She said she understood they would.

Dean Sangrey, Operations Division Administrator, IDPR, stood for testimony saying he had previously been in Committee to testify on H83. He said H229 incorporated changes from H83 that were acceptable by the department, and would not too adversely impact revenue. He yielded to questions.

Discussion/questions: Mr. Sangrey was asked if disabled veterans now had a fee waiver. He said yes, the department issues cards. He said there have been some problem arising from lack of education and information.

Mr. Sangrey was asked what fiscal impact was expected by IDPR. He said IDPR does use fee revenue to set its budget. He distributed a handout, Percentage of Occupancy Rates for Idaho State Parks, that illustrated that the discount program in H229 might actually increase use and revenue in some state parks by offering incentives for use during off-seasons and days (Exhibit 2).

Mr. Sangrey was asked if the IDPR Board now had the option to lower rates, or make special offers at their discretion. He said, technically, yes. The department has the ability to charge what it wants within a range of fees; typically, the high end of the approved fee schedule is what is charged. Mr. Sangrey said IDPR was attempting to be more creative by offering additional opportunities, and by working with RV communities.

Mr. Sangrey was asked if the IDPR Board could lower rates to some classes of campers without H229. He said, technically, yes. The IDPR Board feels H220 provides a structured process, allowing consistent guidance to parks and staff; and is the most businesslike approach.

Mr. Sangrey was asked what record-keeping processes were undertaken at the parks to determine to usage and demographics of campers. He said there was no way to determine the age of park users. He said during the 2004 camping season, IDPR did experience an overall reduction in visitation. He said IDPR is analyzing the current fee structure, and anticipates significant modification. H229 is a step in that effort.

Mr. Sangrey was asked at what age a person became a senior citizen, and if an Idahoan without a Golden Age Passport would get the discount, because the language in the bill refers to "another state" and not Idaho. He said 62 is the age recognized by the federal government to define

senior citizen. Mr. Sangrey told the Committee that their board is going to define and clarify several issues, including at what age a person is a senior citizen.

Mr. Sangrey was asked if neighboring states recognized the Golden Age Passport. He said He didn't know.

Mr. Sangrey was asked to comment about campground fee scheduled. He said the board manages a site-specific and park-specific fee schedule.

PRO:

Public Testimony:

George Dillard, Legislative Representative for ID, representing RV users in Idaho, spoke in favor of H229 saying he knows Mr. Sangrey and Rep. Smith have worked hard on the bill. The purpose is to add revenue to state parks, not to take revenue away. Mr. Dillard said he would disseminate information around the state to members, by way of a monthly newspaper, to keep campers informed.

Representative Smith concluded her testimony, asking Committee members to vote yes on H229.

Discussion/questions: Mr. Sangrey was asked if rates and date schedules would be published. He said that was the department's intent. There will be advertizing on the reservation system, the Internet, and directly to use groups.

Mr. Sangrey was asked if the park board had the ability to reduce rates to certain classes of campers at the present time. He said there is no structural procedure or policy in place to allow for discounted fees. There is a fee structure, and usually the maximum fee is charged.

Mr. Sangrey was asked to be more clear: Can fees be specified for certain classes of customers, for example senior citizens. He said no, currently there is not a senior citizen discount. H229 will make that possible.

Referring to Exhibit 2, Mr. Sangrey was asked why occupancy was so low in the parks during May through September. He said Exhibit 2 identifies parks with lower use. The reason for H229 is to promote higher usage.

MOTION H229:

Representative Jones made a motion to send H229 to the floor with a DO PASS RECOMMENDATION.

Discussion:

Representative Bedke said he would not support H229 because the board should be unfettered, able to use every discount and enticement they can come up with. He said the language needs to be even broader.

Representative Mitchell said he did support H229, noting that it was not the IDPR bill. He said H229 was a tool for a group of campers and vacationers. How the legislation will be implemented will be discussed in April.

VOTE H229: The motion to send H229 to the floor with a DO PASS RECOMMENDATION passed by voice vote. Representative Bedke voting NAY for the record. Representative Smith (30) will carry H229 on the floor.

H83: Representative Smith (30) asked that H83 be held in Committee

MOTION/VOTE H83: Representative Wood made a motion to HOLD H83 IN COMMITTEE AT THE REQUEST OF THE SPONSOR.

The Motion passed by voice vote.

ADJOURN: The meeting adjourned at 2:39 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 22, 2005

TIME: 1:30 p.m.

PLACE: Boise State University, Student Union, Jordan-D

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** None.

GUESTS: See sign-in sheet (Exhibit 1).

A quorum being present, Chairman Stevenson called the meeting to order at 1:34 p.m. He thanked Boise State University for hosting the hearings and reviewed for guests and speakers how the hearings would proceed.

**STATEMENTS FROM
GOVERNMENT
REPRESENTATIVES:**

**The Honorable
Bruce Newcomb
Speaker of the House
55th Idaho Legislature**

The Honorable Bruce Newcomb, greeted the Committee and guests. He acknowledged the controversial nature of the bills, and briefly gave the sequence of events that brought them to fruition—from 1996 until 2004. Speaker Newcomb said the agreement gives assurance as to what will happen in Idaho in the future with a thirty-year period of insulation from the biological Environmental Species Act (ESA). He said there had been time for all interest groups to develop their fact bases, and to deliberate. Speaker Newcomb said everyone was giving a little and taking a little. He asked that the case be allowed to be stated with respect for all opinions.

Speaker Newcomb introduced John Keys.

**John Keys III, Commissioner
U.S. Bureau of Reclamation**

John W. Keys, said it had been his pleasure to work with the Idaho Legislature on water issues for many years. He said to be able to testify to the settlement of the Nez Perce Snake River Basin Adjudication (SRBA) was an honor. Mr. Keys presented a copy of his testimony (Exhibit 2).

Chairman Stevenson thanked Mr. Keys for taking time from his schedule to come to Idaho. He told the Committee that Mr. Keys had a flight to catch and would be leaving the hearings.

MORLEY NELSON DEATH:

Chairman Stevenson told the Committee he had been given a note telling of Morley Nelson's death Monday evening. Morley Nelson was instrumental in relocating the Peregrine Fund to Idaho and in creating the World Center for Birds of Prey in southern Ada County. His memorial services had not yet been scheduled.

**Rebecca Miles, Secretary
Nez Perce Tribe**

Rebecca Miles, Nez Perce Tribe Executive Committee, thanked the Chairman for the opportunity to testify. She spoke in support of the Snake River Water Agreement of 2004, and presented her testimony in

writing (Exhibit 3).

**OVERVIEW OF STATE
LEGISLATION:**

Chairman Stevenson asked Representative Dell Raybould to introduce H152, H153 and H154. Following introduction, the Chairman asked that Clive Strong take the podium.

**Representative
Dell Raybould**

Representative Dell Raybould introduced H152, H153 and H154. He gave an overview, and briefly went through each section of each bill.

**Clive Strong
Deputy Attorney General
Natural Resources Division**

Clive Strong briefly summarized each bill, and said for the Snake River Water Rights Agreement of 2004 to become effective it first had to be ratified by the Idaho Legislature, the U.S. Congress and the Nez Perce Tribe.

HB152 accomplishes ratification and authorizes the agencies to move forward with implementation of the settlement agreement.

H153 implements the Snake River Flow Component of the Snake River Water Rights Agreement of 2004 by extending the interim authority for rental of water to augment flows for anadromous fish listed under the ESA for the term of the agreement. All water rentals must be from willing sellers and must be secured through the state water supply bank and local rental pools. The total amount of water provided from all sources in the Snake River Basin above Lewiston, including storage and natural flow water rights, may not exceed 487,000 acre-feet in any single year. The legislation recognizes that, because of current drought conditions, this amount of water may not be available in all years. The legislation will not become effective until all conditions for effectiveness of the Snake River Water Rights Agreement of 2004 have been satisfied. The legislative authorization automatically terminates upon expiration or termination of the Snake River Flow component of the agreement, and may also be repealed by the legislature if the biological opinions issued for bureau of reclamation projects in Idaho are set-aside or declared arbitrary or capricious by any federal court, or a court finds that any of the projects result in jeopardy to any listed species.

H154 establishes the minimum stream flow water rights adopted by the Idaho Water Resource Board. The Board shall hold the minimum stream flow rights in trust for the people of Idaho. The legislation provides for subordination to future domestic, commercial, municipal and industrial water uses and such other future uses as described in the Mediator's Term Sheet dated April 20, 2004. It establishes the framework within which Idaho will communicate with the Nez Perce Tribe in the event of any minimum stream flow water right change.

**OVERVIEW OF SNAKE
RIVER WATER RIGHTS
AGREEMENT OF 2004:**

Chairman Stevenson told the Committee that K. Lynn Bennett had been asked to join the panel to represent the Bureau of Land Management. This representation resulted from a request at the Committee meeting of February 21, 2005.

Chairman Stevenson introduced the panel members: Michael Bogert, Governor's Representative; Steve Moore, Counsel for the Nez Perce Tribe; Terry Uhling, General Counsel, Simplot Co.; Jim Riley, President, Intermountain Forest Association; Jerry Rigby, Idaho Water Resource

Board (IWRB); K. Lynn Bennett, Director, Idaho Bureau of Land Management (BLM).

**State of Idaho:
Michael Bogert
Governor's Representative**

Michael Bogert said the settlement agreement had reached the Idaho Legislature after several years of difficult discussions and compromises. It had been to the U.S. Congress and was back home again. Mr. Bogert said the Governor's position is clear: the agreement brings long-term certainty, and the opportunity for stakeholders to chart their own destiny. Mr. Bogert presented written testimony (Exhibit 4).

Chairman Stevenson asked that questions to the panel be held until the end of presentations.

**Nez Perce Tribe:
Steve Moore
Counsel, Nez Perce Tribe**

Steve Moore provided an historic summary saying the Nez Perce tribe has resided in Idaho, Oregon and Washington for over 10,000 years. In addition to being aboriginal residents, he noted that the Nez Perce were citizens and residents of Idaho. Mr. Moore works for the tribe and the Colorado Native American Rights Fund (John E. Echohawk, Executive Director). Mr. Moore noted that John Echohawk is the brother of Larry Echohawk, past Attorney General of Idaho. He said both brothers understood that natural resources in the west had to be sorted out efficiently. He said the tribes had important fundamental treaty rights as a result of promises made in the 19th century. Mr. Moore said there were two ways to settle them: litigation or settlement. He said both brothers supported Indian water settlements. His own role had a dual purpose: an attorney who represented the Nez Perce Tribe; but also someone who worked with John and Larry, who understood the efficiency of settling water rights cases in the west. He said the U. S. government was responsible for the problems that existed. Specifically, the treaties of 1855 and 1863 constituted the sacred law that bound the tribe with the United States to protect forever the fishing and homeland rights of the Nez Perce people. Mr. Moore said the cornerstone of the Nez Perce culture rested on the salmon and resident species of fish living in the Salmon, Clearwater and Snake Rivers. He said the same homeland promises were made later in the 19th century with regard to grazing laws. He said a layer of complexity had been added to the problem through the ESA, which wasn't going to go away. Mr. Moore said the Snake River Water Rights Agreement of 2004 melded Nez Perce water rights issues with the resolution of ESA issues. It promoted certainty and security for farmers, ranchers and timber producers. He said the settlement was a blueprint for the west. Mr. Moore then summarized the main points of the agreement, speaking to fears and misunderstandings that had been given as reasons not to support the agreement. He gave written testimony (Exhibit 5).

**Water Users:
Terry Uhling, General
Counsel, Simplot Co.**

Terry Uhling said people who depended on water for their living were faced with pressures from the tribe, ESA, neighbors, the Clean Water Act (CWA), and uncertainty about the future. He said these people asked for protection for Idaho's water, the respect of their neighbors, and certainty going into the future. Mr. Uhling said the Snake River Water Rights Agreement of 2004 was a massive and unique undertaking. He summarized the main points of the three bills. In summary, Mr. Uhling said the agreement represented an opportunity to settle finally and completely all Nez Perce tribal claims on state water in a fair and

equitable manner, taking into consideration the ESA and CWA. He said the agreement creates a thirty-year time frame when the state has been operating on five-year biological opinions. He asked the Committee to support the agreement.

Forestry:
Jim Riley, President
Intermountain Forest
Association

Jim Riley said his association members represented forest businesses and landowners throughout Idaho who had water rights. The association was involved early in negotiations. Mr. Riley said discussions focused around four principles: to absolutely support the Forest Practices Act--the fundamental protection; to ensure that involvement of private land owners was entirely voluntary; to promote science-based decisions; and to ensure an incentive-based program. Mr. Riley said the agreement was not perfect, but was better than the alternative of no program at all. Mr. Riley submitted written testimony (Exhibit 6).

Idaho Water Resource
Board:
Jerry Rigby, Chairman IWRB

Jerry Rigby served on the interim committee this past summer. He said the IWRB is a constitutionally appointed board that holds water rights in trust for the citizens of Idaho. Mr. Rigby said the water board's function is to provide basin-wide planning and set minimum stream flows. The IWRB is independent of the Idaho Department of Water Resources (IDWR) for that reason: the holder of water rights can't also be the grantor of water rights. He said the Legislature realized the significance and importance of the IWRB and created it constitutionally, as well as statutorily. Mr. Rigby said though there had been concerns expressed by people about secrecy, but it had to be recognized that the mediation format was ordered by the district court. Mr. Rigby said the IWRB was involved in the proceedings from beginning to end, and the outcome was something the board could live with.

Bureau of Land
Management:
J. Lynn Bennett, Director
Idaho BLM

K. Lynn Bennett said he was available to answer any questions the Committee had, but would explain BLM's involvement with the agreement. He said BLM is involved as manager of public lands, and would be involved in the transfer of about 11,000 acres to the tribe. Those lands are located in four counties: Nez Perce, Lewis, Clearwater and Idaho. Mr. Bennett explained how the one-time payment in lieu of taxes would affect the four counties. Mr. Bennett said grazing leases would be in effect under their present terms and conditions until they expire: 43 grazing leases would be transferred, ranging from 2 animal/units/month (AUM) to 55 AUM. Mr. Bennett gave detailed information on the 43 grazing leases. He said 15 rights of way were affected. They would move to the tribe and continue as they currently exist. There are no mining claims on the leases, and no active mines.

QUESTIONS AND ANSWERS
TO OVERVIEW PANEL:

Chairman Stevenson asked Committee members to address their questions to Mr. Bennett first, as he would be leaving the hearing.

Representative Bedke asked Mr. Bennett to provide the Committee with information regarding the nature and jurisdiction of rights of way on Nez Perce selection lands. Mr. Bennett said he would provide it. [Mr. Bennett submitted a document titled Rights-of-Way on Nez Perce Selection Lands to the Secretary and Committee February 23, 2005 (Exhibit 7).]

Representative Jaquet said the Wallace community had expressed concern about the tribe's capacity to fight fires on the lands that would be

transferred. Mr. Bennett said firefighters were cooperative in that part of the country, and he would expect no diminution of fire control. He said work was in process now on an agreement that would include those issues. Jack Bell, Director of Land Services for the Nez Perce Tribe, said, in essence, the tribe contracts with IDL for fire protection.

Representative Roberts asked what the financial impact to counties would be under the agreement after thirty years. Mr. Bennett said to his knowledge there were no agricultural pursuits other than livestock grazing. He said BLM doesn't issue leases for any of these lands. The agreement authorizes a one-time \$200,000 payment to mitigate loss of PILT payments to Lewis and Nez Perce counties. Mr. Bennett said he wasn't involved in any other discussion of economics.

Representative Wood asked how it happened that regulations were included in the agreement that didn't follow normal steps under the Administrative Procedures Act; and about the "separation of powers" question. Mr. Bogert asked for an example. Representative Wood said she was not sure the U.S. Congress was authorized to require a Legislature to pass legislation. Mr. Bogert said he thought her question was: How can Congress cause effectuation; of anything. He said the settlement agreement is only enacted if the state and the tribe agree. That is different from being directed to do something without consent.

Representative Wood asked why granting of wilderness water rights was in the agreement when the issue had been argued and won in Idaho. Mr. Bogert said the agreement dealt with quantification issues. Representative Wood said Mr. Keys referred to wilderness water rights; that seemed strange because the Idaho Supreme Court ruled on the issue. Mr. Bogert said the settlement agreement tried to clarify those issues.

Representative Mitchell asked if BLM considered the possibility of combining BLM parcels in its leases; his concern was that leases are scattered about the involved area. Mr. Bennett said he didn't think it was discussed; if it was, he was not at the table.

Representative Eskridge said it wasn't clear the settlement agreement would "create certainty in terms of water rights." After reading an article in the Morning News of February 18th that propounded that the Shoshone-Bannock Tribe wasn't included in negotiations and the settlement agreement would negatively impact their water rights. He wondered which water rights the state planned to violate. Mr. Bogert said the Shoshone-Bannock Tribe was part of the discussion, but withdrew from negotiations. Mr. Moore said the Shoshone-Bannocks were participants in negotiations, but they voluntarily withdrew and dismissed their off-reservation flow claims from the SRBA. That terminated their participation in the negotiations in terms of minimum stream flows set by state law. He said the Shoshone-Bannocks were invited to participate in the public discussion; he believed their hydrologist or biologist did participate. They were recognized as the aboriginal occupants of some of the relevant territory, which the Nez Perce Tribe respects. Mr. Strong said there was nothing included in the settlement agreement that would impact Shoshone-Bannock water rights agreements. The program was entirely voluntary: if the Shoshone-Bannocks chose to participate, they

were free to do so. Nothing affects their hunting or fishing rights. Mr. Strong said they did relinquish their off-reservation flow claims by terminating their participation in negotiations. Their stream flows are set entirely by the state of Idaho; nothing in the agreement dealt with wilderness reserve water rights. Mr. Bogert said there was no reference in the agreement to wilderness water rights; he said perhaps Mr. Keys misspoke.

Representative Eskridge said the February 18th statement had been withdrawn, but asked what kept the Shoshone-Bannocks from filing a lawsuit. Mr. Bogert said the Shoshone-Bannocks were banned from re-engaging in the process because they had dismissed their claims.

Representative Barrett, asked what the unknown consequences of Shoshone-Bannock litigation could be. Mr. Bogert said it was the Governor's view that over the past nine months there had been adequate public scrutiny. He appreciated that some disagreed, but the time had come for the Legislature to review and move forward on the enabling legislation.

Representative Raybould asked if there was anything in the settlement that would nullify Judge Wood's decision if the settlement agreement passed; and if there was anything Judge Wood's decision did that the settlement agreement did not do. Mr. Rigby said the Wood decision, now before the Idaho Supreme Court, was "one piece of a pie": the in-stream flow claims in the Snake River itself. He said the decision could prevail in the Idaho Supreme Court, but that court does not deal with the federal ESA, the CWA, or other federal acts. If Judge Wood's decision stands, then ESA and CWA issues remain that can't be addressed by the Idaho Supreme Court. The settlement agreement, once enacted, removes the Nez Perce claims forever. He said "forever is a better deal" than a court decision that could be appealed to the U.S. Supreme Court and still not resolve ESA and CWA issues.

Representative Wood said she was not clear as to what, exactly, were Indian water rights. Mr. Moore said claims of the Nez Perce Tribe included agricultural claims, under clearly established U.S. Supreme Court and state law precedent, for consumptive uses on their lands for homeland activities. He said the agreement placed a no-injury test on existing water users having lands within the boundaries of the Nez Perce reservation. He said the agreement offered a measure of security and confidence to existing landowners. If forced to use litigation, the tribe would assuredly establish water rights for consumptive uses for its lands--domestic, commercial, industrial, agricultural--and they would become senior to all water rights within the boundaries of the reservation: That was most certain under federal law, since they have a 1855 priority date. The settlement agreement allows existing uses to continue. Mr. Moore said instream flow rights are based on treaty rights to fish, on the reservation and throughout the aboriginal treaty area. That promise was made by the U.S. government in exchange for thirteen million acres of aboriginal land. Treaties were a way to allow a cession of land to the U.S. in exchange for compensation to the tribe with rights back in perpetuity. Water rights, under fishing rights, were to establish flows so that fish had useable habitat. Mr. Moore said reserve water rights were implied; that is now on appeal to the Idaho Supreme Court, with an

uncertain outcome. The U. S. Supreme Court has a case regarding use rights off-reservation. Finally, there is the springs right: When the reservation was reduced in 1863, the tribe was given the express right to access and use all of springs within the ceded territory. Mr. Moore said access rights are not completely resolved as part of the settlement agreement because they are not within SRBA court jurisdiction. Shared use, however, is part of the settlement agreement; the tribe would agree to forego any claim to spring water on private land. That would benefit some 1200 landowners within the ceded territory.

Representative Saylor asked that the future of grazing leases be clarified, and that the tribe's lease policy be compared to BLM's policy. Jack Bell said the tribe and the Bureau of Indian Affairs manage over six hundred leases for crops and grazing; 300-400 are grazing leases from 10 acres to 15,000 acres. Mr. Bell said BLM had a two-way negotiating process between landowners. If landowners can't come to an agreement then BLM goes to an open bid process. He said the Bureau of Indian Affairs is driven for "best value decisions." Mr. Moore said 11 of the current 43 permittees also lease land from the Nez Perce Tribe currently.

Representative Roberts asked how many AUMs were currently on land impacted by the agreement. Mr. Bennett said 590.

Representative Jaquet asked about public access to land that will pass from BLM to the tribe. Mr. Bennett said most of the affected land was quite isolated and in small parcels. Access to much of it is through private lands. He said all existing county and public roads would remain with access as it now is on public roads.

Representative Shepherd (8) asked if an assessment had been made of damage accruing to ranches if leases were lost. Mr. Bennett said the law provided for leases to continue under current terms and conditions until they expire. Mr. Bell said the tribe intended to continue to lease the lands. He said no assessment had been made with regard to damages accruing to ranches should they lose leases. He said the Nez Perce tribe and Indian landowners were active in leasing lands for grazing, and the intention was to manage leases to maximize revenue off those properties.

BREAK:

Chairman Stevenson announced a fifteen minute break: the hearing will resume at 4:35 p.m.

**QUESTIONS AND ANSWERS
TO OVERVIEW PANEL
CONTINUE:**

Representative Andrus asked, with relationship to the thirty-year term of the agreement, how logging in northern Idaho would be affected. Mr. Riley said the thirty-year term applied only to salmon in the Clearwater basin.

Representative Barrett said it may be true that ESA isn't going away, but said Congress was showing signs of reform. She asked if anyone on the mediation team had considered that significant changes in the ESA might occur. Mr. Moore said his opinion was that the voluntary nature of the flow agreement on the Snake and the Salmon/Clearwater Rivers was beneficial irrespective of anything Congress might do in the future, because it provided a way to bring local citizens into the process. Mr. Bogert said there was a special provision in the agreement that allowed

repeal if in the future there should be a finding of jeopardy with regard to the biological opinion .

Representative Barrett said the “voluntary” nature of the program bothered her, because often voluntary government programs were implemented with coercion and intimidation. She said people would volunteer because they were frightened of the alternatives. Representative Barrett said there was no question that ESA coerced and intimidated people.

Representative Barraclough said, regarding implied aboriginal water rights, about eleven years ago the Committee and the Legislature approved 427,000 acre-feet of water for fish flush to help smolts. The flush was extended year by year to help the fish. Representative Barraclough said there is good scientific evidence that the flush has minimal effect. He asked how the tribe could justify a claim of “all the water in the Snake River at Lewiston” by “any sense of fairness.” He said the claim was unconscionable. Mr. Uhling said in order to bring in all of the federal claims, and all the tribes within the Snake River Basin—the Shoshone-Bannocks, Shoshone-Piutes, and Nez Perce—and waive sovereign immunity from lawsuit by the U.S. and the tribes, a general stream adjudication had to be made, including all the streams in the Snake River. He said the Nez Percés would have been forever barred from making claims if they had not made them. The federal claims were developed over a five-year period—primarily by hydrologists and the fisheries—and included flow numbers for all phases and all life cycles for resident anadromous fish. Mr. Uhling said the claims were large, but were biologically driven. He asked the Committee to recall that the Nez Perce had harvestable rights to fish forever from the 1855 and 1863 treaties. Without adequate water in streams for all life cycles, harvestable rights were compromised. Mr. Uhling said the negotiation process had resulted in a compromise drastically different than the entire flow of the Snake River and its tributaries, and was fair and equitable.

Representative Barraclough said there should be concern about western water law. He said in 1984 the state made Idaho Power its water master; now it was making the Nez Perce the watermaster. He asked Mr. Moore, given his expertise and experience, how he felt about Mr. Uhling’s comments. Mr. Moore said had the Nez Perce Tribe chosen the “litigation route,” it could have become watermaster on the Snake River, but all parties to the agreement have foregone that choice. He said, in terms of Oregon and Washington, it was true that the Nez Perce tribe had aboriginal territory in those states.

Representative Barraclough asked how the tribe would put 160,000 cubic-feet-second to beneficial use, which was one of the tenets of Idaho water law. Mr. Moore said since the claims were filed with federal water rights, the requirements were not the same, but in-stream flows would certainly be considered a beneficial use because habitat for fish were preserved. He said the claims were being withdrawn as part of the agreement.

Representative Denney asked for a definition of “springs and fountains,” and what the practical outcome would be to shared use on federal land ceded by the treaty of 1863. Mr. Moore said “springs and fountains” is a

term from the 1863 treaty. In 1863 it was vital for the Nez Perce to preserve access to water sources on trails throughout the territory, which included thousands of miles of trails. That treaty gives access to use in common with the citizens of the territory, and that was the basis for the claims files. He said those rights preexisted the SRBA court, and would have continued to exist as treaty rights. The Nez Perce simply want to access and use springs on federal lands as they still fish, hunt, gather berries and use them for cultural purposes. Mr. Bogert cited a document from the Office of the Regional Solicitor, Pacific Northwest Region as background information for the federal springs and fountains claims made on behalf of the Nez Perce Tribe in the SRBA court (Exhibit 8). Mr. Strong said springs and fountains are non-tributary sources, isolated water bodies not connected to any live stream. They must be one-quarter mile removed from a live stream, and are simply seeps on the lands.

Representative Jaquet said the tribe doesn't pay property taxes. Fear had been expressed that the tribe would acquire additional lands that would be removed from the property tax rolls. She asked what the tribe intended to do with money they appropriated from the U.S. treasury. Mr. Moore said both the term sheet agreement and federal legislation designated funds for multiple purposes, of which land acquisition was one of eight. Because the agreement had not been finalized, the tribe had not made decisions about how the money would be allocated. Mr. Moore said several departments of the Nez Perce government were considering alternatives and making recommendations to the Tribal Executive committee. The tribe intended to invest in the future for its children and grandchildren. Mr. Moore said it was true that the tribe was not required to pay local property taxes, but he couldn't speak for the tribe as to whether they did or did not pay them. He referred to an editorial acknowledging that money allocated to the tribe would benefit all of northern Idaho: It would pay salaries, create jobs, make habitat improvement for fish offering ESA protection, and provide funding for water and sewer systems in Lapwai and Kamiah where half of the households were non-Indian.

Representative Jacquet asked if access for fishing and hunting would be open to people who have traditionally hunted on settlement lands. Mr. Bell said trust lands held by the federal government for the Nez Perce tribe were normally not open to public unless specifically granted by the tribe. His understanding was that all rights of way would transfer, and public access would be denied except through a specific permitting process. He said permits were now made on a regular basis. Mr. Moore said there were BLM riparian corridor lands on Lolo Creek and the Clearwater River, not part of the settlement agreement, where all residents could gain access for fishing, boating and hunting purposes.

Chairman Stevenson asked if fin clipping would continue in hatcheries managed by the tribe. Greg Haller, SRBA Coordinator for the Nez Perce Tribe, said affected hatcheries would continue under the auspices of U.S. v. Oregon litigation in the 9th District Court, and would be managed as they had been in the past.

Representative Saylor said it still wasn't clear whether fins would be clipped. Mr. Haller said hatcheries would be managed as per U.S. v. Oregon requirements. Most fish were clipped; but there were occasions

when they were not.

Representative Eskridge asked if the settlement agreement would set precedent for Washington and Oregon. Mr. Strong said the agreement provided that it shall not be precedent in any other agreement; because it was a settlement it would not affect other court cases. Mr. Bogert said it would not be precedent in other water settlements of a similar nature.

Representative Barrett asked if Idaho was prepared to accept the legal and financial risk of more lawsuits, since opponents said the agreement would lead to “hundreds of thousands of personal property rights cases.” Mr. Strong said there were no actions in the agreement that leave the state open to property rights suits. Any that might exist would involve the federal government. Mr. Strong said “we live in a litigious society where all lawsuits can’t be avoided,” but the settlement minimizes exposure to litigation.

Representative Eskridge said he was confused about whether fish fins would be clipped. His concern was if fins were not clipped, in the short term fish harvest in rivers would be reduced. Mr. Haller said generally the tribe would continue to manage hatcheries as in the past. He said he could not comment on the outcome of U.S. v. Oregon. He said the decision to clip fins was now made on an annual basis. Mr. Haller said the tribe was the leader in salmon/steelhead recovery and would do what was best for the recovery of those species. Mr. Moore said that U.S. v. Oregon was a large, complex case in the third decade of litigation; it was the “mothership” of all federal court litigation for management of salmon on a river system.

Representative Roberts said he believed the agreement to be one of the most monumental pieces of legislation ever considered in Idaho. He asked what financial obligations and precedents would accrue to state and federal governments in 2034. Mr. Uhling said basically one of two things could happen in 2034: The parties could agree to extend the agreement, or the agreement could have “finished its lifespan,” resolving tribal claims forever. If the agreement was extended, the concept of water necessary for flow augmentation would need to be revisited and evaluated in terms of ESA requirements. He said there would be no additional financial costs to the state unless the state wanted to extend the agreement. Mr. Bogert said the most valuable part of the agreement was coming to long-term certainty. He said, in terms of ESA, thirty years was “an eternity.”

Representative Roberts said Speaker Newcomb said that the agreement would insulate against dam-breaching issues. He asked if dam-breaching could be expected to be back on the table if the settlement agreement was signed. Mr. Moore said breaching the four lower Snake River dams had been on the negotiating table for discussion before Professor McGovern was involved, but was rejected as part of this agreement in order for the agreement to move forward. He said it was a political judgement as to whether dam-breaching would be off the table for the next four years. Mr. Moore said the dam-breaching issue would certainly return in the future. Mr. Bogert said the biological opinion issued by NOAA Fisheries described the legal obligation of agencies with operational responsibility for the dams as having no discretion to operate

the dams any differently from the methodology authorized by Congress . The new biological opinion, under review by a Portland federal judge, will be the next major piece of legislation. Mr. Bogert said there was nothing in the settlement agreement which put pressure on facilities or projects in the Columbia River power system.

Representative Roberts asked Mr. Moore if he agreed with Mr. Bogert's statement that dam-breaching was off the table. Mr. Moore said his client was on record in support of dam-breaching, as a member of the Columbia River Inter-Tribal Fish commission. He said the legal and political will was not there today, and he didn't know if it ever would be. He said the four dams were outside the jurisdiction of the agreement, and the parties were not bound in any way.

Representative Roberts asked what had been gained from the \$700 million dollar investment the state had made since 1987. Mr. Strong said adjudication had begun to address state management and water rights issues. By next year, Water Resources would have compiled a list of all claims, which would result in more effective management. In terms of the agreement itself, in his view it would resolve how tribal rights fit with other water rights with some certainty. Mr. Uhling articulated the things that were achieved in the settlement agreement: 1) no additional flows, either through a tribal call of water, the ESA, or the CWA would come out of the snake river; and 2) support for a separate biological opinion for this term sheet.

Representative Wood said she understood there had been a court ruling that wild and hatchery fish were the same. She said in her mind the fish were not endangered, and flow augmentation was demonstrated to be ineffective. She asked why 427,000 acre-feet of water were being diverted as flow augmentation. Mr. Bogert said irregardless of the court ruling, the salmon had not been delisted and were protected by the ESA. He said the settlement agreement did contemplate species delisting, at which time that portion of the agreement would be revisited.

Representative Jaquet said it was her understanding that the tribe did not pay property taxes, and that land acquisition was one of eight uses for funds to be appropriated by the tribe. She asked Mr. Moore to address those issues. Mr. Moore said he understood the tribe did pay property taxes in "a couple of counties and not in another couple." He didn't know why. Representative Jaquet said people wanted to know where taxes were paid.

Representative Saylor asked if there was anything in the agreement to make a likely "call on Lake Pend Oreille or Coeur d'Alene. Mr. Bogert said discussions had concerned Dworshak Dam. It would be unlawful, outside what currently exists, for draw downs as a by-product of the agreements.

STAKEHOLDERS:

Chairman Stevenson introduced representatives of Idaho Farm Bureau, the Clearwater Coalition, the Federal Claim Coalition, and the Water Rights Coalition.

Idaho Farm Bureau (IFBF):

Lynn Steadman spoke against the settlement agreement. He said the

Lynn Steadman, Vice President

CON

Idaho Farm Bureau was a grassroots organization that had been committed to disseminating information since the beginning of the process. It held workshops and debated issues during the last six months of 2004; and, by a margin of 3:1, opposed the agreement. Mr. Steadman noted that 6 out of 37 organized counties chose to dissent from IFBF's official position. Mr. Steadman submitted written testimony (Exhibit 9).

**Clearwater Coalition:
Don Roberts City Attorney
Lewiston, Idaho**

PRO

Don Roberts spoke in favor of the settlement agreement on behalf of the cities of Lewiston, Lapwai, Kendrick and Julietta, the Lewiston Chamber of Commerce, the Lewiston Irrigation District, and the Clearwater Coalition. Mr. Roberts said the Clearwater Coalition found four priorities with respect to the settlement agreement: 1) to protect current and future domestic, commercial, municipal and industrial water use (DCMI); 2) state control of state water; 3) safe harbor from ESA and CWA issues; 4) funding. Mr. Roberts said the settlement agreement lessens pressure for dam-breaching and additional ESA regulations. The BLM land transfer to the tribe was another benefit to north-central Idaho because that money would be shared with communities. The federal government was willing to pay approximately \$57 million in rental fees over the life of the agreement because there was a liability: Mr. Keys said it was a bargain. Mr. Roberts said even if Idaho litigated and won, the tribe would still have a claim against the federal government. He said even though the settlement agreement didn't solve all the problems, it enhanced economical viability in north-central Idaho, protected the Snake and Clearwater Rivers, and the fish.

**Water Rights Coalition
(WRC):
Mark Pollot**

CON

Mark Pollot, said 1) the agreement should not be ratified without further examination and refinement; 2) if adjudication proceeds to appeal, it was probable that Judge Wood's decision denying the claim of the Nez Perce for an off-reservation, instream water right would be upheld; 3) that the agreement favored the tribe; 4) that there were provisions in the agreement that were not related in substantial ways to matters in litigation; 5) the agreement did not further the purposes of settlement which were to end litigation, conserve resources, and provide certainty; and 6) if the settlement was implemented as written, it would impose undue burdens on persons not party to the litigation and might have more impact on the treasuries of Idaho and the U.S. than were acknowledged. Mr. Pollott submitted written testimony (Exhibit 10).

**Federal Claims Coalition
(FCC):
Norm Semanko, Attorney**

PRO

Norm Semanko spoke in favor of the settlement agreement. He said without it tribal claims were for virtually the entire flow of the river and would dry up Idaho. Mr. Semanko said the FCC had been fighting tribal claims for the last five years and had spend over \$5 million dollars of their own money, with the primary objective that federal and tribal claims must go away. Mr. Semanko said opposition to the agreement would have been less if people in central Idaho had been apprised of risks incurred should the agreement not be approved. He said the agreement lifts the water right cloud on 1200 private land claims; the agreement defends against additional flow augmentation; and the agreement gives a thirty-year biological opinion that has an "off ramp." Mr. Semanko reviewed the agreement in light of current litigation, giving the specific example of the Klamath Basin where 180,000 irrigated acres were denied water because of the ESA. He advised not taking for granted the settlement the federal government has negotiated, and to carefully consider the alternatives.

Announcements: Chairman Stevenson said the hearing would resume Wednesday, February 23rd at 1:30 p.m. He asked the Orofino Chamber of Commerce and the North Idaho Jurisdictional Alliance to inform him who their spokesmen will be. The length allowed for presentations will depend upon how many people are signed in to testify.

ADJOURN:

The meeting adjourned at 6:35 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 23, 2005

TIME: 1:30 p.m.

PLACE: Boise State University, Student Union, Jordan-D Room.

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Sayler, Jaquet, Mitchell

**ABSENT/
EXCUSED:** None.

GUESTS: See sign-in sheets (Exhibit 1).

EXHIBITS All written testimonies are appended in alphabetical order. Please note that not everyone submitting written testimony presented verbal testimony at the hearings; and not everyone giving verbal testimony presented written testimony.

Chairman Stevenson called the meeting to order at 1:35 p.m. The Secretary took a silent role call.

The Chairman welcomed guests and explained the format the meeting would take (The agenda is submitted as Exhibit 2). He announced that a vote on H152, H153 and H154 would not take place today, due to the expected absence of Committee members who have conflicting obligations. He said the vote would be taken in Committee Friday, February 25, 2005.

Idaho Forest Owners Association Mark Munkittrick, Idaho Forest Owners Association, Hayden, said the Association opposed all three bills. He said the Nez Perce Agreement was the result of years of negotiations behind closed doors, and would bring a legacy of unintended consequences because the people being affected weren't represented. Mr. Munkittrick said the Snake River Settlement Agreement of 2004 (settlement agreement) was not the best that could be done, and raised as many issues as it resolved. He said too many things were left undone, and too much was based on fear—of the ESA, the CWA and litigation. Mr. Munkittrick asked that amendments be made to the settlement agreement.

CON

Northwest Management, Inc. Vincent Corrao, President, Northwest Management, Inc. (NMI), Moscow, testified in support of the settlement agreement saying NMI was an Idaho Corporation providing natural resources services in the state for over twenty years, with a mission to provide a balanced approach to resource management. Mr. Corrao is a Certified Forester with the Society of American Foresters, a certified Environmental Lead auditor and a member of IFOA and the Tree Farm Program. Mr. Corrao summarized how the settlement agreement would affect the management of riparian areas, road management, and private property rights. He submitted written testimony.

PRO

**Orofino
Chamber of
Commerce**

CON

Charles D. (Chuck) Cuddy, Orofino Chamber of Commerce, business owner, Orofino, testified against the settlement agreement saying there are unresolved items in the Term Sheet. Mr. Cuddy said the Bureau of Land Management's (BLM) proposal to transfer 11,000 acres of public land and the right of first refusal by the tribe on any future lands the BLM may choose to sell, transfer or trade in the future, created difficulties that should be resolved. He said the parameters for discretionary use of 200,000 acre-feet of water to be taken from Dworshak Reservoir had not been determined, and didn't clarify if the 200,000 acre-feet would be part of the water now required for salmonoid recovery. Mr. Cuddy was concerned about the undefined, but stipulated minimum stream flows required by the SRBA to be established by IDWR, because the parameters of the new restriction are undefined; as are the remedies or penalties if minimum stream flows are not met. Mr. Cuddy submitted written testimony. Mr. Cuddy asked to share his time at the podium with Dr. Harper.

CON

Dr. Dennis L. Harper, Legislative Committee Chairman, Orofino Chamber of Commerce, testified against the legislation saying news articles made local citizens out to be racist; but they are only business people. Mr. Harper said SRBA had affected fisheries, fish management and water issues. He said over one hundred Chamber businesses did not support the settlement agreement.

**Idaho
Association of
Commerce and
Industry**

PRO

Dick Rush, Vice President of Natural Resources, Idaho Association of Commerce and Industry (IACI), testified in support of the legislation saying IACI takes a business perspective, and the Nez Perce Agreement is a classic business deal. He said the Nez Perce Tribe had claims to most of Idaho's water, and the Tribe believed those claims to be valid and valuable; the state and Idaho water users also claim most of those same rights. Mr. Rush said there are two options: to litigate or to settle. He said as a business deal, there was no question that settlement would be the smart decision. Mr. Rush gave an overview of the salient issues and submitted written testimony.

Discussion/questions: Representative Barrett told Mr. Rush that looking at the settlement agreement from a business standpoint made sense; and asked him if, as a business man, he would sign an agreement with a thirty year term, that was "open-ended and full of holes," as the settlement agreement had been described. Mr. Rush said their Board of Directors included CEOs of the state's major corporations, and they all voted in favor of the agreement.

Representative Roberts asked Mr. Rush, relative to the \$200,000 mitigation fund for local governments to repay payment in lieu of taxes, if he was concerned about the tribe purchasing private land in Clearwater and Lewis Counties. Mr. Rush said it was only an assumption that the tribe would buy land in those counties; but it was a valid issue. He said if the tribe spent fifty million in one county, property tax would be affected. Mr. Rush said there were seven other options as to where money could be spent.

**Idaho/Lewis
Cattle**

Martin N. Thompson, farmer, Idaho Lewis County Cattle Association, testified in opposition to the legislation saying he retired after twenty years to bring his family back to Idaho, and to take over the family ranch.

Association

CON

He said he wanted to expand the ranch and perpetuate a family business that was over one hundred years old. Mr. Thompson said he didn't know if that was possible because of the state's water situation. He said the public needed to be informed about two issues: 1) the legal opinion of the proposed agreement, including a description of the benefits to the state and its citizens, and the likely negative impacts of the proposed agreement; and 2) the likelihood that the state would prevail in the SRBA litigation on the issue of the Nez Perce Tribe's claim to off-reservation instream flow and diminishment of the former reservation, if the agreement was not ratified and litigation continued. He said homesteaders had to be protected too. Mr. Thompson submitted written testimony.

Discussion/questions: Representative Bedke asked if during the adjudication process his family had filed on the Springs and Fountains on federal permits. Mr. Thompson said no, his family filed on SRBA. He said his claims attribute to the original 1200-or-so claims the tribe filed against when SRBA began. Representative Bedke asked if the claims were recommended. Mr. Thompson said as far as he knew they were still part of the adjudication process. Representative Bedke said there was a difference between a grazing preference versus a straight-up lease. He said Mr. Thompson's concerns seemed to be more about private property rights than water issues, though there are water rights at issue, too. He asked Mr. Thompson if he thought the ESA safe harbor protection was a good tradeoff for any losses that may be incurred. Mr. Thompson said there should be no trade off for personal rights. He said it was ridiculous to think the settlement agreement would be protection from litigation for ESA.

Idaho Cattle Association

PRO

Mike Webster, Idaho Cattle Association (ICA), Roberts, testified in support of the legislation saying ICA's support was not without strings. The association demanded that attention be given to specific issues regarding the transfer of lands from BLM to the Nez Perce Tribe. Mr. Webster said ICA members across the state wanted to ensure that their affected members were kept whole with relation to concerns of access, permit conditions, and long term recognition of grazing as an important use on the land. Mr. Webster said, in working with the parties involved, ICA had been assured that any actions needed to keep ICA members whole could occur within the administrative transfer of the land, and did not require amendments to the Nez Perce Agreement or the legislation before the Committee. Mr. Webster submitted written testimony.

Discussion/questions: Representative Mitchell asked Mr. Webster if his association had on-going conversations with the tribe about concerns going into the future. He said they have had on-going conversations, and felt comfortable that there was a workable situation.

Representative Shepherd asked Mr. Webster what the price of AUMs would be after the transfer. He said there was no question the price would go up, because people now pay \$15 to \$18 an AUM on private property. Mr. Webster said BLM permits were issued through a bid process, while the tribe would get what the AUMs are worth.

Representative Barrett asked a point of personal privilege to request that former Congresswoman Helen Chenoweth-Hage be given the opportunity

to address the Committee after panel presentations.

North Idaho Jurisdictional Alliance	<u>Daniel M. Johnson, Executive Director, North Central Idaho Jurisdictional Alliance, attorney and CPA</u> , testified in opposition to the legislation saying the alliance was a group of twenty-two local units of government within the former reservation, which formed almost nine years ago to deal with the ever-expanding claims of jurisdiction over non-members by the Nez Perce Tribe. Mr. Johnson said the alliance opposed the legislation for several reasons: 1) Judge Wood was correct; 2) there are too many unknowns, and too many future agreements to be negotiated; 3) the settlement agreement is overly generous to the Nez Perce Tribe; and 4) other issues should be considered for settlement including Idaho Power (Hells Canyon Complex) claims; Lewiston Orchards Irrigation District Claims; legal and moral claims relating to Dworshak Dam; impacts of the lower Snake River Dams on fish; and the Nature and extent of "Springs and Fountain" claims. He said people should be concerned with the increasing frequency that federal and state governments resolved disputes with Indian tribes by giving away public lands or extending tribal influence or regulation over public and private lands and waters. Mr. Johnson submitted written testimony.
CON	
Food Producers of Idaho	<u>Rick Waitley, Executive Director, Food Producers of Idaho, Inc. (FPI), Meridian</u> , testified in support of the legislation. Mr. Waitley gave a summary of the historical genesis of his organization. He said FPI had come to be a platform for water, natural resource and agriculture issues on a state, regional and national basis. Mr. Waitley said in spite of the overwhelming support of FPI, he needed to state that individual producer members in many organizations continued to have questions regarding the settlement agreement. He said the agreement is not perfect; but it does protect the state's water rights and the agricultural community. Mr. Waitley submitted written testimony.
PRO	
Independence Miners	<u>Pat Holmberg, President, Independent Miners Association (IMA), Grangeville</u> , submitted as testimony, a document dated 2004 stating IMA's position regarding the Snake River Basin Agreement (SRBA), the associated upcoming bills in the legislature, and the substitute bill passed by Congress as S2605 ES. Ms. Holmberg said the settlement agreement had been decided in secret and was not inclusive; specifically, nothing speaks to the mining industry. Ms. Holmberg said she stayed late yesterday to listen to the conversation held after the formal hearing. She said the meeting assured her that the state was diminished, a condition that is not suggested in the legislation. Ms. Holmberg said the court system should be allowed to finalize issues.
CON	
	<u>Discussion/questions: Representative Raybould</u> said to amend ESA would take an act of Congress. He read from SB2605 passed by the Senate, the House of Representatives, and signed by the President, asking Ms. Holmberg if that language did not modify ESA to the point that is included in the settlement agreement. <u>Ms. Holmberg</u> quoted from the act, to support her statement that nothing in the act amended or superceded ESA. <u>Representative Raybould</u> asked her if the settlement agreement said ESA was modified, and therefore modified the federal law. <u>Ms. Holmberg</u> respectfully disagreed.

Shoshone-Bannock Tribe Nancy Eschief Murillo, Chairperson, Fort Hall Business Council, Fort Hall, said the Shoshone-Bannock Tribes had been informed of comments made at the hearings yesterday regarding the proposed Snake River Water Agreement. Speaking to those comments, Ms. Murillo made four points: 1) She referred to a 2002 meeting with Governor Kempthorne in Fort Hall, that resulted in the state reneging on its agreement with the tribe; 2) Ms. Murillo said the agreement would violate the Shoshone-Bannock Tribes' 1990 water agreement; 3) Ms. Murillo said the Shoshone-Bannock Tribes have never participated, and were not invited to participate in the Nez Perce negotiations; and 4) Ms. Murillo said any discussion of minimum flows has not been part of SRBA. Ms. Murillo submitted written testimony with back-up documentation.

CON

Helen Chenowith-Hage Helen Chenowith-Hage, addressed the committee saying she was not speaking for a paying client, rather she spoke at the request of former constituents in northern Idaho, because they were concerned. Ms. Chenowith-Hage said she had never seen such far-reaching legislation with so many holes and unanswered questions. Ms. Chenowith-Hage said the transfer of Idaho water from the exclusive jurisdiction of the state to the tribe was unprecedented. She cited a takings case involving her husband, Wayne Hage, and Idaho Code to support the position that takings cases would be numerous if the legislation passed. Ms. Chenowith-Hage agreed with Pat Holmberg that the ESA was not modified, amended or changed as a result of the settlement agreement. Ms. Chenowith-Hage empathized with the pressure the Committee was experiencing saying the Committee had to return to the rule of law, and return the three bills to their sponsors.

CON

PUBLIC TESTIMONY: After a short break, Chairman Stevenson called the meeting back to order at 4:02 p.m. for public testimony.

CON Russell C. Brooks, Managing Attorney, Pacific Legal Foundation, Seattle, Washington, testified against the legislation. He said water was of paramount importance to Idaho. Many Idahoans were unsure how this would affect their rights. The Nez Perce had been involved in the discussions for months, but only in May, 2004 did the issue become public, though the settlement agreement would affect many private citizens. He said that the terms of the agreement appear to be far different on paper, than people are saying they will be in practice, and expressed concern over many terms yet to be defined. Mr. Brooks said it would take time for Idaho and private citizens to experience the full impact of these laws. He said constitutional rights must be watched. Mr. Brooks submitted written testimony.

PRO Jeff Raybould, Chairman, Fremont-Madison Irrigation District, Eastern Idaho, testified in favor of the legislation. His irrigation district provides irrigation water to over 200,000 acres. Mr. Raybould said their water rights are being threatened. They feel passing the legislation is the best way to protect their water rights. He quoted Francis McGovern, "Never forget that the perfect is always the enemy of the good." He said this may not be perfect legislation, but it is the best that can be offered.

PRO Jerry Hawkins, President, Salmon River Coalition, from Custer County, and President of the Salmon River Coalition, testified in favor of the

settlement agreement. He said, at the request of the state, his organization had a representative at the negotiations. Mr. Hawkins expressed concern about permits on BLM land that would be turned over to the Nez Perce Tribe

- PRO** Lloyd Hicks, President, of the Burgess Canal and Irrigation Company, Rigby, an irrigator with 26,000 acres in Jefferson and Bonneville Counties, testified in favor of the legislation. He said his organization paid a lot of money to prepare this legislation, and, without it, there were a lot of uncertainties; banks wanted to know what was going on before they loaned money. Mr. Hicks said Judge Wood's rule concerning the Nez Perce only covered one body of water, and an appeal would only address that one body of water.
- CON** Marty Dodson, Minister, Kamiah, testified in opposition to the bills. He said native born Americans had the right to their water wells. Mr. Dodson mentioned references to water in the Bible. He closed saying Water is a God-given right, necessary to life and important to everyone, not just the Nez Perce Tribe.
- PRO** Tim Dillin, Idaho, a Bonner County wheat and barley farmer with 1800 acres in the Kootenai Valley, testified in support of the legislation. By a vote of 20 to 12, the Idaho Grain Producers Association (IGPA) supported this legislation. He said grain producers had been well represented. Mr. Dillon said the settlement agreement wasn't perfect—it didn't protect dams, for instance. He said Idaho grain producers, who had been involved in litigation for a number of years, felt the settlement agreement solved a lot of their problems.
- CON** Dennis Fuller, Orofino, testified in opposition to the bill. Mr. Fuller said he lived in the middle of the Nez Perce Reservation, "the one they own now, not the one they wanted, or the one they say they have historic homeland rights to, nor the one that groups like the International Union for Conservation of Nature, and the International Indian Treaty Council, the World Forum, or the Sierra Club say they should have." He said there was no telling the effects the settlement agreement would have. Mr. Fuller submitted written testimony.
- CON** Gary Morgan, Kooskia, testified against the bill. Mr. Morgan is concerned about the consequences of the settlement agreement saying it catered to one group at the expense of another. He said future generations would look back and ask: "when will we ever learn?" Mr. Morgan quoted Patrick Henry: "I have but one lamp by which my feet are guided and that is the lamp of experience. I know of no other way of judging the future but by the past." Mr. Morgan submitted written testimony.
- PRO** Larry Kerbs, St. Anthony, representing the canal organizations in eastern Idaho, testified in favor of the legislation. He said all Idahoans were represented in the negotiations, and he knew many involved to be leaders in their communities and men of common sense and integrity. Mr. Kerbs said the settlement agreement protected private property rights, but thirty-years protection from the ESA (Endangered Species Act) would "be a miracle." Mr. Kerbs noted that, with few exceptions, all

the state agriculture groups supported the legislation, and asked that it be remembered that Judge Wood's decision only dealt with one tribal water right claim.

- CON** Pete Schell, farmer and business man, New Plymouth, testified against the legislation. He said he has watched his industrial consulting business of 29 years go down as plants close. He said Camas went from a community with thirty sawmills to three. Companies are moving to other countries—Simplot has moved to Canada and South America; Boise Cascade has closed many plants. He said this legislation would force closure of more businesses and result in unemployment. He said it gave some legal authority over water rights to the tribe; and left it uncertain, should he have a water problem, if he would be standing before the tribe without recourse in an Idaho court of law. Mr. Schell said Anthony Johnson of the Nez Perce Council said this legislation is just the springboard, the beginning, and that the tribe would use it to get total control of all water rights. Mr. Schell submitted written testimony.
- PRO** Bill Newman, water user, Fall River Canal Company, St. Anthony, testified in favor of the settlement agreement saying he believed it would alleviate many problems. He said there were risks; but farmers and ranchers understood risks. Mr. Newman said many states around Idaho would like our water; this legislation represents an opportunity to protect our water rights. He said he was born and raised in the Klamath Basin in southern Oregon; it was a beautiful valley with wonderful, rich soil; but because of a little snail, many farmers and ranchers were put out of business. He said he would rather trust the negotiating committee than the federal government.
- CON** Walt Bayes, Wilder, testified against the bill saying the Constitution gave him rights which were inalienable; the Committee didn't give him those rights, and can't take them away. Mr. Bayes told personal anecdotes.
- PRO** Ed Clark, signed-in to testify, asked Mr. Vales to register his testimony in support of the settlement. Mr. Clark had to leave due to a medical emergency in the family.
- CON** Russell C. Brooks, Pacific Legal Foundation, Sacramento, California, testified against the legislation. Mr. Brooks said law suits would not stop as a result of the settlement agreement. He said the state could be endangering more rights than it was securing. Mr. Brooks submitted written testimony.
- CON** Marvin Richardson, Emmett, testified against the settlement agreement saying it was being done in "too big a rush." He said the public needed to know more about the legislation; and he doubted that many on the Committee had read everything about the issue. Mr. Richardson recommended that the Committee request more time to wait for the results of current litigation.
- PRO** Jack Hoops, signed in to testify, asked Mr. Vales to register his testimony in support of the legislation. Mr. Hoops drove the car taking Mr. Clark home due to a medical emergency.

- CON** Robert Callihan, Latah County Farm Bureau, Potlatch, testified against the legislation saying “we’ve gotten lost in the details of settlement without first considering the legitimacy of the claims.” He made several points: 1) The agreement assumes that only the tribe had 1855 fishing (and prior water) rights; 2) the claims misconstrue the original intent of fishing rights; 3) the agreement distorts the original intent of rights to “Springs and Fountains” by failing to recognize that the right was only for “watering” 4) the tribe is not an independent, sovereign nation; and 5) tribal rights were not retained in the 1855 treaty: they were given up, though some were granted back. Mr. Callihan submitted written testimony.
- PRO** John Peavey, former State Senator, Carey farmer and rancher, testified in support of the legislation, urging negotiations to continue. Senator Peavey said he spent most of his career working with water problems, and strongly urged negotiations. Senator Peavey asked why Idaho water was used to defend the four Washington state dams. He said there used to be huge fish in the creeks on his land; after the Snake River dams were constructed, the fish disappeared, and it had nothing to do with cattle grazing on the land. He urged that the dams be breached to save the fish; then water would not be needed for fish flush, and could be used for irrigation. He said the Nez Perce want to save their fish; but water should be kept in Idaho to avoid an economic Armageddon. Mr. Peavey said Idaho’s over-developed farmlands could revert to sage brush if things continue. Mr. Peavey submitted written testimony.
- CON** Betty DeVeny, representing a family cow/calf operation, Riggins, testified in opposition to the legislation. Ms. DeVeny said they were party to the “Springs and Fountains claims,” since there were 25 springs on their forest service grazing allotment. Ms. DeVeny submitted written testimony.
- PRO** F. David Rydalch, President, North Fork Reservoir Company (NFRC), St. Anthony, testified in favor of the settlement agreement. He said the NFRC was a secondary source of supply for 47,000 acres, and was formed in 1915 when six separate canal districts joined to build a dam on Henry’s Lake to collect water for irrigation; it created a world-class fishery. Mr. Rydalch said his shareholders were in favor of the legislation because continued litigation would make it harder to keep water in the lake. He said litigation started in 1992; in 1993 there were meetings with the Nez Perce; the bombshell hit when they had been negotiating for six years, and the judge ordered mediation because a settlement could not be reached. Mr. Rydalch said the mediation meetings were open, but were mostly attended by attorneys.
- CON** Dean C. Gentry, Moscow, testified against the settlement agreement. Mr. Gentry said he lived in St. Maries from 1963 until recently, near the former Indian reservation, and had experienced “many of these problems.” He said he had great empathy for farmers who had spent millions trying to get their point across when it was not necessary, because the Governor is telling only what he wants people to hear in favor of the agreement. Mr. Gentry said the reasons why the settlement agreement was detrimental to Idaho were endless. He submitted written testimony.

- PRO** William Nez, Rexburg, said he was on the Board of Directors of a canal company. He rose in support of the settlement agreement.
- CON** Jim Smolik, Cottonwood, testified against the settlement agreement saying it “pits one group against another.” Mr. Smolik said the legislation was bad for the whole state because many were left out during its negotiation. He said the rights of others were given away by those who had no authority; the agreement didn’t establish cooperation; and differences wouldn’t be settled when someone tried to take from another.
- CON** Elizabeth K. Morris, Kooskia, said she was new to Idaho and was against the legislation because it appeared to denigrate her private property rights and water rights. Ms. Morris submitted written testimony.
- PRO** Joseph L. Jordan PE, Idaho Water Resource Board, retired civil engineer, Boise, supported the settlement agreement saying the combination of the three bills was a good compromise. Mr. Jordan submitted written testimony.
- CON** H. L. Roy Clay, elected official, businessman, Orofino, opposed the settlement agreement saying it was not a compromise, but a buy-out, and there were too many flaws to approve it. He submitted written testimony and Resolution No.346 from the Orofino City Council for the record.
- PRO** Dawn Justice, President, Idaho Bankers Association, testified in favor of the settlement agreement saying the banking community looked at the issue of protecting the Idaho agricultural community from a long-term, state-wide perspective. Ms. Justice said, after diligently evaluating unknown outcomes and known benefits, the association supported the settlement agreement. She said banking was a heavily regulated, conservative industry that looks for predictability; there are enough unknowns in agriculture without adding water to that list.
- CON** Terry Sverdsten, former legislator, testified against the settlement agreement. He said the agreement was filled with problematic “little items” held dear by the people of Idaho. For example, he said that the 11,000 acres to be transferred to the tribe would not be under the aegis of the Forest Practices Act. Mr. Sverdsten asked for equality for everyone in Idaho.
- PRO** Doug Hess, farmer, Ashton, testified in support of the settlement agreement. Mr. Hess referred to an article recently published on the front page of U.S.A. Today, depicting the states losing population: Indiana and North Dakota are the top two. He said it was important to remember that Idaho is dependent upon water: Shell Oil is considering coming to eastern Idaho and wants irrigated straw for oxygenated fuel. He recommended moving toward proactive support of Idaho’s water. Without adequate water for irrigation, the state will lose industry and population.
- CON** Angie Lee Morrow, President, North Idaho Citizens Alliance, testified against the legislation. Ms. Morrow said she had only recently heard about the settlement agreement, and it shouldn’t be “rammed through”

when even state legislators didn't know all the details. Ms. Morrow said the settlement agreement was full of holes; that it was intolerable to give away land, water and money to the Nez Perce Tribe, that pays no taxes but gets more equal treatment than those paying taxes. Ms. Morrow submitted written testimony.

- PRO** Kip Martindale, farmer, testified in support of the settlement agreement saying it supported years of effort and dollars. He said many groups helped craft the legislation; it needed to be passed to show responsibility to water rights, land and the environment. Mr. Martindale said Idaho needed to be sovereign over its water, not the federal government or the uneducated public.
- CON** Joyce Bissell, Harrison testified against the legislation saying she represented her family and hundreds of neighbors from Benewah, Kootenai and Shoshone counties. Ms. Bissell said the settlement agreement was detrimental to all of Idaho, especially those living in the northern and central part of the state. She said it transferred wealth, state resources, and authority to a small segment of society; and placed Idaho citizens under the jurisdiction of the Nez Perce Tribe. Written testimony was submitted.
- PRO** Rod Dalling, President, Southeast Idaho Canal Company, Teton Island Feeder Canal, and farmer, said he represented over 500 water users, and testified in favor of the legislation. Mr. Dalling said the settlement agreement was the best possible, that the state couldn't afford to litigate, and that security was "worth the risk." He said the Farm Bureau didn't represent his group or their views on this issue.
- CON** Pam Secord, North Idaho Citizens Alliance (NICA), Santa. Ms. Secord said the NICA represented over 250 members, and wants to be on record in opposition to the settlement agreement because it was dangerous and wrong for Idaho. She said it was "legal plundering for a few," when there was a solid court case against the tribe. Ms. Secord submitted written testimony.
- PRO** Dale Swenson, Executive Director, Fremont-Madison Irrigation District, testified in support of the settlement agreement. He said, without the legislation, a serious cloud existed over water rights because of the very senior water right held by the Nez Perce Tribe. Mr. Swenson said it was a far greater risk to litigate than to settle.
- PRO** Robert Murdock, Blackfoot, rose in support of the settlement agreement saying it was desperately needed to move forward. He said his family farmed in the Blackfoot area for 115 years; he knew that the threat to Idaho water was real. Mr. Murdock said the ESA and lawyers scared him more than mother nature, and anyone wanting to stand tough against ESA needed to talk to a Klamath farmer who went out of business.
- CON** Bill Mider, Kamiah testified in opposition to the settlement agreement. He was concerned about many issues surrounding the agreement, and many impacts it might have on him, his property and his family. Mr. Mider asked the Committee not to "throw out generations of water law." He submitted written testimony

- PRO** Diana S. Richman, water user on the Teton Irrigation and Mfg Co., and former legislator, Sugar City, testified in favor of the legislation saying the settlement agreement removed a cloud on her water right; gave protection from ESA; and capped flow augmentation water. Ms. Richman submitted written testimony.
- CON** Dr. Blaine Symons, Whitebird, testified against the legislation. Dr. Symons, who practiced dentistry in California before returning to Idaho, said there were problems with minority groups where he taught in California. He likened the water issue with the Nez Perce tribe to ethnic groups at the University of California who wanted special treatment. Dr. Symons said ethnic groups should be proud to earn citizenship, and that the Nez Perce Tribe should give up water rights to become Idaho citizens. He said residents of the state should work together and help each other. The alternative, he said was to amend the agreement and not “give Idaho away.”
- PRO** Lon Atchley, North Fremont Canal Systems, Ashton, testified in support of the settlement agreement saying it solved some major problems. He said it was a compromise agreement, and it was time to move forward. Mr. Atchley submitted written testimony.
- CON** Pauline Malone, Lewis County Treasurer and Ex-Officio Tax Collector, Kamiah, testified in opposition to the settlement agreement. Ms. Malone said she was confused about the legislation. She attended public meetings, but her questions were answered “in circles” with unfamiliar legal terms. Ms. Malone said there are issues in the settlement agreement that were not clearly defined, and wouldn’t be until “years down the road.” Ms. Malone presented written testimony relative to property taxes the Nez Perce Tribe pays in Lewis County.
- PRO** Brian Murdock, fifth generation Blackfoot farmer, testified in support of the legislation. He made an analogy between the settlement agreement and Chuck Yeager’s historic flight: neither was undertaken with full knowledge of the future. Mr. Murdock said the settlement agreement kept Idaho making Idaho water decisions and water issues.
- PRO** Mark Duffin, Executive Director, Idaho Sugarbeet Growers Association, Boise, testified in favor of the legislation saying it brought much-needed certainty to the status of everyone’s water rights in the Snake River Basin. Mr. Duffin said without the settlement agreement litigation would continue on all tribal water rights claims; and there would be no ESA protection, which was a very important element. He said other water rights issues, such as the Snake River Plains Aquifer water rights dispute, needed a more timely resolution than protracted litigation would provide. Mr. Duffin submitted written testimony.
- CON** Carol Stillman, Craigmont, testified against the legislation. Ms. Stillman lives inside the 1863 former reservation, and opposed the bill because of the negative impact it would have on her family through the transfer of BLM ground to the Tribe. Ms. Stillman said six sections of BLM property were within the boundaries of their ranch. She provided written testimony that goes into the situation in some depth.

- PRO** Albert Lockwood, Chairman, Committee of Nine; Director, North Side Canal Company Board, testified in favor of the legislation. He said the settlement agreement ended well over six years of negotiations, waiving forever the Nez Perce Tribe's water rights to instream flows, and Springs and Fountains. Mr. Lockwood gave an summary of positive outcomes provided by the legislation. He said he hoped the state would continue to protect the rights of citizens of the state, including their water rights. He said the ESA was a key element of the agreement, as was providing certainty for Idaho's water.
- CON** Bill Stillman, Craigmont, representing the highway district, testified against the legislation. Their highway district is within the former boundaries of the 1895 treaty, and has concern about right-of-way issues. Mr. Stillman said rights-of-way are granted by Idaho Code, and can't be revoked by the owners. Once a road has been used for five years there is a descriptive use right-of-way. Mr. Stillman said there are roads in the highway district that have been used for ninety years. The concern was that the Tribe might use money it gets by way of the settlement agreement to buy land that would revoke the highway district's rights-of-way. Mr. Stillman submitted written testimony.
- PRO** Bruce Smith, Attorney, Boise, testified in favor of the settlement agreement. Mr. Smith is one of the attorneys who worked on the agreement. He said that once the confidentiality order was lifted by the court last May, information was disseminated to the public. Mr. Smith said impacts on farmers whose water supply was cut off still continue because their credit worthiness was damaged. He said there had been a \$200 million dollar ripple effect to the economy which was unsettling, because it was not based on good scientific information. Mr. Smith said the settlement agreement needed to be ratified now to end uncertainties for farmers.
- CON** Thomas Igo, Kamiah, testified in opposition to the settlement agreement. He said there was a great deal of similarity between it and the movie, The Mouse that Roared, in which a small country declared war on the U.S. knowing it would lose and then be supported by the U.S. Mr. Igo said someone in the Nez Perce Tribe saw this movie, and then filed for more than they could ever hope to receive in order to scare the state of Idaho, and then get a negotiated settlement. Mr. Igo said none of the tribe's claims have been approved or verified, but \$193 million will have been given up in concessions if the three bills are passed.
- PRO** Harold Mohlman, President, Idaho Water Users Association, and chairman of an irrigation district with one of the largest pumping stations on the Snake River, testified in favor of the settlement agreement. He said his constituents wanted wise and efficient use of water extending throughout the two million acres of irrigated land and domestic water systems throughout the state. There was unanimous support for the legislation in the organizations he represents. Mr. Mohlman said the settlement agreement removed the fear of the next "Klamath disaster" occurring in Idaho; the alternative was years of litigation.
- CON** Tom Simmons, Kamiah, testified in opposition to the legislation. He said he felt there was a "rush to judgement," because the request for public

field comments was denied. Mr. Simmons said negotiators had years to consider the settlement agreement; but the people of Idaho had only a few months. He said the public had nothing to lose by delaying the legislation, because if the State Supreme Court rejects Judge Wood's ruling, it would go directly to the U.S. Supreme Court, not the 9th District Court of Appeals. Mr. Simmons said the Nez Perce Tribe now owns less than 11% of what was the 1893 reservation, and tribal membership is less than 3,500 members; but there are over 1.3 million Idaho citizens. Some of Mr. Simmons concerns included: 1) speculation about the outcome of the settlement agreement; 2) that BLM settlement land will not be accessible to non-tribal members; 3) that dam breaching will occur in the future; and 4) that the agreement had been over-lawyered." Mr. Simmons asked for a chance to have those who would be affected to "come to the table."

- PRO** Neil Powell, an Idaho native with family roots going back to 1889, testified in support of the legislation. Mr. Powell said his family had been farming their ground since 1893. He said the settlement agreement established and clarified the state's right to control its own water; provided a platform for resolving future changes to the ESA; and avoided, or reduced, the chance of a Klamath catastrophe.
- CON** Alfred Holden, testified against the legislation, questioning its objectiveness and justification. He said meetings were held in closed session, giving the public only the results. He said the legislation gave probable cause for a civil rights violation.
- PRO** Roger Batt, Executive Director, Idaho Eastern Oregon Seed Association, Idaho Mint Growers Association, testified in support of the settlement agreement. He said his constituents needed to know the water would be there, so contracts could be made; without the certainty of water, there would be no certainty with their contracts—and maybe no contracts at all. Mr. Batt said without the legislation, the results of years of negotiations would be expensive indeed—the seed industry and other industries have spent large sums of money. He said without the settlement agreement, the tribe's instream flow claims would still remain in full force and would be litigated over many years at untold costs. Mr. Batt submitted written testimony.
- CON** Roy Farmer, a rancher in White Bird, Idaho, testified against the legislation. Mr. Farmer has a federal grazing allotment that will be affected by the SRBA agreement. He said he had informed himself, gone to meetings, and talked to many people-- including the Attorney General; but hadn't been able to get exact answers to questions about the mediator's Term Sheet. He did not understand his position vis-a-vis the tribe. Mr. Farmer said hundreds of ranchers were in the same situation. Mr. Farmer told the Committee that the settlement agreement was a "forever agreement" that would effect generations of Idahoans, and should be taken seriously. Mr. Farmer submitted written testimony.
- PRO** Brenda Tominaga, Idaho Ground Water Appropriators, Inc. (IGWA), testified in favor of the legislation. She said IGWA represents 700,000 acres of irrigated crop land in Idaho. The IGWA Board of Directors voted to support the settlement agreement.

- CON** Kimberly Thompson, wife of a farmer and rancher in Nez Perce, testified against the legislation. Mrs. Thompson said she was one-quarter Cherokee Indian, but her nationality was American. She said the indigenous people of this country are compensated monetarily for the “sins of the father” every year, without ever reaching a final resolution or restitution. Mrs. Thompson submitted written testimony.
- PRO** David C. Williams, Ditch Rider, District 1, testified in support of the legislation saying that water rights should not be mitigated or reduced for those who have inherited them. Mr. Williams said that state law is closer to the public than federal law: The settlement agreement puts the Idaho Resource Board in charge of water rights, and also insulates against the ESA. He said the agreement reflects a win-win situation, and asked that the Committee “preserve for our families the inherited right to the water and land we all enjoy.”
- CON** Don James, of Warren, Idaho, near the South Fork of the Salmon River testified against the legislation saying there was a trend of qualifying the former treaty with this new proposal. He asked the Committee to go back to the treaty, and live with that. Mr. James said all proposals should be evaluated against the Bill of Rights: If that were done in this instance, there would be no support for the takings of Idaho water and his personal property rights.
- PRO** John Iverson, Idaho and Eastern Oregon Seed Association, production manager for Harris Moran Seed Company, and fourth generation farmer, representing fifty seed companies, testified in support of the legislation. Mr. Iverson said he wanted to see farming activities continue; without the Nez Perce agreement, he feels that their future is in jeopardy. Mr. Iverson said Idaho and California now dominate seed production in the U.S.; but companies would move their seed business to another state or overseas if water wasn’t certain. He said the settlement agreement assured the seed industry that water would be available. Mr. Iverson submitted written testimony.
- CON** Rose Frutchev, Cataldo, representing 30-40 of her neighbors, testified in opposition to the bills. She said the best fish survival science is being overlooked, and asked why water was being assigned for flow augmentation when there is no scientific data to support the belief that it was effective. Ms. Frutchev told a personal anecdote likening the settlement agreement to a real estate sales contract: “The devil is in the details.” Ms. Frutchev said there should be no rush to accept the settlement agreement until the “details are rewritten.” She submitted written testimony.
- PRO** Frank R. Keith, Director of Information, Potato Growers of Idaho, Pocatello, testified in support of the legislation saying when he came to Idaho seventeen years ago as a reporter, his first story was the first filing of the Snake River Adjudication. Mr. Frank said the three bills brought closure to a small part of the on-going process. He said it was an agreement all the parties could live with, though not perfect. He said flow augmentation for fish didn’t make much sense; but neither did not knowing if you would have water for crops. Mr. Frank submitted written testimony.

- CON** Alice Mattson, Idaho County Commissioner, Kooskia, testified against the settlement agreement. She said the south fork and the middle fork of the Clearwater River and many tributaries ran the full length of her district; she is also a private land owner with about a mile of land bordering Sally Ann Creek. Ms. Mattson said she was concerned about the voluntary registration of land, because if someone didn't voluntarily sign up for the program, that person might be targeted for strict regulation. She said the proposed payment to the tribe could be used to purchase considerable real estate that would then be removed from county tax rolls, remove public access to lands, reduce PILT payments, and interfere with grazing. Ms. Mattson said it was not clear how the tribe would gain access to parcels surrounded by private land. Ms. Mattson submitted written testimony.
- PRO** Drew Eggers, fourth generation row crop farmer, Meridian, testified in support of the settlement agreement saying it was important to Idaho agriculture, and the key to the future. Mr. Eggers told of a friend, farming in the Klamath Falls Basin, who was told three weeks before the start of an irrigation season that he would not have water. He said in Idaho, to not have irrigation water was to go out of the agricultural business. Mr. Eggers submitted written testimony.
- CON** Ed Galloway, Orofino, testified against the settlement agreement saying there was a new county in Idaho named Simplot: Simplot was well-represented in the agreement, though Clearwater County was not. Mr. Galloway said he was raised on the north fork of the Clearwater River, a river that no longer existed—now it is Dworshak reservoir. He said now he looks out his window on 150 feet of mud banks. He said Clearwater County was comprised of 70-75 percent public lands, and approximately 30 percent of the residents were unemployed. Mr. Galloway was concerned that the agreement would result in more land being taken off the tax rolls. He said it was “too open ended, had to many maybes and I don't knows.”
- PRO** Fred Sarceda, Treasure Valley farmer, Wilder, testified in favor of the legislation saying he understood the importance of sharing resources. He had confidence in the negotiators, and urged moving forward into the future knowing water rights were protected.
- CON** Neal Johnson, Orofino Chamber of Commerce, Orofino, testified against the legislation saying the Chamber would like to go on record that it has a long and positive working relationship with the Nez Perce Tribe; and it was their objective to continue that relationship. The Chamber opposed the settlement agreement in part because, but not limited to: 1)the potential loss of recreation through the immediate transfer of \$7 million worth of BLM lands; 2) the transfer of operation of the Kooskia and Dworshak hatcheries which would negatively impact the Orofino economy; 3) the Term Sheet did not resolve the claims against the U.S. for the construction and operation of Dworshak Dam; 4) the Term Sheet had many unanswered questions; 5) and the Term Sheet addressed issues within the boundaries of the ceded areas of the 1863 Treaty, also known as the reservation boundaries of the 1855 Treaty—extending from Shoshone/Benewah Counties to the North and into Adams/Valley Counties in the south; and into the states of Washington and Oregon. Mr. Johnson submitted written testimony.

- PRO** Michael McEvoy, President, Payette Water Users Association, former legislator, testified in favor of the legislation saying his organization had been involved with the settlement agreement since the outset; over that time, much energy, time and expense had been invested. He said several compromises were made, but the agreement served everyone's best interests.
- CON** Renee Farmer, White Bird, testified against the legislation saying it was not a final settlement, it did not settle all of the issues, and was nebulous and far-reaching. She said it would be criminal to commit the citizens of Idaho to so many unknowns. Ms. Farmer said the settlement agreement put their White Bird ranch in jeopardy, impacting their grazing lands and water rights. She said their land was of no value to them without the livelihood that went with it. Ms. Farmer submitted written testimony.
- CON** Clay Baker, Water Rights Coalition, Kamiah, testified against the settlement agreement saying to the Republicans on the Committee that voting to pass the legislation was ignoring the State Republican Party Platform, specifically Article 7, dealing with private property rights, and Article 12, dealing with water. He said representatives were elected to office based on this platform, and their votes would be remembered in November.
- PRO** Albert P. Barker, attorney, Federal Claims Coalition, testified in support of the legislation saying he was an attorney in front of Judge Wood arguing the case for no off-reservation instream flow rights. Mr. Barker said to the people in the room wearing "uphold Judge Wood's decision" stickers, that the settlement agreement did implement Judge Wood's decision: There were no off-reservation instream flow rights held by the tribe. Mr. Barker said the claims the tribe had against the U.S. government were for failing to protect its claims for fishing rights on and off the reservation: That is why the U.S. paid \$193 million dollars. He said the claims against the U.S. were not part of the litigation; it was the decision of all parties to wrap everything together into one piece of legislation. Mr. Barker said the settlement agreement didn't solve everything, but it did say no to off-reservation instream flow claims held by the Nez Perce Tribe "forever." It also said that flows in the Salmon/Clearwater Rivers were held by the state of Idaho, not the tribe, and were subordinated to future irrigation withdrawals, and all future commercial and industrial withdrawals; it resolved the Springs and Fountains claims on private lands; and it resolved federal claims the tribe would have for consumptive rights on the reservation.
- CON** Holly Hancock, farmer, President, Jefferson County Farm Bureau, testified against the agreement saying that in southeast Idaho there were surface water users, groundwater users, and at least one canal company that were in total opposition to the legislation. She said Judge Wood's decision was sound and supportable, and could be appealed to the U.S. Supreme Court. Ms. Hancock said the settlement agreement was a massive giveaway to the Nez Perce Tribe, giving water and property rights they were never entitled to, according to Judge Wood, and rights relinquished in the 1863 treaty. She said it would be the cause of other tribes bringing claims. Ms. Hancock submitted written testimony.
- PRO** Wayne Hurst, Vice President, Idaho Grain Producers Association

(IGPA), Burley, testified in support of the legislation saying the IGPA supported the legislation for several reasons: It protected property rights; provided a thirty-year protection from ESA; would help provide certainty to lenders and water users; and put water in the hands of the state water board, which was necessary for Idaho's future and economy.

- NO POSITION** Bill Sedivy, Executive Director, Idaho Rivers United (IRU), gave informational testimony saying IRU would not take a position because they were currently engaged in federal court litigation that questioned the legal and biological validity of at least two elements on the Term Sheet. They are: the requirement for separate biological opinions (as proposed by this agreement) that govern operations in the Snake River above Hells Canyon Dam, and operations in the lower Snake and the Columbia Rivers below Hells Canyon; and the validity of the flow augmentation component. Mr. Sedivy then offered the opinion of IRU as to what the settlement agreement might and might not accomplish. He submitted written testimony.
- BREAK** Chairman Stevenson announced a ten minute break.
- PRO** Don Hale, Committee of Nine, Advisory Committee of Water District 01, and member of the negotiating Coalition, testified in support of the legislation saying he would not address technical matters, but explained how we "got from where we started to here." Mr. Hale submitted written testimony.
- PRO** Dale Rockwood, Committee of Nine, Bonneville County Farm Bureau Board, Idaho Falls Chamber of Commerce Agriculture Committee, partner in Rockwood Farms, and past President Idaho Farm Bureau, testified in support of the settlement agreement saying it was far better to negotiate a settlement than rely on the courts. He said the Term Sheet gave the state of Idaho sovereignty of its water, and a mediation settlement to the Nez Perce water rights and property claims. Mr. Rockwood submitted written testimony.
- PRO** Rod Robison, Madison County, testified in support of the legislation saying he wanted to make one point: State sovereignty over water, not the tribe or the federal government
- CON** Mark Jackson, Idaho Water Rights Coalition, Kamiah, testified against the legislation saying it simply was not right. Mr. Jackson said the constitution and statutes of Idaho declare all of the water of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state, and ground waters of the state, to be public waters; and declared sovereignty over all water within the state's boundaries. Mr. Jackson submitted written testimony.
- PRO** Rex R. Barrie, General Manager, South Board of Control, Homedale, testified in support of the settlement agreement saying South Board was the operating agency for the Gem Irrigation District in Owyhee County, Idaho, and the Ridgeview Irrigation District in Malheur County, Oregon. He said he had been asked to relate that the Joint Committee of the Owyhee Project, representing over 2,200 water users and 110,000 acres in the Snake River Basin, encouraged support of the legislation. Mr. Barrie submitted written testimony.

- NO POSITION** Dave Vesekla, Indian Valley gave informational testimony saying both those in favor and those opposed to the agreement had points. He cautioned that those making the rules don't always have to follow them. Mr. Vesekla said the Nez Perce Tribe was not obligated to follow the same rules as the timber industry, for instance.
- PRO** Ron Shurtleff, Executive Director, Payette River Water Users Association, testified in support of the settlement agreement saying it was an opportunity to bring Idaho together on this controversial water claims issue. He said members of his association did not wish to take the chance of a court ruling; or to shoulder again the costs invested to make a settlement. Mr. Shurtleff submitted written testimony.
- PRO** Vernon Case, Director, Wilder Irrigation District, Water District 63, rose in support of the legislation.
- CON** Alman Manes, Kooskia, testified against the legislation saying it came down to the sovereignty of the state. He said he disagreed that the Nez Perce Tribe was a sovereign nation; but if the agreement passed it would become one. He said the agreement was open-ended. Mr. Manes said he had a rifle in WWII: It felt like he was being shot at again and couldn't shoot back.
- PRO** Darrell Tyler, president of a canal company, rose in support of the legislation. He said there was a big difference between those who paid the bill to litigate and those who didn't; those who paid the bill support the settlement agreement.
- PRO** Walt Yerki, rose in support of the settlement agreement.
- PRO** L. Claude Storer, farmer and rancher, Committee of Nine, Water Board, testified in support of the settlement agreement saying it was important that the three bills passed.
- CON** Welton Ward, Malad, testified against the settlement agreement saying the Shoshone nation was watching closely to see what was given to the Nez Perce, so they could start claiming water in southeastern Idaho. Mr. Ward said the legislation divided the state and was a "pig in a poke," or something you couldn't see: it had many unanswered questions.
- CON** John Schurbon, Mayor, City of Kooskia, testified against the legislation and refuted that the Clearwater River Users Coalition was in favor of the settlement. Mr. Schurbon brought resolutions from Coalition member cities of Grangeville, Kamiah, Kooskia, Stites, , Orofino and Peck—all in opposition. He said only three Coalition members endorsed the settlement. Mr. Schurbon submitted written testimony. [All resolutions are included separately in the appendix.]
- CON** Rick E. Laam, representing the Mayor and City Council, Orofino, testified against all three pieces of legislation saying the City of Orofino has the highest respect for the culture and heritage of the Nez Perce Tribe, but could not agree with many components of the Term Sheet. Mr. Laam said the agreement encompassed an area of land dating back to the reservation boundaries of the 1855 treaty—an area extending into three

states, giving guaranteed water rights on hundreds of streams, and unprecedented instream flow rights. Mr. Laam submitted written testimony.

- CON** Stan Leach, Clearwater County Commissioner, independent logging contractor, testified against the legislation saying that people who support the agreement were ignoring the economic outcome. He said people in Clearwater County were dealing with disastrous economic fallout. Mr. Leach said schools there were operating only four days a week because of reduced revenues.
- CON** Carol Boyce testified against the settlement agreement saying give and take is necessary in community and family life. She said, "we want to get along, and take care of ourselves cooperatively, understanding that everyone isn't always going to be happy." Ms. Boyce said she would vote against the legislation because it isn't fair.
- CON** Kenneth Degan testified against the legislation saying if the settlement agreement passed, it would be the first time a legislative body gave 11,000 acres—17 square miles—back to another nation. Mr. Degan said the Bannock-Shoshone Tribe would surely sue.
- CON** Mike Garner, row crop farmer, Raft River, Cassia County, testified against the legislation saying it was, in principle, wrong. If passed, the Nez Perce Tribe and the federal government have suggested they will sell some of the water to the Nez Perce for flow augmentation. He said some farmers may lose their grazing leases because they are sold to the tribe. Mr. Garner was concerned about the economic impact to the counties surrounding Fort Hall. He said the economic effect would trickle down from agriculture to industry.
- CON** Steven Babcock, Moore, small feed lot, southeastern Idaho, testified against the settlement agreement saying the ESA and CWA won't go away, the problem would still be there if the legislation was passed, and there would be continual lawsuits. Mr. Babcock said nothing had been accomplished except "giving some Indians some money."
- CON** Pauline K. Malone, Lewis County Treasurer and Ex-Officio Tax Collector, testified in opposition to the legislation because of the possible negative fiscal impact to Lewis County. Ms. Malone said if the tribe used the money coming from the SRBA to buy property in Lewis County and then refused to pay property taxes, it would have a huge fiscal impact on Lewis County. She said as of February 14, 2005, the Tribe owed Lewis County a total of \$71,733.21; a huge burden for a small county without a lot of industry. Ms. Malone submitted written testimony.
- CON** Carroll Keith, Lewis County Commissioner, testified against the legislation saying all Lewis County Commissioners were in opposition for several reasons: 1) litigation would not stop; 2) the agreement was devised in secret; and 3) it would have a negative impact on the people of Lewis County. Mr. Keith submitted written testimony.
- CON** David R. Callister, President, Lost Rivers Farm Bureau, dairyman, Howe, testified against the legislation saying he was afraid of the precedent the

three bills set. He said property owners were pitted against one another, and there was no surety as to snow pack. Mr. Callister said he had initially supported the agreement, but the more he studied it, the more it scared him.

- CON** Carol J. Asher, Kamiah, testified against the legislation citing scripture, “The Earth is the Lord’s and the fullness thereof.” She asked that people resolve to strive to live truly equal before one Creator. Her written testimony is attached.
- CON** Jeann Mider, Kamiah, testified against the legislation citing a list of many concerns. Her written testimony is attached.
- CON** Pat Burnam, on record against the legislation. Ms. Burnam left written testimony.
- CON** Jane Lesko, on record against the legislation. Ms. Lesko left written testimony.
- CON** Tim Lowrey, southwest Owyhee County, testified in opposition to the legislation. Mr. Lowrey said his concerns were two-fold: he had concern as to how the state would protect, or not protect, state-defined private property rights; and it was wrong to satisfy the concerns of one party by sacrificing the other. Mr. Lowrey submitted written testimony.
- CON** Dan Proskine, Kamiah, presented an imaginative, fictive news article suggesting that to cede water rights to the Nez Perce Tribe might set precedent for ceding water rights to other very early inhabitants of the area: the French and Russians among them. Mr. Proskine submitted written testimony.
- CON** Ralph Mellin, civil engineer, Boise, testified against the legislation saying the three bills would have a tremendous long-lasting impact upon the future economic growth or lack of economic growth in Idaho. He said water in surface and groundwater reservoirs were, in essence, what had allowed the southern part of the state to prosper to the degree that it had. Mr. Mellin discussed five issues related to future water use, concluding that biggest reason not to approve the settlement agreement, as submitted, was that the primary beneficiaries would be the local power company. He said benefits would be tremendously offset by a much greater loss to a much greater number in the state because of the ripple effects upon both the supporting businesses and use businesses, and the ripple/multiplier effect on those groups. His written testimony is attached.
- CON** Donna Lake, Midvale, testified against the legislation because all agreements and understandings under CWA and ESA had not been agreed to. Ms. Lake said the agreement would allow more stringent rules and regulations; didn’t protect water rights; and was not a compromise—but a “total surrender on the installment plan.”
- CON** Brian Stillman, Nampa, testified against the settlement agreement saying Idaho needed to unite and use its resources, both financial and legislative, to fight the real threats addressed in the SRBA agreement.

He said those threats were environmental lawsuits empowered by the federal Endangered Species Act. Mr. Stillman submitted written testimony.

CON Carole Galloway, Clearwater County, testified against the legislation saying it made many empty promises, and was very troubling. She said many speakers at the hearings refused to answer questions, and danced around them. Ms. Galloway said the hearings should be the beginning of discussions, not the end of them.

CON Irene Buck, originally from Germany, testified against the legislation saying legislative rights don't come from a government, but from the Heavenly Father. Ms. Buck recalled what happened in Germany.

CON Robert Buck, testified against the legislation saying the issues are federal, not state. He said the state didn't have a problem for a hundred years; why now. Mr. Buck said the issues were bigger than water.

Announcements Chairman Stevenson said the Committee would meet Friday, February 25, 2005. All three bills would be presented by Representative Raybould, and a vote on each would be taken at that time.

Representative Eskridge said he had asked yesterday if the settlement agreement would leave other waters in Idaho exposed to additional pressure. He presented a letter from Governor Dirk Kempthorne responding to his inquiry. The Governor's letter is entered into the record (Exhibit 3).

Chairman Stevenson thanked Boise State University, the security staff, and the technicians who made it possible to web-stream the hearings. He said it was appreciated.

ADJOURN: The meeting adjourned at 8:40 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

ALPHABETICAL APPENDIX OF WRITTEN TESTIMONY
SUBMITTED FOR PUBLIC HEARINGS ON H152, H153, AND H154

LIST OF INDIVIDUALS PROVIDING WRITTEN TESTIMONY:

Alberdi	Vince	Manager, Twin Falls Canal Company, Twin Falls
Asher	Carol	Kamiah
Atchley	Lon	Ashton
Atkinson	Dale	Meridian
Barrie	Rex R.	General Manager, South Board of Control, Homedale
Batt	Roger	Idaho Eastern Oregon Seed Association, Idaho Mint Growers Association, Klamath Basin
Beck	Doug	Harrison
Beck	Georgia	Harrison
Beck	Leonard M.	Burley
Bennett	Ken Linge	Tensed
Bissell	Angelo B.	Harrison
Bissell	Joyce	Harrison
Blick	Phil	Castleford
Bogert, Esq	Michael	Governor's Representative, Office of the Regional Solicitor, Pacific Northwest Region, Portland, OR
Bowers	Judith E.	St. Maries
Brandt, Senator	Skip	Idaho Senate District 8, Kooskia
Bretbrunner	April	St. Maries
Brooks	Russell C.	Managing Attorney, Pacific Legal Foundation, Bellevue, WA; Executive Director, Foundation for Constitutional Law
Burnam	Pat	Eagle Forum, Boise
Callihan	Bob	Latah County Farm Bureau, Potlatch
Carney	Christine M.	Clarkia
Carver	Mary M.	St. Maries
Carver	Thomas G.	St. Maries
Chemelik	Jim	Cottonwood
Christensen	Robin	Clearwater County Clerk, Orofino
Clay	H.L. (Roy)	City of Orofino, Orofino

Cobb	Richard	St. Maries
Cobb	Teresa	St. Maries
Corrao	Vincent P.	President, Northwest Management, Inc., Moscow
Covi	Donna R.	Tensed
Covi	Richard R.	Tensed
Cuddy	Charles D.	Orofino Chamber of Commerce, Orofino
Daman	Keith	Farmer, DeSmet
Deeg	Tim	President, Idaho Ground Water Appropriators, Inc.; American Falls
DeVeny	Betty	Riggins
Divine	Janelle	Harrison
Divine	Larry	Harrison
Dotson	Marty	Kamiah
Duffin	Mark	Executive Director, Idaho Sugarbeet Growers Association; Boise
Dunn	Connie	Harrison
Ecklor	Molly	St. Maries
Edwards	Mardell J.	President, Idaho County Property Owners Association, Inc., Grangeville
Eggers	Drew	Farmer, Meridian
Elf	Jim H	(Name and spelling uncertain)
Ellsworth	Pete	Culdesac
Farmer	Renee	Rancher, White Bird
Farmer	Roy	Rancher, White Bird
Fisher	Janet M.	Cataldo
Fisher	Mardy	Cataldo
Frank	Keith R.	Pocatello
Frelts	Patricia W.	Boise
Frutchey	Frank	Cataldo
Frutchey	Rose	Cataldo
Fuller	Dennis	Orofino
Gentry	Dean C.	St. Maries
Hale	Don	Committee of Nine, Advisory Committee of Water District 01, Member of negotiating Coalition

Hamrick	Dallana Joy	Harrison
Hamrick	Ted	Harrison
Hancock	Holly	President, Jefferson County Farm Bureau; Rigby
Hardy	Rogers & Toni	Harrison
Hirai	Jack	Wendell
Hoaglin	Leslie	St. Maries
Holmberg	Pat	Chairman, Idaho County Commissioners Board; Independent Miners Association, Grangeville
Honcik	John	Buhl
Igo	Julia Clegg	Kamiah
Ingalls	Gerald A.	Kootenai County
Ingalls	Laurie R.	Kootenai County
Iverson	Jon	Idaho Eastern Oregon Seed Association, Treasure Valley
Jackson	Mark	Kamiah
Johnson	Daniel M.	Attorney
Johnson	Jeannie	Clearwater County Treasurer, Orofino
Johnson	Neal A.	Orofino Chamber of Commerce, Orofino
Jones	Monica	President, Orofino Chamber of Commerce
Jordan	Joseph L.	Idaho Water Resource Board, Boise
Keith	Carroll	Lewis County Commissioner
Keller	Rick	Pacific Legal Foundation
Keppen. P.E.	Dan	Past Executive Director, Klamath Water Users Association, Klamath Falls, OR
Kewish	Elaine	St. Maries
Kewish	Jim	St. Maries
Keys III	John W.	Commissioner, U.S. Bureau of Reclamation, Washington D.C.
Laam	Rick E.	City Council, City of Orofino
Lamb	Joshua I.	Harrison
Lamb	S. K.	Harrison
Lamb	Stacie	Harrison
Lamb	Tom	Harrison
Landt	Nancy	Benewah County, St. Maries

Lowry	Tim	Owyhee County
Malone	Pauline	Lewis County Treasurer & Ex-Officio Tax Collector
MarylIn	L. Sean	Farmer, N. F. Canal System
Mattson	Alice	Idaho County Commissioner, Kooskia
Mellin	Ralph	Boise
Mider	Bill	Kamiah
Mider	Jeann	Kamiah
Miles	Rebecca	Nez Perce Tribal Executive Committee
Mills	Pamela	St. Maries
Miner	Robert C.	Cataldo
Mitchell	Sandra F.	Idaho Recreational Council, Boise
Morgan	Gary	Kooskia
Morris	Elizabeth K.	Kooskia
Morrow	Angie Lee	Harrison
Morrow, Jr.	William	Harrison
Murillo	Nancy Eschief	Chairperson, Ft. Hall Business Council, Ft. Hall
Mussman	Berwyn	Eden
Peavey	John	Former State Senator, Carey
Pickard	John C.	Cataldo
Pollot	Mark L.	Water Rights Coalition, Boise
Proskine	Dan	Kamiah
Reynolds	Jerry	Emida
Reynolds	Rita	Emida
Richardson	Kurt	Santa
Richman	Diana S.	Sugar City
Riley	James S.	Intermountain Forest Association, Coeur d'Alene
Robinson	Ernie	President, Idaho Cattle Assoc., Boise
Rockwood	Dale	Idaho Falls
Rush	Dick	Idaho Association of Commerce and Industry
Schell	Jean & Pete	New Plymouth
Schurbon	John	Mayor, City of Kooskia; Executive Director, North Central Idaho Jurisdictional Alliance

Secord	Pam	North Idaho Citizens Alliance, Santa
Sedivy	Bill	Executive Director, Idaho Rivers United, Boise
Shewmaker	Dan	Kimberly
Shurtey	Don	Kootenai County
Shurtleff	Ron	Fruit Grower, Payette and Washington Counties, Payette; Executive Director, Payette River Water Users Association, Inc.
Steadman	Lynn	Vice President, Idaho Farm Bureau Federation, Boise
Stillman	Bill	North Highway District, Lewis County, Craigmont
Stillman	Bill and Carol	Craigmont
Stillman	Brian	Nampa
Stillman	Carl W.	Lewiston
Stillman	David	Nampa
Stillman	Eleene	Lewiston
Tews	Gerald	Filer
Thompson	Kimberly	Nezperce
Thompson	Martin A. & Barbara	Nezperce
Thompson	Martin N.	Idaho Lewis County Cattle Association; Farmer, Nezperce
Waitley	Rick	Executive Director, Food Producers of Idaho, Inc., Meridian
Walton	Tracy	Gem County Farm Bureau Federation
Ward	Welton	Malad
Webster	Mike	Idaho Cattle Association, Boise; farmer, Roberts
Whelan	Patricia L.	St. Maries
Wilson	Howard	Harrison
Young	Carol J.	Harrison

RESOLUTIONS, and MISCELLANEOUS DOCUMENTATION:

BLM Completes role in Nez Perce Water Rights Settlement Agreement	
Grazing Leases within Nez Perce Land Selection Area	

Greater Idaho Falls Chamber of Commerce	Draft 2005 Legislative Positions
Nez Perce Land Transfer by County	
NPR–Improvements	
Resolution No. 04-10-33–Clearwater County	Stan Leach, Chairman; J.P. “Pete” Curfman, Commissioner; Don Ebert, Commissioner
Resolution No. 05-01–City of Riggins	Robert Zimmerman, Mayor; June Whitten, Clerk-Treasurer
Resolution No. 05-027–Canyon County	Matt Beebe, Chairman; Robert Vasquez, Commissioner; David J. Ferdinand II, Commissioner; G. Noel Hales, Deputy Clerk
Resolution No. 19–Idaho County	Pat Holmberg, Chairman; George Enneking, Commissioner; Alice Mattson
Resolution No. 91–City of Kooskia	Mayor, City Clerk
Resolution No. 183–City of Grangeville	Terry Vanderwall, Mayor
Resolution No. 346–City of Orofino	Joe Pippenger, Mayor; Janet Montambo, City Clerk
Resolution No. 10404–City of Stites	Mayor, City Clerk
Resolution No. 2004-1--City of Ferdinand	Mayor, City Clerk
Resolution No. 2004-01–City of Peck	Mayor, City Clerk
Resolution No. 2004-01–Idaho Lewis County Cattle Association	
Resolution No. 2004-2--City of Nezperce	Steve A. Bateman, Mayor; Daniel M. Johnson, City Attorney
Resolution No. 2004-6--City of Kamiah	Robert Olive, Mayor; Cathy LaBatt, City Clerk/Treasurer
Resolution No. 20-04–Valley County	Terry F. Gestrin, Chairman; F. Phillip David, Commissioner; Thomas W. Kerr, Commissioner; Leland G. Heinrich, Clerk
Resolution No. 2004-09–Bingham County	Wayne T. Brower, Chairman; Cleone Jolley, Commissioner; DeVaughn Shipley, Commissioner; Sara J. Staub, County Clerk
Resolution No. 2004-11–Lewis County	Joe E. Leitch, Chairman; Charles E. Doty, Member; LeAnn J. Trautman, Member
Resolution No. 2004-96–Bannock County	Jim Guthrie, Chairman; Steve Hadley, Member; Craig Cooper, Member
Resolution–Idaho County Property Owners Association, Inc.	Mardell J. Edwards, President; Betty DeVeny, Secretary
Resolution–North Central Idaho Jurisdictional Alliance	John Schurbon, Chairman; Daniel M. Johnson, Executive Director

Resolution–Term Sheet	Committee of Nine
Rights of Way on Nez Perce Selection Lands	
Total Revenue for Grazing Fees paid to BLM for FY 2004	

MINUTES - REVISED

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 25, 2005, 2005

TIME: 11:45

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** None.

GUESTS: Clive Strong, Clive Strong, Division Chief, Natural Resources Division
See sign-in sheet (Exhibit 1).

EXHIBITS: See Exhibit appendix for documents submitted for the record, but not mentioned in the minutes.

A quorum being present, the meeting was called to order at 11:35 a.m. Chairman Stevenson thanked the Committee for the tremendous job they have done during the past two days of hearings. The secretary was asked to take a silent role call.

Chairman Stevenson asked for unanimous consent for H152, H153 and H154. He said they would be introduced together, but voted on individually.

H152, H153, H154: Representative Raybould introduced H152, H153 and H154, going through each bill briefly, section by section.

H152: Clive Strong, Division Chief, Attorney General's Office, Natural Resources Division presented H152, the bill that approves, ratifies and confirms the Snake River Water Rights Agreement of 2004 and authorizes and directs the Governor and executive branch agencies with obligations under the agreement to execute and perform all actions consistent with this act necessary to implement the agreement.

Mr. Strong entered for the record a map, Springs and Fountains Claims, Exhibit 2); and a letter from Nancy E. Murillo, Chairperson of the Shoshone-Bannock Tribes dated February 24, 2005 (Exhibit 3). Mr. Strong rebutted each of the issues raised in the letter.

Discussion/questions: Representative Roberts asked Mr. Strong if Idaho would be at risk for takings issues and, if not, if there would be takings claims against the U.S. government. He said Idaho would not be at risk. With regard to the federal government, he said there is now litigation between parties in Nevada over grazing rights themselves as providing a basis for takings.

Representative Jaquet said one issue she found compelling is that the

Nez Perce treaty was made at the same time the Bureau of Reclamation was making promises to homesteaders: Water was not an issue then. Referring to testimony from previous hearings, she asked Mr. Strong what alternative the Stillmans had now. He said it was a troubling issue, but efforts are being made to address those concerns.

MOTION H152:

Representative Jones made a motion to send H152 to the floor with a DO PASS RECOMMENDATION, saying he appreciated the discussion and questions raised over the past days of hearings. Now a decision was needed. He said, in his opinion, it was correct to send the package—one bill at a time—to the floor with a do pass recommendation.

Discussion/questions: Representative Barrett said she opposed the motion, and disagreed that issues had been well-debated in the public arena.

Representative Andrus said he, personally, had an adjudicated water right in the Snake River Basin. He said the inevitability of the decision has weighted heavily on him. He commended the effort of the Committee of 9, and said he had faith in Judge Wood's judgement. Representative Andrus said Judge Wood's decision did leave Idaho sovereign over Idaho's water, but he disagreed with the transfer of 11,000 BLM acres to the Nez Perce tribe, said other private property rights were being compromised, and had reservations that a 30-year biological opinion would stand. Representative Andrus said he could not in good conscience accept the agreement, and would vote no. (Exhibit 4).

Representative Roberts said he believed this legislative package to be one of the most historical in Idaho but, ironically, not everyone comes out on the winning side. He noted that people in industries and associations were for the legislation; however individual areas of the state were opposed—and that included many industries. Representative Roberts made an analogy to NAFTA, saying in that agreement, the U.S. as a whole benefitted, but Idaho suffered. He said by means of this legislation the state was passing on the same standard: part of the state would benefit at a cost to another part. Representative Roberts said much had been said about the voluntary nature of programs included in the agreement, but gave instances of other voluntary programs that have since become mandatory. He said the counties he represented were not compensated to fund services where the tribe did not pay taxes. The agreement provides the tribe additional money to purchase land, which would then be off counties tax rolls. He said Lewis and Clearwater counties are now near the statutory limits. Representative Roberts said he believed there was a takings issue. He said there were positive things about the agreement, primarily that it removed uncertainty in some areas. But said the rights of one should not be given away for the benefit of another. He will vote no.

Representative Barrett said she had spoken in opposition to the bill but wants to state other objections, numbered seven: 1) The argument in favor of the legislation was based on fear and false hope; 2) Judge Wood's court decision is well-reasoned and supported by existing law—accepting the agreement would invite new demands; 3) false hope suggests that management practices in the Salmon/Clearwater basin will

avoid endangered species issues; 4) the settlement is a product of group think and, if ratified, will put undue burdens on others; 5) the most striking feature of the agreement is the degree to which it favors the tribe: Representative Barrett does not believe the court would give more than the settlement; 6) the term sheet language is so riddled with ambiguities, and legal and constitutional infirmities that it will breed more trouble than in resolves; 7) the state would not be designating instream flows without the settlement. Representative Barrett said the agreement “stood Idaho water law on its head.”

Representative Wood said, in her heart, she knew and believed this agreement was wrong. She has been pressed to support the agreement to protect her water users from incidental take jeopardy, and yet she believes it causes jeopardy to other Idaho citizens. Representative Wood said she was “furiously angry with my federal government and their determination to destroy the natural resource base of our economy and ... do not think they will keep their promise in this agreement.” She said the federal government is being sued by the Nez Perce Tribe because it did not keep its promise. She said she would vote aye, but with “no joy or satisfaction...” and gave written testimony for the record (Exhibit 5).

Representative Jaquet spoke in support of the legislation, saying the two preceding days of hearings were helpful. She said the best public policy has everyone on board, which hasn’t happened with this legislation. Representative Jaquet said the people in her district are overwhelmingly in favor of going forward with the agreement.

Representative Roberts called for a roll call vote.

VOTE H152:

The motion to send H152 to the floor with a DO PASS RECOMMENDATION passed by roll call vote. Voting AYE—Representatives Stevenson, Wood, Field, Jones, Bell, Barraclough, Denney, Moyle, Eskridge, Raybould, Bedke, Sayler, Jaquet and Mitchell. Voting NAY—Representatives Barrett, Roberts, Andrus and Shepherd. Motion passed 14:4.

H153:

Representative Dell Raybould presented H153, the legislation implementing the Snake River Flow Component of the Snake River Water Rights Agreement of 2004. It extends the interim authority for rental of water to augment flows for anadromous fish listed under the endangered species act (ESA) for the term of the Agreement. If the agreement is cancelled for any reason, then this authorization becomes null and void. All water rentals must be from willing sellers and must be secured through the state water supply bank and local rental pools. The total amount of water provided from all sources in the Snake River Basin, including storage and natural flow after rights, may not exceed 487,000 acre-feet in any single year.

Representative Raybould said the negotiating committee did the best job they could. He summarized what the state of Idaho did receive. Representative Raybould showed a schedule, part of the agreement, illustrating when the federal government will not demand water from the upper Snake River reservoirs, and showing how much water could be taken (Exhibit 6). He said the agreement did uphold Judge Wood’s court

decision, and discussed how lawsuits now in progress might result in court decisions that would adversely impact Idaho without the agreement. Specifically, there is a lawsuit in an Oregon federal court seeking to combine the Columbia biological opinion with the upper Snake River biological opinion: The Columbia opinion has a jeopardy opinion, while the upper Snake has a no-jeopardy opinion. Without the agreement, Idaho could get a jeopardy opinion where there is none now. Representative Raybould said Judge Redden could render a decision that would take all of the water from the federal reserve system in the upper valley. He said the biological opinion required flow augmentation, even though the state doesn't believe it is effective, but does grant the right to stop flow augmentation water in the event a new biological opinion finds it unnecessary.

Discussion/questions: Representative Barraclough said eleven or twelve years ago the Committee set the parameter by agreeing to release up to 427,000 ac-ft, an agreement renewed one year at a time. He said that was done so that the Bureau of Reclamation wouldn't take 1.5 to 2 million ac-ft. Representative Barraclough said the water does little to no good to help fish flush. Nevertheless, this agreement "sweetens the pot" with another 60,000 ac-ft. He said the Bureau of Reclamation published a report in 1962, with technical work cited from 1959 by the U.S. Geological Survey, about recharging the Snake River Plain Aquifer. One of the best chances there is to resolve the southern Idaho dilemma is recharge to reduce the effects of drought. Representative Barraclough said it "galls me that the same bureau that won't read their own reports is going to take this water. It galls me to see a federal agency with this much incompetence."

MOTION H153:

Representative Jones made a motion to send H153 to the floor with a DO PASS RECOMMENDATION, saying he didn't like it better than anybody else, but didn't see any other options. Representative Jones reviewed advantages and disadvantages of H153. He said H153 did provide some protection and, as part of the agreement, would have to pass.

Discussion/questions: Representative Bedke said he wasn't in the Legislature when the bill was passed allowing 427,000 ac-ft to be released to augment salmon flows. He said that amount was delivered in nine of the past twelve years. He said the arrangement had served Idaho well, though the water could be used elsewhere to better advantage; H153 allows the arrangement to continue for the next thirty years.

Representative Roberts asked Clive Strong what constituted causing jeopardy to the Clean Water Act (CWA), and how that would play out. Mr. Strong said since no one wants to create new problems, releases need to be done in a way that don't create new violations of the CWA. He said in ESA terms, jeopardy refers to a further decline of a species; but litigation is on-going as to what jeopardy actually means.

Representative Roberts asked Mr. Strong if the CWA and ESA were "lined up on the same pathway headed for each other," at what point a trigger would be pulled, and who has the authority to pull it. Mr. Strong said the agreement was an attempt to avoid the collision of CWA and ESA.

Representative Eskridge said his comment applied to all three bills; that

his concerns were the same as many others: that the federal government, in its treaties with tribes, had created uncertainty and ambiguity. He said most state cases led to lawsuits favoring tribal requests, resulting in that uncertainty. However, flow augmentation created specific concerns in his district, capping Snake River waters. He asked if capping would increase pressure on other waters, especially in north Idaho, requiring additional water to service those claims. He referred to a letter dated February 22 from the Governor which he said alleviated concerns (Exhibit 7). Representative Eskridge reviewed the letter. He said, with the Governor's assurance, he would vote in favor of the agreement.

Representative Roberts called for a roll call vote.

VOTE H153:

The motion to send H153 to the floor with a DO PASS RECOMMENDATION passed by roll call vote. Voting AYE—Representatives Stevenson, Wood, Field, Jones, Bell, Barraclough, Denney, Moyle, Eskridge, Raybould, Bedke, Andrus, Sayler, Jaquet and Mitchell. Voting NAY—Representatives Barrett, Roberts, and Shepherd. Motion passed 15:3.

H154

Representative Dell Raybould presented H154, establishing the Snake River Water Rights Agreement minimum stream flow water rights adopted by the Idaho Water Resources Board. He said every water right was superior to the in-stream flows, and subordinate to all new domestic, commercial, municipal and industrial (DCMI) claims. He said the key was that instream flows will be held in trust for the people of the state of Idaho, and will be controlled by the Idaho Department of Water Resources (IDWR).

Discussion/questions:

Representative Wood asked why it was required to provide notice and consult with the Nez Perce Tribe before changing any minimum stream flow water rights; and, if the tribe doesn't agree, what the consequence would be. Representative Raybould said minimum stream flows are not for the benefit of the tribe; they involve off-reservation flows; and are maintained by the state. He yielded to Clive Strong, who said the consultation provision is in the agreement because of past history. The tribe is relinquishing their claims, and nothing in the agreement precludes the state from changing minimum stream flows after notice and consultation with the tribe.

Representative Roberts called for a roll call vote.

**MOTION/VOTE
H154:**

Representative Jones made a motion to send H154 to the floor with a DO PASS RECOMMENDATION, saying the Committee had debated minimum stream flows over the years. He said H154 was the least restrictive minimum stream bill he could recall coming in front of the Committee. Representative Jones said most of the streams affected had little development, and were likely to have little; that very little damage would result; and that H154 should be sent on if that is what was required to finish the Snake River Water Agreement of 2004.

Discussion/Questions: None.

The motion to send H154 to the floor with a DO PASS RECOMMENDATION passed by roll call vote. Voting AYE—Representatives Stevenson, Wood, Field, Jones, Bell, Barraclough, Denney, Moyle, Eskridge, Raybould, Bedke, Andrus, Saylor, Jaquet and Mitchell. Voting NAY—Representatives Barrett, Roberts, and Shepherd. Motion passed 15:3.

ANNOUNCEMENTS: Chairman Stevenson thanked the Committee, apologizing to anyone who may have been offended in any manner throughout the Snake River Water Rights Agreement of 2004 hearing process. He said he appreciated the diligent work of the Committee and everyone involved.

Representative Jones commended the Committee for their professional conduct, and the Chairman for his direction throughout the proceedings. He said the highly emotional issues had been handled fairly, and everyone deserved the utmost respect for the way they had participated.

Representative Mitchell thanked the Chairman for the manner in which he conducted the hearings and meetings, saying they were fair and extraordinarily professional.

Representative Raybould thanked the secretary, assistant secretary, pages, security and all who worked to make the hearings successful. He thanked Clive Strong, Winston Wiggins, Director, Department of Lands, and others who had made themselves available to answer questions.

Announcements: Chairman Stevenson announced that H134 would be back in Committee Tuesday, March 1, 2005.

ADJOURN: The meeting adjourned at 1:03 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

EXHIBIT APPENDIX

House Resources and Conservation Committee February 25, 2005

The following documents were submitted for the record:

1. Davis, F. Phillip. Chairman of the Board, Valley County Board of Commissioners
2. Dixon, Dave. President, Wilder Community Farm Labor Sponsoring Committee
3. Emry, Stuart. President, Idaho Alfalfa and Clover Seed Growers Association
4. Meyer, Glenn. President, Idaho Hay and Forage Association, Inc.
5. Munkittrick, Mark. Consultant Forester and forest land owner
6. Pettingil, Jeffrey. President, Idaho Weed Control Association
7. Purdy, Viki. Member, Ada County Farm Bureau Board of Directors, IFBF State Water Committee, Idaho Water Users legislative committee, New Dry Creek Ditch Co.
8. Sartell, Dave. President, Idaho Cooperative Council, Inc.
9. Waitely, Rick. Executive Director, Food Producers of Idaho, Inc.
AND Iverson, Ty. Lobbyist

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 1, 2005

TIME: Upon Adjournment

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representative Field (23)

GUESTS: See sign-in sheet (Exhibit 1).

A quorum being present, Chairman Stevenson called the meeting to order at 2:16 p.m. He asked the secretary to take a silent roll call.

Representative Saylor made a motion to approve the minutes of February 17, 2005 and February 21, 2005 as written. The motion passed by voice vote.

Chairman Stevenson told the Committee the Idaho Department of Fish and Game (IDFG) has asked that action be delayed on H134. The bill will be held by the Chairman for now. Another bill is being prepared that may replace H134.

Chairman Stevenson told the Committee that action will be taken on IDFG Administrative Rules Docket 13-0119-0401 in Committee Thursday, March 3, 2005. The Wood Subcommittee will also report to Committee that day with regard to Dockets 13-0106-0401.100.d and 13-0108-0401.010k.

SJM102#: Representative JoAn E. Wood presented SJM102, a memorial to petition the U.S. Congress to authorize citizens to protect the pet and sporting dogs in the same manner provided for dogs that guard or herd livestock; to support continued funding through federal grants of Idaho's Wolf Depredation Compensation Plan; and to broaden compensation criteria to provide compensation for wolf related losses of all dogs.

Discussion/questions: None.

MOTION/VOTE: Representative Barrett made a motion to send SJM102 to the floor with a DO PASS RECOMMENDATION.

The motion passed by voice vote. Representative Wood will carry SJM102 on the floor.

SJM103#: Senator John Goedde, presented SJM103, a memorial urging the President of the United States and the U.S. Congress to pass legislation that will establish an equitable reimbursement formula based on some

measurable, standardized method. Senator Goedde said the Bureau of Land Management (BLM) had acreage in every county in Idaho. Only 24 of the 44 Idaho counties receive reimbursement from BLM for law enforcement services. There is no standardized formula on how that money is allocated, nor have rates increased to keep up with costs. The burden for law enforcement services is placed on local property tax payers. Senator Goedde said SJM103 asks for equity and better funding of law enforcement services on BLM ground.

Discussion/questions: None.

MOTION/VOTE: Representative Wood made a motion to send SJM103 to the floor with a DO PASS RECOMMENDATION.

Discussion/questions: Senator Goedde was asked to explain the difference between law enforcement funding and PILT payments. He said the BLM fee is paid to counties for law enforcement as a separate allocation.

Representative Barrett spoke in support of SJM103, saying 96% of the total acreage in one county in her district was federally owned land.

Senator Goedde was asked to explain why BLM law enforcement fees are so disparate. He said he didn't know, but the problem exists throughout the western states.

Representative Wood spoke in favor of the bill, saying the point is to be fair. She said several counties have large BLM holdings—for example, Owyhee county.

The motion to send SJM103 to the floor with a DO PASS RECOMMENDATION passed by voice vote. Representative Wood will carry SJM103 on the floor.

SJM104#: Senator John Goedde, presented SJM104, a memorial urging the President of the United States and the U.S. Congress to pass legislation that will establish an equitable reimbursement formula based on some measurable, standardized method for Forest Service land in Idaho. The Forest Service has control of more than 38% of the total acreage in the state. There are no property taxes paid on these lands, and the burden of law enforcement services is placed on local property tax payers. Currently, 36 of Idaho's 44 counties have some Forest Service land within their jurisdictions. These counties receive reimbursement from the Forest Service for law enforcement service at a rate that is a small fraction of the actual cost, and not based on a standardized allocation formula.

Discussion/questions: None.

MOTION/VOTE: Representative Wood made a motion to send SJM104 to the floor with a DO PASS RECOMMENDATION.

The motion passed by voice vote. Representative Saylor will carry SJM104 to the floor.

Discussion/questions: Senator Goedde was asked if there had been any discussion between the Forest Service and the BLM to exchange parcels of land, where the exchange would result in better management. He said he had not talked with either the Forest Service or BLM. His contact had been the county sheriffs.

H134#: The hearing on H134 was delayed at the request of the sponsor.

ADJOURN: The meeting was adjourned at 2:31 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES
WOOD SUBCOMMITTEE
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 2, 2005

TIME: 4:00 p.m.

PLACE: Room 412

MEMBERS: Chairman Wood, Barrett, Moyle, Eskridge, Mitchell

**ABSENT/
EXCUSED:** None

GUESTS: Jim Caswell Administrator, Office of Species Conservation (OSC); Dennis Stevenson, Administrative Rules Coordinator; see sign-in sheet.

Chairman Wood called the meeting to order at 4:29 p.m. A silent role was taken.

Chairman Wood said the meeting was held to discuss the Idaho Department of Fish and Game (IDFG) Administrative Rules, Docket 13-0106-0401.100.d, the classification of the gray wolf; and Docket 13-0108-0401.010k, the definition of the gray wolf.

Chairman Wood said the Subcommittee needed to approve these rules or reject them by concurrent resolution with the Senate.

Representative Moyle said it was his understanding that H132 and H133 addressed the problems raised in these two docket citations. He asked if a conflict existed between statute and rule, did statute prevail. Dennis Stevenson said yes.

Chairman Wood asked if statute and rule could run side-by-side when they conflicted. Mr. Stevenson said yes, but IDFG would enforce the statute, not the rule. He said in this situation, regardless what happens to rule, IDFG will come back to fix the rule to avoid conflict if the statute passes. If the rule is in place, it would leave some way to deal with situations that may arise should the statute not pass. He reminded the Committee that the rule has been in effect since last March.

Chairman Wood said the H132 and H133 only allowed IDFG to take action on wolves; an ordinary person could not shoot or trap a wolf. Representative Moyle reminded the Subcommittee that until the wolf was delisted that would be the case. Control of the wolf is under federal jurisdiction. He said Idaho's 10J ruling allows some recourse. Representative Moyle said H132 and H133 will give more control to Idaho when the wolf is delisted, whether it is called a big game animal or a predator.

Representative Moyle suggested that the Subcommittee was being pushed to act before H132 and H133 were passed. He suggested a motion could be made to send the relevant docket citations to the full Committee without recommendation, with the caveat that they not be heard until H132 and H133 have passed the Senate. He said the bills are on the Senate docket next week.

The Subcommittee discussed the possible motion, given that the bills had not yet passed through the Senate and the motion would require the cooperation of the Committee.

Chairman Wood asked Mr. Stevenson to clarify the need for the Subcommittee to act on the docket citations now. Mr. Stevenson said there really is no deadline as long as the Legislature is in session, but Carl Bianchi would like to get all the concurrent resolutions and omnibus resolutions drafted as soon as possible.

Representative Moyle said if the rule was passed, even if the Governor vetoed the bills, a concurrent resolution could still be sent to kill it. He asked for confirmation from Mr. Stevenson. Mr. Stevenson said that was correct. A rule can be reviewed at any time as long as the Legislature is in session.

Representative Moyle said if the bills were passed by the Senate and vetoed by the Governor, there would be such an uproar that the wolf could be called a predator, or anything the Committee wanted.

Representative Barrett directed a discussion pertaining to the Governor's right to delay signature. It was determined that a bill coming to the Governor during session must be signed within five days.

Representative Mitchell asked the professional people in the room if anything pertinent had been overlooked. No one had anything to add to the discussion except Jim Caswell. Mr. Caswell said even if H132 and H133 pass the Senate, the problem won't be solved because they are predicated on the wolf being classified as a big game animal. He said the wolf should not be classified in statute because it is more appropriate to do so in rules.

The Subcommittee discussed various possibilities should the two bills pass or not pass the Senate; and be signed or not signed by the Governor.

MOTION/VOTE
Docket
13-0106-0401.100.d

Representative Moyle made a motion to send docket 13-0106-0401.100.d, regarding the classification of the gray wolf, to the full Committee without recommendation, and ask that the docket be held in Committee until after H132 and H133 are signed by the Governor.

The motion passed by voice vote. Representatives Barrett and Wood voting NAY for the record.

MOTION/VOTE
Docket
13-0108-0401.010k

Representative Moyle made a motion to send docket 13-0108-0401.010k, regarding the definition of the gray wolf, to the full Committee without recommendation, and ask that the docket be held in Committee until after H132 and H133 are signed by the Governor.

The motion passed by voice vote. Representatives Barrett and Wood voting NAY for the record.

Docket
13-0119-0401

This docket has already been sent to the full Committee with recommendation to approve. Chairman Wood told the Subcommittee that she has information about social security numbers being used in different capacities for identification purposes, and will share that information with the full Committee.

Representative Moyle said Idaho can perhaps do more than is being done to protect citizens from identification theft.

ADJOURN:

The meeting adjourned at 4:40 p.m.

JoAn E. Wood
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 3, 2005

TIME: 2:30 p.m. or upon adjournment

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representatives Jones and Roberts.

GUESTS: Steve Barton, Intergovernmental Policy Coordinator, Idaho Department of Fish and Game (IDFG); Dennis Stevenson, Administrative Rules Coordinator; see sign-in sheet.

Chairman Stevenson called the meeting to order at 3:18 p.m. The secretary took a silent role call.

Representative Wood asked the Wood Subcommittee to read the Subcommittee minutes of March 2, 2005.

Representative Moyle made a motion to accept the Subcommittee minutes as written. The motion passed by voice vote.

WOOD SUBCOMMITTEE REPORT: Representative JoAn Wood presented the Subcommittee report on the IDFG Administrative Rules. The Subcommittee accepts the IDFG Administrative Rules, except for IDFG Docket 13-0106-0401.100.d (p.14) and Docket 13-0108-0401.010k (p.34). The Subcommittee asks that the Dockets with those two citations be held in Committee until the Governor signs H132 and H133. These are the citations dealing with the classification and description of the gray wolf.

Discussion/questions: The Committee discussed the Subcommittee's request. Chairman Stevenson told the Committee that Legislative Services had requested action on the Rules.

Representative Wood said she believed the Committee was free to work on rules as long as the Legislature was in session. Dennis Stevenson concurred.

Representative Moyle told the Committee that the Senate is holding the same rule docket citations for the same reason.

MOTION/VOTE: Representative Field (23) made a motion to approve the Subcommittee Report. IDFG Administrative Rules are approved, with the exception of Docket 13-0106-0401.100.d and Docket 13-0108-0401.010k. Those two docket citations will be held in Committee until H132 and H133 are signed by the Governor.

**Docket
13-0106-0401.100.d
and
Docket
13-0108-0401.010k**

**IDAHO DEPARTMENT OF
FISH AND GAME
ADMINISTRATIVE RULES
Docket 13-0119-0401:**

The motion passed by voice vote.

The full Committee commenced the hearing on IDFG Docket 13-0119-0401 that was returned to the full Committee from Subcommittee without recommendation. Steve Barton stood for questions.

Discussion/questions: Representative Wood told the Committee that she spoke with Rakesh Mohan, Office of Performance Evaluation. She asked him to search how many times social security numbers are requested, and why. Mr. Mohan told her the numbers were collected because of federal requirements, specifically for the Deadbeat Dad's legislation. Mr. Mohan also told her each state agency determines how to obscure the numbers in their records from public access.

Representative Wood told the Committee that she understood IDFG did not "sell social security numbers." She asked Steve Barton why social security numbers were taken on recreation license applications, and how they were administered. Mr. Barton said there is a state requirement to take social security numbers, following from the federal mandate; and that the social security field on the form is blanked out and is not visible.

Mr. Barton was asked who had access to social security numbers in IDFG records. He said they were given to officers in the course of investigations, and supplied to the Department of Health and Welfare for the purpose of collecting child support.

Mr. Barton was asked what the penalty was for selling or disclosing a social security number. Mr. Barton said he believed there was statute prescribing a penalty for releasing that information. It could also have the IDFG penalty of dismissal.

Mr. Barton was asked what the ramifications would be if the rule was not approved. He said the federal government ties federal money to compliance with federal legislation. In order to be in compliance with the Deadbeat Parent Law, social security numbers are required to be obtained.

Mr. Barton was asked if the federal government might withhold highway funds, for instance, if the rule was not approved. He said he didn't know. Representative Wood told the Committee that the Department of Transportation went to great lengths to protect social security numbers it keeps on record, by tying each social security number to a separate number issued for public identification: for example, the drivers license. Mr. Barton said IDFG had a similar procedure: a customer identification number is issued.

Representative Wood asked Mr. Barton if he thought the rule should be endorsed as presently constituted. He said, in order to comply with both federal and state law, a social security number is required to be given in many instances, including professional licenses, marriage licenses, and so on.

Mr. Barton was asked his opinion of the risk of losing federal funds if the rule was not approved. He said he found it difficult not to comply with state law.

MOTION/VOTE
Docket 13-0119-0401:

Representative Wood made a motion to approve IDFG Docket 13-0119-0401. The motion passed by voice vote.

Representative Saylor made a motion to approve the minutes of March 1, 2005. The motion passed by voice vote.

Announcements: Chairman Stevenson reviewed the agenda for next week.

ADJOURN:

The meeting was adjourned at 3:40 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 7, 2005

TIME: 2:30 p.m. or upon adjournment

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** None

GUESTS: Lee Haynes, Jonathan Swift Mining Co.; Jim Jaquet; Denise Mills, Assistant Director, Idaho Department of Lands (IDL); Donald L. Snyder, Ph.D., Utah State University; Clive Strong, Deputy Attorney General, Natural Resources Division; Dennis Tanikuni, Assistant Director of Public Affairs, Idaho Farm Bureau.

See sign-in sheet (Exhibit 1).

Representative Stevenson called the meeting to order at 2:40 p.m.

Representative Wood made a motion to approve the minutes of March 3, 2005 as written. The motion passed by voice vote.

Representative Saylor made a motion to approve the minutes of February 25, 2005 as written. The motion passed by voice vote.

**EASTERN SNAKE
PLAIN AQUIFER
REPORT:**

Donald L. Snyder, Ph.D.

Clive Strong introduced Donald L. Snyder, Ph.D. who made a power point presentation and submitted written testimony, Assessment of Relative Economic Consequences of Curtailment of Eastern Snake Plain Aquifer Ground Water Irrigation Rights (Exhibit 2). Dr. Snyder is Associate Dean of the College of Agriculture, a professor in the Economics Department, and Project Leader at the Agricultural Experiment Station, Utah State University.

Dr. Snyder said the ESPA report was commissioned last summer by the Natural Resources Interim Committee. The report examines various business components of the Eastern Snake Plain Aquifer (ESPA). The study began with the identification of parties directly impacted through the present conflict. Three parties are assumed to be directly impacted, including senior surface/spring irrigation water right holders involved in production agriculture, aquaculture water right holders, and junior ground water right holders involved in production agriculture. Tax recipients were considered within the analyses of these three parties. All other potentially impacted parties were considered as externalities for the analysis.

Dr. Snyder identified major study assumptions and calculations leading the estimation of impacts, and explained his model. He then presented his report, indicating analysis results for 1949 and 1961 curtailment dates.

Dr. Snyder said the bottom line was that losses to junior ground water right holders would be in excess of gains to combined surface/spring water right holders into the foreseeable future. He said he would expect a detailed benefit-cost analysis to yield similar results in the aggregate.

Discussion/questions: Chairman Stevenson asked if the operable definition of "surface and spring irrigation" identified all surface water users benefitting from the springs. Dr. Snyder said the definition included all people using surface irrigation but getting water from a spring source, even if in a river or reservoir.

Representative Bedke asked if that meant, for example, the Twin Falls Canal Co. Dr. Snyder said yes.

Representative Bedke, asked if the benefit accruing to surface and spring water irrigators in the 1961 curtailment was connected to the injury they were suffering in the present scenario. Dr. Snyder said, in a sense, as the model assumed them to be immediately restored without incurring any costs; to that extent, they are included.

Representative Barraclough asked what method was used to determine travel time to springs from when wells were shut off. Dr. Snyder said the recharge information available from Cosgrove and Associates was used; also the University of Idaho.

Representative Bedke asked if "there was another button on the model to spit out" an analysis for the optimum case. Dr. Snyder said no.

Representative Wood asked if there was a cut of the curtailment, for instance 10%, that people would agree to. Dr. Snyder said he didn't look at any percentage cuts; but with the spread of gains and losses, it was something that could be done.

Representative Raybould said it was his understanding that the analysis made an assumption for ground that would revert to dryland hay because it would be taken out of production due to loss of ground water. Dr. Snyder said an assumption was made that if ground came out of irrigated agriculture, it would go to a dryland crop; and that one-third of that ground will not support dryland alfalfa and will go to dryland grazing.

Representative Raybould asked, given the assumptions of dryland alfalfa an dryland grazing, if the analysis took into consideration that land irrigated with underground water is really desert land with sandy soil and would not support alfalfa; and where the cattle would come from to graze the projected dryland grazing land. Dr. Snyder said no. It was recognized that about two-thirds of the referenced land would grow only a marginal alfalfa crop. There was a difference of opinion as to whether it takes 10" or 12" of water for dryland alfalfa. The model assumes land with less than 10" of water is dryland grazing.

Representative Barraclough asked Mr. Strong to address the legal aspects of the study. Mr. Strong said, putting it in the context of a surface water supply transfer to a ground water situation, where surface water has senior water rights downstream, the junior water rights upstream were curtailed. He said it was an issue of the time effect delay on pumping activities, and

would have to be addressed at some point. He said how it applied to groundwater was the “billion dollar question.”

Representative Roberts asked why a later curtailment date was not included in the analysis, for example 1974 or 1975. Dr. Snyder said many dates had been considered. The 1949 date was selected because the level of diversions under ground water appropriations prior to that date was less than 10 percent of the total diversion of ground water from the ESPA: it is therefore representative of essentially total curtailment of ground water diversions. The 1961 date was selected because it is representative of a curtailment of all ground water rights junior to the most senior aquaculture rights in the Thousands Springs reach area.

Representative Roberts said there had been a fair amount of activity in the last 25 years, and it seemed natural to look at a more recent date. Dr. Snyder said the issue really was one of time; it was impossible to run analyses for multiple dates. Mr. Strong said the two dates were selected because the scenarios they represent were significant even today. Dr. Snyder said he would expect the order of magnitude to remain relatively the same from 1971 to 1961.

Representative Wood asked if a call was made on all junior groundwater users, or on those with rights adjacent to streams. Mr. Strong said the delivery call was as to ground water users diverting to the Eastern Snake Aquifer.

Representative Wood asked how much water would have been affected, and how many water rights shut down on the first call. Mr. Strong said that was not certain because the analysis didn't go forward to execute that call. He said the question came back to whether a futile call was made.

Representative Bedke asked if an optimum solution could be determined, if there was a scalable, linear relationship. Mr. Strong said there remains the question of what “reasonable minds” would agree that solution would be: it is negotiable.

Representative Raybould said he didn't believe the “lines ever crossed” because as the date increased, the amount of return to the river by curtailment decreased. Mr. Strong said that was a reasonable assumption, but that the study suggests there is some level that could be agreed upon, and which would benefit all.

Representative Wood asked if there was some way the entire problem would not accrue to pumpers and irrigators, because domestic, commercial, municipal and industrial users (DCMI) and water users participating in the Conservation Reserve Enhancement Program (CREP) should share the burden. Mr. Strong said the Strawman Funding Proposal attempted to distribute costs among users.

GUEST: Jim Jaquet

Representative Jaquet welcomed her husband, Jim.

H60:

Representative Harwood introduced Lee Haynes, who presented H60, a bill to change Idaho Code § 47-716 to allow the leasing of beds of navigable rivers. Mr. Haynes said he had worked in the fields of human health risk and the environment for twenty years; he is now looking into the

hazardous waste, and environmental assessment and remediation fields. He said "garbage is not good for the environment" and made an analogy between picking up aluminum cans and removing toxic materials from lake bottoms and river beds: both are clean-up programs. Mr. Haynes said an opportunity exists to profitably cleanup the bottom of Lake Coeur d'Alene and stretches of the Coeur d'Alene River. He said an Environmental Protection Agency (EPA) superfund site existed in those areas. The state, under superfund authority, is obligated to pay 10% of the cleanup expense. Mr. Haynes said this alternative would give Jonathan Swift Mining Co. the right to process dredged materials, and to extract minerals at a profit both to the company and the state. A preliminary analysis estimates minerals valued at between \$80-100 million dollars could be extracted from toxic dredge material.

Discussion/questions: Representative Barraclough said he had considered toxicity in the Coeur d'Alene Lake years ago. At that time there were very few contaminants in the water. The conclusion at that time was that natural processes were healing what damage there was. He asked Mr. Haynes why a problem should be created if there wasn't one. Mr. Haynes said there was a debate going on about the extent of the problem. He said H60 didn't make an argument to dredge or not dredge, but allowed his company the right to process minerals if dredging occurred. He said the study he had seen took the position that dredging would occur, because of a superfund policy mandating the cleanup of certain waste hazards. Mr. Haynes offered to furnish the study to Committee members.

Representative Barraclough said, as he remembered, the original superfund site was a box 7x3 miles. He asked its current status. Mr. Haynes said the site extended from the upper basin to the Montana State Line, and from the lower basin cutting through Coeur d'Alene lake. He said wherever the EPA samples and finds contaminants, the superfund comes into play. Mr. Haynes said the area has expanded to encompass 21 square miles, and is the largest superfund site in the U.S. encompassing hundreds of square miles. The state of Idaho is responsible for 10% of any superfund cleanup costs incurred.

Representative Wood asked if by passing H60, the Legislature would legalize dredging. Mr. Haynes said no. His company, Jonathan Swift Mining, has filed a claim for mining activity if dredging occurs. He said he, himself, thought dredging was not a good idea; but he is a miner by trade and H60 turns an expensive outcome into a profitable one.

Representative Wood asked what department had oversight. Mr. Haynes said the Idaho Department of Lands (IDL).

Representative Wood asked if a pilot project had been undertaken by his company or IDL. Mr. Haynes said his company applied for a mining claim, and is looking at the law from the tailings aspect which allows mining of extracted material. He said someone else would do the dredging. No studies have been done.

Representative Eskridge asked what other bodies of water in Idaho might be affected by this bill; and what impact H60 might have the environment and fish species, for instance the spawning ground of Kokonee Salmon and Bull Trout. Mr. Haynes said he was not advocating dredging. The plan

to mine tailing from dredge materials is one the Coeur d'Alene Tribe, EPA and DEQ have participated in formulating. It is an opportunity to extract in the event dredging occurs. Dredging rules and guidelines are not within the parameters of H60. It allows for the taking of tailings, and processing them and a profit.

Representative Wood restated that H60 did not allow dredging, but would allow mineral extraction from any dredge that occurred. Mr. Haynes said that was correct. Jonathan Swift Mining Co. is not interested in becoming a dredging company.

MOTION H60:

Representative Wood made a motion to send H60 to the floor with a DO PASS RECOMMENDATION.

Discussion/questions: Representative Roberts asked if the Coeur d'Alene Tribe had any claim on the prospective mining sites. Mr. Haynes said to his understanding the tribe settled ownership to portions of the lake, but any dredge area would not affect tribal holdings. It would impact their water column, which is why the tribe is involved.

Representative Roberts asked if a decision to dredge was made, would the method of removing material be changed by H60. Mr. Haynes said no.

Representative Roberts asked what of value could be extracted from dredged materials; and if the classification of dredged material would change after processing. Mr. Haynes said minerals to be removed include zinc, lead, cadmium, gold, silver and mercury. He said the tailings materials were sand-like, no crushing or rolling would be required to process them. They would be de-watered in huge presses; the sludge would be dried and sent to a smelter to refine. Dredge material would be analyzed before it was sent to smelter. The slag remaining after refining is the property of the smelter. As far as the state of Idaho is concerned, the dredge material "goes away."

Representative Roberts asked where the slag would be deposited and treated. Mr. Haynes said the refinement process would depend on the composition of the material; basically it is a heat and leach process: the material is cooked. Typically what is left is a nearly inert material that is primarily silicon. Glass could be made from it, but is not because it is not profitable.

Representative Jaquet asked if there had been environmental reviews or a vetting process. Mr. Haynes said the only information he has is the aforementioned approximately five-page report performed on behalf of the EPA and Coeur d'Alene Tribe. It is a short report without much detail.

Representative Jaquet asked if H60 was premature since no environmental reviews had been done. Mr. Haynes said no; H60 was a "piece of housekeeping" left over from years gone by.

SUBSTITUTE MOTION H60:

Representative Saylor made a substitute motion to HOLD H60 IN COMMITTEE.

Discussion/questions: Representative Eskridge said H60 was more than a housekeeping bill. It deals with deposits in a natural state, opening dumps

and tailings not in existence before, and provides for a potential disturbance of water that wouldn't otherwise occur, going beyond Coeur d'Alene into other tributaries and rivers where mining may have taken place. The question is: What is the impact of expanding law to allow access to dumps and tailings where not previously permitted. Mr. Haynes said it was correct that the old law did not include dumps and tailings. Thirty or forty years ago, mining companies worried about possible litigation and who owned tailings. The EPA superfund law and EPA regards tailings as a hazardous waste; as a result no one will touch them.

Representative Roberts asked if slag was considered hazardous waste and if the EPA would deal with it. Mr. Haynes said his lab analysis found very small amounts of contaminants, but as a precaution EPA wanted all those materials contained. He said the situation "was not a settled thing."

PUBLIC TESTIMONY:

IDAHO FARM BUREAU: Dennis Tanikuni spoke in support of H60. He said it was a common sense approach.

**Dennis Tanikuni,
Assistant Director
Public Affairs**

PRO

IDAHO DEPARTMENT OF LANDS (IDL) Denise Mills gave informational testimony, which she submitted in writing (Exhibit 3). She said the department is not against the bill, but did have concerns. H60 would modify Idaho Code § 47-716 to eliminate the current limit on riverbed leasing authority of the State Board of Land Commissioners to "deposits in their natural state."

Denise Mills, Assistant Director

Discussion/questions: Representative Barrett said Mr. Haynes is asking the state for an opportunity to go forward with a project that could bring revenue to himself and the state. The state would retain oversight authority. H60 would allow a profitable outcome for a legitimate cleanup problem. Mr. Haynes may end up with a lease he won't ever get to mine. There may be other sites on navigable rivers the state owns that could similarly be leased.

Representative Wood said H60 doesn't let Mr. Haynes do anything. She asked if it was correct that IDL would make a determination as to whether the project had validity. Ms. Mills said when IDL receives an application it is assessed. She said in the case of Jonathan Swift Mining Co. there was not enough information from the applicant to make a judgment. Judgments are made on a case-by-case basis.

Representative Wood asked if the procedure was for IDL to make a recommendation to the land board, and for IDL to retain veto power. Ms. Mills said typically IDL makes a recommendation to the land board; but when the board makes a decision, IDL backs it.

Representative Raybould referred to a letter from the Idaho Conservation League (Exhibit 4), and a statement from Idaho Rivers United (Exhibit 5), both against H60. He said the questions were if the area involved was a

superfund cleanup site, then does H60 allow a private company to negotiate with whoever is in charge of the superfund cleanup; and does Jonathan Swift Mining Co. need a mining claim, or do they just get the material in question from whoever is doing the cleanup. Ms. Mills said a party would need to make a claim to the material as mineral right law is now written, though it has historically been an area of dispute. The 1980 superfund law didn't define tailings as hazardous waste or a commodity, leaving the question open as to who owns tailings.

Representative Raybould asked if the superfund cleanup was going to undertake this project whether or not anyone extracts minerals from the tailings. Ms. Mills said that question would be answered in EPA's final decision; but certain materials will be removed and disposed of—either on land, under water or by making them inert. She said EPA would remove materials from some parts of the river and lake.

Representative Eskridge asked what could be done under existing law. Ms. Mills said there were limited funds available for abandoned mine reclamation in areas where there was no concern about federal liability. She said an analysis still had to be done as to whether the sites in question were a problem. She said in some cases it made sense to leave things alone.

Representative Eskridge asked if money did accrue to the state as a result of H60, would it go to the endowment fund. Miss Mills said she thought money would go into the State General Fund as royalties.

Representative Barrett spoke in support of the main motion. She saw no reason to deny an opportunity when the tailings could be revenue rich.

Representative Jacquet asked if H60 was needed in order to pursue the mineral extraction activity. Ms. Mills said it would be necessary if a lease were issued as a minerals claim on tailings and dumps of certain rivers, but not to lease the bed of a river in its natural state.

Representative Wood asked if it was correct that H60 represented an opportunity to clean up water. Ms. Mills said it was generally correct that water and the quality of sediment would be improved. She said the legislation was not needed to clean up the bed of Coeur d'Alene Lake because the tribe and EPA have a plan for dredging. H60 was needed to assert a claim and have a right to process material as a commodity. In that case IDL would look for some agreement between the party and EPA so that the state would carry no liability.

Representative Harwood gave closing remarks. He noted that there were no smelters in the U.S. Dredge material would be sent to British Columbia for processing. He said H60 was a first necessary step. Without it, it was not feasible for Jonathan Swift Mining Co. to undertake the steps IDL requires, because it doesn't make sense to do the studies unless there is certainty that the minerals will be theirs. He said if a superfund site is mandated, Idaho will be paying 10% of the cleanup—some say \$100 million dollars. H60 turns a loss into a revenue-making opportunity.

Representative Harwood said an inquiry had been made to Idaho Rivers United; they did not respond.

Representative Saylor said people in Coeur d'Alene were struggling to keep the lake off the superfund site, and there was no consensus to dredge the lake. H60 put that effort at risk. The referenced report does not represent what the community wants, or any movement toward cleanup. He said there is often disagreement among the tribe, communities and the state. H60 might encourage action because an economical incentive was involved. Currently, scientific consensus is to leave the situation alone. To not leave it alone may create a water quality problem, resulting in putting the state at risk. He said H60 was not a first step towards a solution, but a first step toward another major water crisis.

Representative Barraclough said dredging the bottom of the lake would be a major disaster and foolish. To support H60 was to tacitly support acceptance of that premise. He would vote to hold H60.

Representative Wood spoke against the substitute motion, in favor of the main motion. She said H60 is an opportunity, and agency safeguards were in place to protect the state from jeopardy.

Representative Bedke said he didn't want to see the lake dredged, but if it was dredged it made sense to create an economic incentive. Mr. Haynes needed to be able to make a claim in order to justify investing in a cost-benefit analysis. He supported the original motion.

Representative Barrett said H60 did not guarantee anyone a lease; that application would go through the regular channels. It just created an opportunity, if not in Coeur d'Alene, then perhaps in other parts of the state. She heard Ms. Mills say dredging in Coeur d'Alene Lake would occur. If it doesn't, the point would be moot anyway.

Representative Eskridge supported the substitute motion. He said Representative Saylor was "close to the issue," and he respected his point of view: H60 could influence decisions. He said the time was not right to take this action. If a cleanup decision is made, then action can be taken.

Representative Barraclough said he was concerned that a cleanup could be more detrimental than doing nothing. He said he knew of no area where sediments were impacting water quality or causing fish toxicity.

VOTE ON SUBSTITUTE MOTION H60:

Representative Barrett called for a roll call vote on the substitute motion.

The substitute motion to HOLD H60 IN COMMITTEE failed 6:10.

Representatives Eskridge, Jones, Barraclough, Mitchell, Jacquet and Saylor voting AYE. Representatives Stevenson, Andrus, Bedke, Roberts, Barrett, Wood, Shepherd, Raybould, Moyle, and Denney voting NAY.

VOTE ON MAIN MOTION H60:

Representative Barrett called for a roll call vote on the main motion.

The main motion to send H60 to the floor with a DO PASS RECOMMENDATION passed 11:5.

Representatives Stevenson, Andrus, Bedke, Roberts, Barrett, Wood, Shepherd, Raybould, Moyle, Denney, and Barraclough voting AYE. Representatives Eskridge, Jones, Mitchell, Jaquet and Saylor voting NAY.

Representative Harwood will carry on the floor.

ADJOURN:

The meeting adjourned at 4:55 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 9, 2005

TIME: 2:30 p.m. or upon adjournment

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representative Bedke.

GUESTS: Albert Barker, Attorney, Barker, Rosholt and Simpson; Representative Sharon Block (24), Steve Huffaker, Director, Idaho Department of Fish and Game (IDFG); Nancy Merrill, Mayor, City of Eagle; Jon Sandoval, Chief of Staff, Department of Environmental Quality (DEQ); Dan Steenson, Lobbyist, Nampa-Meridian Irrigation District (NMID); Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA); Greg Wyatt, General Manager, United Water.

See sign-in sheet.

A quorum being present, Representative Stevenson called the meeting to order at 2:37 p.m.

There were no minutes to approve. The secretary took a silent roll call.

H280: Albert Barker, a Boise attorney with Barker, Rosholt and Simpson, presented H280, a bill supported by the Idaho Water Users Association (IWUA). He said it had two purposes: to amend Idaho Code § 42-1207 and Idaho Code § 18-4308. The result is to provide more reasonable time for the rehabilitation of adjacent land when large irrigation and drainage projects are undertaken by ditch and conduit owners, and to provide more time for the constructor of the project to record the specification and location of the buried conduit. An amendment provides that global position system technology may be used in place of a certified survey in order to ascertain the location and specifications of the buried conduit for purposes of recording. An amendment to Idaho Code § 18-4308 eliminates any criminal liability for failure to record the specifications of the buried irrigation conduit or drain. He said the IWUA did not think a criminal penalty was appropriate.

Discussion/questions: None.

MOTION/VOTE H280: Representative Roberts made a motion to send H280 to the floor with a DO PASS RECOMMENDATION.

The motion passed by voice vote. Representative Roberts will carry H280 on the floor.

H281: Representative Mike Moyle presented H281, a bill requiring the use of surface water for irrigation on lawns and landscaping when available. He said there was growing concern about landowners selling water rights before selling property for development. As a result, the new landowner frequently drills a well and reverts to using ground water.

Discussion/questions: Representative Raybould made a comment that the bill comes from the Interim Committee. He said in some areas, like the Treasure Valley and Mountain Home, it has happened that new subdivision properties are being sold to developers without surface water. He said the practice limits the incidental recharge from the aquifer. In essence, it extracts water for drinking and culinary water use, creating an “double whammy effect”: No water coming into the aquifer; and more water going out of the aquifer. Representative Raybould said eventually there would be problems. H281 prevents that sort of trouble with new development.

PUBLIC TESTIMONY

**Lynn Tominaga,
Executive Director
Idaho Ground Water
Appropriators (IGWA)**

Lynn Tominaga, said IGWA supported H281. He said Representative Raybould expressed their concern. H281 is a good change in public policy. Mr. Tominaga briefly outlined communities around the state that were moving to keep surface water rights from being sold separately before annexation to a municipality.

PRO

**Nancy Merrill,
Mayor
City of Eagle**

Nancy Merrill testified in support of H281. She said she was active in the Interim Committee in the Treasure Valley, and noted that H281 had the support of the Association of Idaho Cities. Mayor Merrill said Eagle had an ordinance in place requiring surface water to be used for irrigation. Eagle is also working to require land sellers to transfer ground water rights, as well as surface water rights, to new landowners. She said H281 is a step toward supporting a state-wide policy restricting water rights from being stripped from properties at the time of sale.

PRO

**Greg Wyatt,
General Manager
United Water (UW)**

Greg Wyatt gave informational testimony, saying that as the valley grows, UW is a source of water supply. Historically development has been ground-water-driven since the early 1990s, and is now converting to treated and surface water supplies as well. He said surface water would continue to be needed to supply the need for drinking water, fire protection, and other municipal purposes for the growing population. He said if surface water is isolated for irrigation purposes, and not available for public consumption, then it begs the question as to where the water will come from. He was concerned with some of the language in H281, and said he would speak with Representative Moyle about it.

Informational

MOTION/VOTE H281: Representative Wood made a motion to send H281 to the floor with a DO PASS RECOMMENDATION.

Discussion/questions: Representative Jaquet asked why ground water wasn't included in the bill. Representative Moyle said it hadn't been discussed at length; H281 is a bills that makes a “start down the road.” More will come later.

The motion passed by voice vote. H281 will be carried on the floor by Representative Moyle.

H284:

Dan Steenson, Lobbyist, Nampa-Meridian Irrigation District (NMID) presented H284, a bill brought on behalf of irrigation clients. H284 addresses four interrelated issues regarding recreational uses in ditches: safety, liability, water quality standards, and operation and maintenance of the ditches. Mr. Steenson emphasized that nothing in H284 spoke to uses outside the irrigation ditches, but only addressed irrigation ditches, drains and other appurtenances to the ditches; and only those facilities where the owner or management agent does not authorize, allow or permit recreational uses. It does not address any recreational use that doesn't involve getting into a ditch. Mr. Steenson summarized changes to Idaho Code sections affected by H284.

Discussion/questions: Representative Wood expressed concern about a ditch in her district that provided a major recreational float opportunity. Mr. Steenson said recreational use is not prohibited per se, and can occur unless it is not permitted by the irrigation entity.

Mr. Steenson was asked to identify the language where recreational use was permitted. Discussion ensued about permitted uses, and amendments to language.

PUBLIC TESTIMONY:

**Jon Sandoval,
Chief of Staff,
Department of
Environmental
Quality (DEQ)**

Jon Sandoval said he was present to answer questions.

**Kurt Holzen,
Present Elect,
Idaho Trial Lawyers
Assoc. (ITLA)**

Kurt Holzen expressed concern for language in Section 1, page 2, line 11, "duty of care or," and explained possible unintended consequences to the Committee. He said it could have ramifications far beyond the intent of the drafters, exposing people to liabilities having nothing to do with recreational uses in irrigation ditches. He gave examples.

Discussion/questions:

Discussion ensued about what language changes in the bill accomplished, what was intended, what criminal and civil remedies might be affected, whether H284 would increase the likelihood that ditch and canal owners would prohibit recreational use, and what amendments might be made to H284. Amendments will be made. Changes are recommended to: Section 1. 36-1604 (c) line 40; Section 1. 36-1604 (d), line 11; Section 2. 39-3602 (28), lines 21-22; Section 3. 39-3603, line 39; Section 4. 39-3604, lines 10-15.

**Representative
Sharon Block (24)**

Representative Sharon Block (24) is a co-sponsor to H284. She said safety is a major issue when ditches are used for recreational purposes because they were never intended for any use except irrigation. She said recreational uses should be discouraged, and gave a poignant example.

Mr. Steenson gave closing remarks and stood for questions.

Representative Jaquet asked why the word “lawful” was added in Section 3, line 39. Mr. Steenson said when similar legislation was pursued in the past, the concern was to make sure that protection was extended to injury occurring to trespassers. This change concerns water quality standards and makes the statute very clear.

Representative Wood asked how a ditch or canal owner would be characterized. Mr. Steenson said it would depend on the ditch or canal, but generally would be an irrigation district, canal company, lateral ditch users association or private owner of land through which the water is diverted.

Chairman Stevenson asked the sponsor to be certain that Committee amendments were made to H284.

MOTION/VOTE H284: Representative Field made a motion to send H284 to GENERAL ORDERS WITH COMMITTEE AMENDMENTS.

The motion passed by voice vote. Representative Moyle will carry H284 on the floor.

S1052: Steven Huffaker, Director, Idaho Department of Fish and Game (IDFG), presented S1052, a bill brought in response to problems private and owners have on their posted private property. Landowners are frequently alerted to hunting activity on their land by the sound of gunfire. When they investigate, they see a hunter dragging or carrying game from their property. By this time, the hunting activity has concluded. The definition of hunting in Idaho Code does not include game retrieval. Prosecuting attorneys are forced to use the charge of criminal trespass under Idaho Code § 18-7011, with penalties not intended for hunting activities. S1052 more clearly defines the trespass code that would allow license revocation and a fiscal penalty of more than \$300. The change would give landowners greater protection from the hunting-related activities intended by Idaho Code § 36-1603.

Discussion/questions: Representative Wood asked if it would be worse to leave game or to retrieve it. Director Huffaker said S1052 doesn't affect the obligation of a hunter to make a reasonable effort to retrieve wildlife. That obligation does not give a hunter to right to trespass on private property because he didn't ask a landowner for permission.

Representative Wood noted there could be long distances between where a person hunts and where the landowner resides. Director Huffaker said it is a requirement to get permission before entering posted private property, and the hunter would not be cited for leaving game to talk to the landowners.

Representative Barrett said the bill seemed innocuous, but the Statement of Purpose refers to a definition that forces prosecuting attorneys to make criminal charges. She asked why retrieving game was not part of the hunting definition. Director Huffaker said the argument people are now making is that once the gun is put away, they are no longer hunting and

can't be charged under title 36.

Representative Barrett asked if IDFG brought the bill. Mr. Huffaker said S1052 was brought at the request of prosecutors and enforcement officers on behalf of private land owners.

MOTION/VOTE S1052: Representative Andrus made a motion to send S1052 to the floor with a DO PASS RECOMMENDATION.

The Motion passed by voice vote. Representative Andrus will carry S1052 on the floor.

Announcements: Chairman Stevenson said no meeting was anticipated for Friday, March 11th, at this time.

Representative Jaquet asked for a progress report on the IDFG fee increase bill. Representative Moyle said the new bill had not yet been heard in Senate Committee. The Committee still holds H134, which could be acted on.

ADJOURN: The meeting was adjourned at 3:44 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** March 15, 2005
- TIME:** 2:30 p.m. or upon adjournment
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell
- ABSENT/
EXCUSED:** None.
- GUESTS:** Senator R. Skipper Brandt; Loyal Fleener, Logger; Bob Helmer, Chief, Bureau of Forest Management, Idaho Department of Lands; Jack Lyman, Legislative Advisor, Idaho Mining Association; Denise Mills, Assistant Director, Department of Lands (IDL); Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators, Inc. (IGWA); Representative Tom Trail.
- See sign-in sheet (Exhibit 1).
- Chairman Stevenson called the meeting to order at 2:55 p.m.
- MINUTES of
March 7, 2005** Representative Jones made a motion to approve the minutes of March 7, 2005 as written. The motion passed by voice vote.
- MINUTES of
March 9, 2005** Representative Wood made a motion to approve the minutes of March 9, 2005 as written. The motion passed by voice vote.
- HJM5:** Representative Lenore Barrett presented HJM5, a memorial to establish that the state of Idaho reserves the rights and remedies offered by Title 7 of the U.S. Code, Section 11(h) of the Endangered Species Act, and the Idaho State Department of Agriculture law to manage for depredation pursuant to Section 22-103. Representative Barrett said the objective was to create awareness, establish one more option, communicate the legislature's intent to protect the rights and private property rights of citizens, and to recognize and claim the rights and remedies under U.S. Code, Title 7, that directs the Department of the Interior to cooperate with states, not the other way around.
- Representative Wood, Co-Sponsor said the Memorial comes as a result of a three-state coalition. Montana has passed its resolution; Wyoming is in the process.
- Discussion/questions: Representative Jaquet asked for clarification as to the genesis of the citation on lines 20-21, "not to hurt hunting and the local economies." Representative Barrett was not certain, and referred to Representative Wood, who said it came from the ESA, itself.
- MOTION/VOTE
HJM5:** Representative Roberts made a motion to send HJM5 to the floor with a DO PASS RECOMMENDATION.

The motion carried by voice vote. HJM5 will be carried on the floor by Representatives Barrett, Wood and Moyle.

H311: Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators, Inc. (IGWA), presented H311, proposing legislation, pursuant to chapter 54, title 42, Idaho Code, to allow two directors-at-large to be elected by a 2/3 majority at the annual meeting of the Ground Water District. This would allow broader decision-bases in those districts not having demographics to support seven directors.

Discussion/questions: The question was asked if water use was a criteria for voting members. Chairman Stevenson said there is no minimum ground water usage required unless the district bylaws state otherwise; but there is a requirement that a member be a ground water user to be on the Board of Directors. Mr. Tominaga said allowing directors-at-large eliminated the expense of redistricting.

Mr. Tominaga was asked if a domestic well diverter would be allowed to vote. He said in most ground water districts the answer was no; but it would depend on the bylaws of the ground water district.

Mr. Tominaga was asked if H311 precluded domestic well diverters. He said most are precluded, as they are not members. Chairman Stevenson said when ground water districts were first organized in 1995, there was a requirement that a user had to have .20 cfs to be a member in a district. Since then, there have been changes; now municipal water users are required to measure, and allowed to join ground water districts but have to have .20 cfs diversion before they can belong. He said H311 is fashioned after the Milner Irrigation District, where there were not enough people living within the district boundaries. Members-at-large will allow water boards to maintain their size.

MOTION/VOTE H311: Representative Field (23) made a motion to send H311 to the floor with a DO PASS RECOMMENDATION.

The motion passed by voice vote. Representative Stevenson will carry H311 on the floor.

H312: Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators, Inc. (IGWA), presented H312, proposing legislation to address several concerns related to the operation of Ground Water Districts established and operating under the provisions of Chapter 52, Title 42, Idaho Code. Mr. Tominaga went through the bill section by section.

Discussion/questions: Mr. Tominaga was asked if a person applied to the ground water district and paid mitigation, would an applicant applying later pay the same amount. Mr. Tominaga said that was why the change was sought to Idaho Code § 42-5244. He said since there were past costs incurred by ground water districts, a surcharge was only fair.

Mr. Tominaga was asked how non-members of the ground water district were charged for mitigation. He said people outside the ground water district boundaries, and not part of the ground water district, but who have an affect on the ESPA should participate in mitigating for senior water rights holders.

He said the decision was made last year that everyone affecting ESPA—including cities, dairies and municipalities—would join for mitigation only. Rather than making their own mitigation plans, these entities join ground water districts, for mitigation only; that is the reason mitigation costs are separate from operating costs.

Representative Wood said she received a letter from constituents in the Lost River Valley who were struggling to pay mitigation costs when they don't have any water. She asked Mr. Tominaga if he was aware of this situation. He said he was, but H312 wouldn't apply to them because it wasn't an organized ground water district. He said the effects, however, would eventually affect them. Chairman Stevenson said water districts that don't have the ability to mitigate, have to have a ground water district to mitigate.

MOTION/VOTE H312: Representative Bell made a motion to send H312 to the floor with a DO PASS RECOMMENDATION.

The motion passed by voice vote, Representatives Wood and Barrett voting NAY for the record. Representative Stevenson will carry H312 on the floor.

S1169: Jack Lyman, Legislative Advisor, Idaho Mining Association, presented S1169, proposing that ore-processing facilities using cyanide be regulated by the Department of Environmental Quality (DEQ) under Section 39-118A, Idaho Code. That law allows DEQ to require financial assurance (usually in the form of performance bonds) to guarantee the proper closure of a facility when ore processing has ended. Under current agency rules, DEQ cannot require financial assurance in excess of \$100,000. S1169 amends the Surface Mining Act to transfer the responsibility for financial assurance for closure of cyanide facilities from DEQ to the Idaho Department of Lands (IDL). It would require cyanide facilities to submit a closure plan for approval and would require financial assurance to cover 110 percent of the estimated cost of closure. There would be no limit on the amount of financial assurance required. The existing authority for DEQ to regulate all aspects of a cyanide operation, including closure activities and water quality impacts, would remain the same as current law.

S1169 would require DEQ and IDL to engage in rulemaking to implement the legislation, to be completed with current agency appropriations. Costs to implement S1169 would only be incurred if a cyanide facility was proposed. Oversight responsibilities would only be incurred if a cyanide facility was approved and built.

Mr. Lyman referred to a five-page chart, Senate Bill 1169, for an explanation of changes that would take place should S1169 become law (Exhibit 2). He said S1169 would consolidate all financial assurance functions into a single agency, and update Idaho laws making them among the most stringent in the nation. Mr. Lyman said he knew of no opposition to the bill; though one concern was expressed: S1169 will impact small miners. He said it couldn't be avoided, but rulemaking could mitigate the financial burden on small miners somewhat.

Discussion/questions: Mr. Lyman was asked who made the decision as to how much it would cost to close a facility down. He said S1169 requires the applicant to provide a cost estimate. The important point is that the estimate is not what it would cost the owner to close the facility, but what it would cost a third party to do the work, assuming the owner would not be available to do the work. As part of the application fee, the applicant would pay for an independent third party

review to determine whether the applicant's estimate was accurate.

Mr. Lyman was asked the purpose of requiring the estimated cost plus ten percent. He said the extra ten percent added a margin of safety. S1169 also required a periodic review to insure the adequacy of the bond.

Mr. Lyman was asked if Section 2, 39-118A(5) didn't contradict what he just said regarding performance bond costs. He said that provision was included in the bill at the request of the Atlanta Gold Mine on the middle fork of the Boise River. He said because of the shift to IDL, a regulatory gap of eight to nine months was created; during that gap no one could proceed under the law. The aforementioned provision reduces that gap to one month. He said if the department failed to promulgate rules, that provision would take affect.

Mr. Lyman was asked if small miners had a "seat at the table." He said they did not; but some accommodation to small miners could be accommodated through fee schedules at rule-making.

Mr. Lyman was asked when it would be time to revisit the rules to be certain that 110 percent was the correct figure; and how the assessment would hold up when a project went out twenty-five years, for example. He said S1169 required the department to periodically review the adequacy of estimates. A review was mandated because conditions change, and plans altered. Mr. Lyman said the crux of the bill was to make sure, when the operator started a facility, that the state had enough money set aside to do all of the closure work should the operator fail to do so. Rules would address how that would happen. He said most mines in the 1990's had a two- to five-year time line, not twenty-five years. Mr. Lyman said he wanted to encourage gold mining in the state; but have laws to protect taxpayers.

Mr. Lyman was asked what the "hammer over a person's head" would be if the bond wasn't adequate. He said all of the tools were provided to ensure that the bond would be adequate. If unforeseen circumstances or unexpected conditions arose, there was a requirement to file an amended plan to update the bond. He said if the bond was forfeited, the responsibility to complete the work wasn't removed under DEQ and EPA.

Mr. Lyman was asked about the Atlanta cleanup, where cleanup and not closure was the issue. He said S1169 didn't address cleanup; that would be part of the mining plan and would be addressed by the Forest Service, other laws, and state and federal permits. He said S1169 specifically addressed closure and didn't extend beyond closure.

Mr. Lyman was asked if there would be an IDL application fee to cover incremental costs incurred by the agency as they take on new mining oversight. He said H318, a trailer bill establishing a Cyanidation Facility Closure Fund, would provide funds for new responsibilities. He said H318 created a dedicated account.

PUBLIC TESTIMONY

INFORMATION

Chia Wood, representing herself, distributed a spreadsheet showing purported campaign contributions to Committee members by mining and natural resources interests in 2003-2004 (Exhibit 3). Chairman Stevenson asked Ms. Wood if she was for or against S1169. She said she had no

position, and asked members to vote their conscience.

PRO

Justin Hayes, Program Director, IDL, said he worked with Mr. Lyman to develop this bill, one that addressed the department's concerns. Mr. Hayes said he looked forward to passing S1169 into law. Representative Eskridge asked Mr. Hayes if he was certain S1169 was a better bill. He said it represented an incremental improvement over the authorities that state currently had, that included restrictive rules and insufficiently capped bonds.

INFORMATION

Denise Mills, Assistant Director, Department of Lands (IDL), said the department had been involved with the bill draft for several weeks, and several changes had been asked for and made. Ms. Mills said IDL Commissioners had not taken a formal position on S1169. She said her testimony was to highlight the departments remaining concerns, that had not been addressed in the bill. Ms. Mills submitted written testimony (Exhibit 4.)

Ms. Mills was asked about the department's ability to take care of new duties without the trailer bill. She said that there would be no revenue into the fund, even if the trailer bill passed, until ore extraction took place; a gap or hiatus of several years was expected. She said in the interim, fees would help to cover costs; IDL was not seeking full coverage but would work with the resources they have.

Ms. Mills was asked if the department was satisfied with regard to liability issues. She said not completely, but IDL will use an aggressive bond calculation formula. She said issues could be technically complex: for instance, other substances, maybe toxic, could be involved. Ms. Mills said there would always be some risk and uncertainty; IDL wanted to close the uncertainty gap.

Mr. Lyman was asked if S1169 applied to all mines, including those without cyanidation processes. He said no. The bill is very specific to mining where cyanide is used as the primary means to leach metal.

Mr. Lyman was asked if added responsibility and expense would be added to DEQ; and if that was taken into consideration in the trailer bill. He said no new responsibilities were added to DEQ; some were taken away, but they have not been identified. DEQ and IDL would have to work together, either to hire more people or to utilize the expertise at DEQ.

**MOTION
S1169:**

Representative Moyle made a motion to send S1169 to the floor with a DO PASS RECOMMENDATION.

Discussion/questions: Representative Jaquet asked if the matters to be reviewed during the bonding process could be done during rulemaking. Mr. Lyman said yes. He stressed that a fundamental philosophical difference existed between his approach and that taken by the departments. Mr. Lyman said he wanted to establish a system wherein the state was supplied with all the information needed to make decisions, but, having done that, the state had to take responsibility for its regulatory actions. He asked the rhetorical question: If the state doesn't manage properly, who should pay the extra increment? Mr. Lyman said the vast majority of projects would be on Forest Service ground, where the bond would be much greater than any the state would ask.

There was a discussion about the mining application process, and the bonding process. It was suggested that the trailer bill might be coordinated with S1169, to “keep all the pieces of the puzzle together.”

VOTE S1169: The motion to send S1169 to the floor with a DO PASS RECOMMENDATION passed by voice vote, Representatives Wood and Barrett voting NAY for the record. Representatives Moyle and Ellsworth will carry on the floor.

S1099: Representative Tom Trail introduced S1099, legislation that would provide for small timber sales, not exceeding two hundred thousand (200,000) board feet and not exceeding a maximum value established by the State Board of Land Commissioners, to be exempt from advertisement.

Loyal Fleener, Logger, explained that costs have risen since the direct sale program started in 1955. He illustrated some constraints that now occur with small timber sales, and explained how the changes effected with the new legislation would benefit the small operator and the timber resource. Mr. Fleener said all that was being asked was “a little bit of leeway for foresters to work.” He said the legislation made for a healthier forest, more income for the endowment, took pressure off local foresters, better utilized resources, and would result in more taxes to the state.

MOTION S1099: Representative Mitchell made a motion to send S1099 to the floor with a DO PASS RECOMMENDATION.

Discussion/Questions: Representative Roberts said S1099 was an appropriate change, and he supported the motion on the table.

Representative Barraclough said it was his observation that the state had done a better job of managing forests than Washington, D.C. Mr. Fleener agreed.

PUBLIC TESTIMONY

PRO Russ Hendriksen, Legislative Aide, Farm Bureau, signed in to speak in favor of S1099, but was not in the room.

PRO Judy Bartlett, Lobbyist, Idaho Farm Bureau Federation (IFBF), rose in support of S1099.

CON Bob Helmer, Chief, Bureau of Forest Management, Idaho Department of Lands, said he didn’t necessarily support the increase to 200,000 board feet, but he didn’t oppose it either. Mr. Helmer said most sales are small; very few are larger than 100,000 board feet. He said direct sales take time away from other duties—like “putting up bigger sales”. He said there was no doubt there was a place for direct sales.

PRO J. C. Hatley, Deary, ID, submitted a letter in support of S1099 (Exhibit 5).

PRO Mark D. Harris, Mark Harris Logging Inc., Kendrick, ID, submitted a letter in support of S1099 (Exhibit 6).

MOTION S1099: The vote on the motion to send S1099 to the floor with a DO PASS RECOMMENDATION passed by voice vote. Representative Roberts will

carry on the floor.

S1138: Senator R. Skipper Brandt presented S1138, proposing to amend Chapter 4, Title 36, Idaho Code, to provide that certain statutory license applications may make a voluntary donation of one dollar or more to support the activities of Idaho Hunters Feeding the Hungry, Inc., an Idaho nonprofit corporation. There is an effective date of January 1, 2006.

MOTION S1138: Representative Mitchell made a motion to send S1138 to the floor with a DO PASS RECOMMENDATION.

Discussion/questions: Representative Roberts asked what the IDFG spent now to process game for food banks. Senator Brandt said he didn't know; but there wasn't enough money to process all the meat in the program.

Representative Roberts asked if the IDFG appropriation should be adjusted if it used voluntary funding. Representative Bell said she had never seen that much detail in the IDFG budget; but would look into it.

Representative Raybould asked if vendors would want an increased fee for keeping track of the donation. Senator Brandt said he had not heard that concern. No one from IDFG was in the room to speak to the question.

PUBLIC TESTIMONY

PRO Judy Brian, National Rifle Association of America, Sacramento, CA, submitted a letter in support of S1138 (Exhibit 7).

VOTE S1138: The motion to send S1138 to the floor with a DO PASS RECOMMENDATION passed by voice vote. Representative Jaquet will carry on the floor.

MINUTES of February 22, 2005 Representative Saylor made a motion to approve the minutes of February 22, 2005. The motion passed by voice vote.

ADJOURN: The meeting was adjourned at 4:37 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 17, 2005

TIME: 2:30 p.m. or upon adjournment

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representatives Bedke, Field (23), Moyle, Raybould and Roberts

GUESTS: Hal Anderson, Administrator, Idaho Department of Water Resources (IDWR); Gayle Batt, Assistant Director, Idaho Water Users Association (IWUA); Jim Caswell, Administrator, Governor's Office of Species Conservation (OSC).

Please see sign-in sheet (Exhibit 1).

A quorum being present, Chairman Stevenson, called the meeting to order at 3:06 p.m.

**CORRECTION
MINUTES OF
FEBRUARY 25** Representative Andrus made a motion to correct the minutes of February 25, 2005 to reflect a language change (Exhibit 2). The motion passed by voice vote.

**MINUTES OF
MARCH 15** Representative Wood made a motion to correct the minutes of March 15, 2005. The motion passed by voice vote.

H336a: Jim Caswell, Administrator, Governor's Office of Species Conservation (OSC), presented H336 with an amendment. H336 proposes to provide that the duties of the Governor's Office of Species Conservation will include addressing issues relating to "candidate and petitioned species and rare and declining species" in addition to their work on endangered and threatened species in the state of Idaho. Mr. Caswell gave the background of the bill's movement through the legislative system. He said the "invasive species" language had been removed. H336 amends Idaho Code § 67-818. Mr. Caswell explained the changes to statute.

Mr Caswell said the amendment to H336 was proposed to include the Department of Water Resources (IDWR) to the list of other state agencies that OSC shall cooperate and consult with. It also provides language to clarify the relationship between specified provisions and certain water rights.

Discussion/questions: Representative Wood sought clarification of changes to statute. Mr. Caswell re-affirmed that the section of code being addressed was § 67-818.

PUBLIC TESTIMONY

- PRO** Gayle Batt, Assistant Director, Idaho Water Users Association (IWUA), said IWUA appreciated the amendment. She explained that similar language was included when the Department of Environmental Quality (DEQ) was created; it ensures there will be no jeopardy to water rights.
- MOTION AMENDMENTS TO H335:** Representative Wood made a motion to APPROVE THE AMENDMENTS to H335. The Motion was seconded by Chairman Stevenson.
- MOTION/VOTE H335a:** Representative Wood made a motion to send H335 to the AMENDING ORDER WITH COMMITTEE AMENDMENTS ATTACHED.
- The motion passed by voice vote. Representative Wood will carry H335 on the floor.
- S1034:** Hal Anderson, Administrator, Idaho Department of Water Resources (IDWR), presented S1034, a bill to give final approval of amendments to the Priest River Basin component of the Comprehensive State Water Plan. The Plan provides for changes in the fall operation of the Priest Lake outlet structure to minimize impacts on fall-spawning Kokonee. Mr. Anderson explained that Kokonee are making a resurgence in the Priest River. S1034 allows keeping the water level higher during the Kokonee spawning period, so Kokonee don't spawn in the gravels along the sides that then dry up.
- Discussion/question: Representative Saylor asked if fisheries in the river would be negatively impacted. Mr. Anderson said IDFG said they would not be.
- Representative Eskridge asked if the water level would be maintained until eggs hatched. Mr. Anderson clarified that what he meant to say was that the water level in the lake would be lowered; the problem is keeping the water level higher later in the year. Kokonee were spawning along the side, the water level dropped, and eggs were being exposed.
- MOTION/VOTE S1034:** Representative Eskridge made a motion to send S1034 to the floor with a DO PASS RECOMMENDATION.
- The motion passed by voice vote. Representative Eskridge will carry S1034 on the floor.
- S1035:** Hal Anderson, Administrator, Idaho Department of Water Resources (IDWR), presented S1035, a bill giving final approval to the South Fork Clearwater River Basin component of the comprehensive State Water Plan. The South Fork Clearwater Plan examines the water and related resources within the basin, and contains water management recommendations and actions to protect waterways and to pursue minimum stream flows. The Plan protects 54 miles as state Natural Rivers and 324 miles as state Recreational Rivers. Mr. Anderson gave background information for the plan. He said, in the past, through the Organic Act, federal agencies claimed water upstream in wilderness areas. It came to a point where case law did not favor the Organic Act, and the federal government negotiated a settlement with Idaho in those claims. The Organic Act was dismissed with the caveat that the state

would enter into a comprehensive planning process in areas where the Organic Act claims were relevant. The state agreed. Mr. Anderson said the state was clear that it would use existing state planning processes, not federal processes, to develop the comprehensive basin plans. S1035 is the first comprehensive basin plan done collaboratively between the state and the U.S. Forest Service. In summary, Mr. Anderson said the Board determined, through a series of public hearing and informational meetings, to establish natural designations for those areas in federal management in wilderness areas. A number of rivers were declared Recreational Rivers, which doesn't mean they are set aside only for recreational purposes. It means some things may be precluded, depending on what is established in the plan. The plan clearly establishes what is and isn't approved. Mr. Anderson said no existing water rights were affected, and there was no negative affect on water users now or in the future. He said if the Nez Perce Settlement Agreement was approved and adopted by the tribe, it wouldn't be necessary for the Board to do anything associated with minimum stream flows.

Discussion/questions: Representative Shepherd asked if he meant the state agreed that the federal government had water rights. Mr. Anderson said no. By agreeing to collaborate, the state didn't legitimize a federal water right.

Representative Shepherd (8) asked if the plan would place restrictions in riparian areas on minerals, logging or other activities. Mr. Anderson distributed a map, Executive Summary, South Fork Clearwater River, depicting where Natural and Recreational Rivers were included in the plan (Exhibit 3). Representative Shepherd (8) said his question was if recreational activities would preclude logging. Mr. Anderson said all affected rivers were in federal management, and federal agencies have the authority to make those decisions. The only exception is the South Fork of the Clearwater, where the plan protects existing uses, including maintenance.

Representative Barrett asked for clarification that federal claims were made through the Organic Act because of the SRBA, and the state agreed to come to an agreement on those claims. Mr. Anderson gave background, saying he thought the federal agency was concerned about winning in court, and didn't want to invest resources in a lawsuit. The state and the Idaho Water Resources Board felt that it would be better to come to an agreement.

Representative Barrett, referring to page 3 of the bill, asked if the activities listed were prohibited. Mr. Anderson said the listed activities typically were precluded by the Water Resource Board in a recreational area. He said the agreement with the federal agency stated that future demands for development could be cause to change or modify the plan based on changing needs. He said changes would have to be approved by the Legislature as amendments.

MOTION S1035: Representative Bell made a motion to send S1035 to the floor with a DO PASS RECOMMENDATION.

Discussion/questions: Representative Shepherd said it was important to keep the multiple use concept extant in recreational areas. He said more

restrictions weren't needed, and said he would oppose S1035.

Chairman Stevenson asked if there was public objection at public hearings, and how many meetings had been held. Mr. Anderson said the Board held an extensive number of meetings and hearings several years ago. A local advisory committee was established. He said as the process was about completed, there was last minute concern—primarily by the Farm Bureau—and the Board backed off to make modifications to the original plan. Mr. Anderson said S1035 reflects those changes. Additional public meetings were held without unanimous support. He said most of the objection came from those who objected to any sort of natural resource planning.

Representative Bell asked to be told, again, that the water plan could be changed if the situation or the times changed. Mr. Anderson said it could, and cited Idaho Code § 42-1734B.

VOTE S1035: The motion to send S1035 to the floor with a DO PASS RECOMMENDATION passed by voice vote. Representatives Andrus, Barrett, Eskridge, Shepherd (8), and Wood voting NAY for the record. Representative Mitchell will carry S1035 on the floor.

Discussion/questions: Representative Eskridge said he would want more information before the House vote.

Announcements: Chairman Stevenson said there might be a water bill in Committee by Monday. He said there was an effort to try to go home March 25th or shortly thereafter.

ADJOURN: The meeting adjourned at 3:44 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** March 23, 2005
- TIME:** 1:30 p.m. or upon adjournment
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell
- ABSENT/
EXCUSED:** None.
- GUESTS:** See sign-in sheet (Exhibit 1).
- A quorum being present, Chairman Stevenson called the meeting to order at 1:39 p.m. The secretary took a silent role call.
- Charles A. Barnes** Chairman Stevenson welcomed Charles A. Barnes, from Congressman Mike Simpson's office.
- Minutes of February 23, 2005** Representative Saylor made a motion to accept the minutes of February 23, 2005 as written. The motion passed by voice vote.
- Minutes of March 17, 2005** Representative Saylor made a motion to accept the minutes of March 17, 2005 as written. The motion passed by voice vote.
- LEWISTON
MORNING TRIBUTE
EDITORIAL, H60** Chairman Stevenson asked Representative Raybould to respond to an editorial that had come to his attention, written by Jim Fisher of the Lewiston Morning Tribune (Exhibit 2). Representative Raybould said the editorial referred to H60, that had been heard in Committee; the bill was referred to as a hoax and disparaging remarks were made about the Committee and the legislature. Representative Raybould said Jonathan Swift Mining Company was a registered corporation licensed in Idaho to do business. H60 was researched by Representative Harwood, debated pro and con both in Committee and in the House, and passed because of the merits of the legislation. He said the legislature's responsibility to the new media was to provide facts; and the news media's responsibility to the legislature was to report facts. Chairman Stevenson thanked Representative Raybould for bringing the editorial to the Committee's attention.
- HCR25:** Representative Raybould presented HCR25, a resolution authorizing the Legislative Council to continue an interim committee to undertake and complete a study of natural resource issues. He said a similar resolution comes each year. Speaker Newcomb asked for the resolution, which will allow him to appoint a joint interim committee and authorize the interim committee's expenses.
- MOTION HCR25:** Representative Wood made a motion to send HCR25 to the floor with a DO PASS RECOMMENDATION.

The motion passed by voice vote. Representative Raybould will carry HCR25 on the floor.

The Chair was passed to Vice Chair JoAn E. Wood.

H372:

Representative Stevenson presented H372, legislation that proposes mandatory membership for all ground water users except for domestic and livestock water rights. The reason ground water districts want this change is to insure that mitigation and district operational costs are equally spread to all ground water users who receive benefits. Representative Stevenson said H372 was the result of the work of the interim committee on the Eastern Snake Plain Aquifer (ESPA), and is concerned primarily with ESPA issues. He said ground water district membership had been voluntary since 1995. At that time it was necessary to organize ground water districts because water rights held privately by water users did not come under statutes intended for irrigation districts. Chairman Stevenson said H848, from the last legislative session, gave the director the authority to include individuals in ground water districts for mitigation purposes. He said H372 makes changes to include all ground water users who benefit from mitigation and assesses a fair share of ground water district operational costs to them.

Representative Stevenson went through the main points of the bill, including: 1) the ability to opt-in or opt-out has been removed; 2) ground water districts will not be comprised solely of irrigators, but will include others who use water; 3) municipalities will be included (Exhibit 3 is a list of cities that are members of the Idaho Ground Water Association (IGWA)); 4) licensing or other entitlements will be considered as appropriate for IGWA qualification; 5) section 10 adds a new section to be known as 42-5219, allowing some ground water districts with a limited number of members to elect up to two members at large; and 7) ground water districts shall be allowed to incur indebtedness up to thirty years.

Representative Stevenson said in the past indebtedness was limited to ten years. That has been extended to thirty years because some programs, for example CREP, require longer periods of indebtedness. When a debt is paid, H372 requires that the county assessor be notified. He said a two-thirds majority of members was still required to incur indebtedness.

Representative Stevenson referred to the amendment to H 372 saying irrigation districts were unintentionally included in H372 when they already have their organizations; the amendment allows for the inclusion only upon filing of a petition for annexation. He said the amendment restores language that was removed by the unintentional inclusion.

Discussion/questions: Representative Jaquet said she had talked with people from the City of Wendell who were concerned that there was no process for closure. Representative Stevenson said districts couldn't be resolved if there was indebtedness; but dissolution was included in statute.

Representative Jaquet said it was not clear if someone on the "border of the ESPA," who had a plan and had spent a sizeable amount of money on it, would be given some accommodation. Chairman Stevenson said

people not in an irrigation district can petition the board for membership; it a decision made by the board of directors. He said H372 provides a process to petition for exclusion from the district. Phil Rassier, Deputy Attorney General, Idaho Department of Water Resources, said membership could be a requirement if there was an equity problem. Representative Stevenson said the director had the ability to review mitigation costs for equity. Mr. Rassier said H372 would require anyone within the boundaries of a ground water district to be a member of the district. If they had provided their own mitigation in the past, that was mitigation for the right to divert water in the past. As a member of the district, mitigation would be concerned with the future. He said any credit for carryover from the past would be between them and the ground water district.

Representative Jones asked why domestic and livestock water rights were excepted from mandatory membership. Mr. Rassier said the exclusion was not a change; there was already language in statute exclude them (p.3, l.35). Representative Jones asked why it should not be mandatory for domestic and livestock water rights users to join a district. Representative Stevenson said that issue had been considered at the interim committee; it was thought a statutory change should be statewide. Since H372 applied only to ground water districts, it was not thought to be the vehicle to include domestic and livestock water rights.

Representative Jones asked, philosophically, if a trailer bill could be drafted as a freestanding piece of legislation. He agreed that it was a state-wide issue. Discussion followed.

Representative Jaquet, referring to Exhibit 3, said the City of Gooding didn't think it was fair to pay for mitigation it wasn't using. Representative Raybould said the interim committee did discuss the domestic issue would require extensive administration, because of the size and number of domestic wells. He said the issue should be put at the top of the list for interim committee to consider; and that input should be solicited from municipalities and the public.

Representative Barrett asked if H372 included state-wide ground water districts, or just the Hagerman-Twin Falls area. Specifically, did it include the Big Lost River area. Representative Stevenson said it included those areas with existing ground water districts and those where districts might be formed. He said a district could be formed on the Big Lost River. He said organizational meetings had been held in the Big Lost River area; when the organize, H372 would apply.

Representative Barrett asked H372 would apply if the Big Lost River area didn't organize. Representative Stevenson said it would not unless there was a ground water district. He said it was important to remember that water districts didn't have the ability to mitigate, but ground water districts did.

PRO

Lynn Tominaga, Executive Director, Idaho Ground Water Users Association, testified in support of H372 saying the bill had been well presented. He said he knew there was some concern about mandatory membership within ground water districts. He said everyone needed to be

part of the solution; the issue was whether ground water pumpers within the boundaries of ground water districts should be included. Mr. Tominaga suggested that in the case of municipalities, ground water districts look at the amount of water used, and not at licensed water rights.

Discussion/questions: Representative Jones, noting that Mr. Tominaga was in favor of all users participating in ground water districts, asked if he would favor including domestic and livestock water right holders. Mr. Tominaga said he would work with members of the interim committee to consider that issue. He said even though those people represented a small percentage, they probably needed to be part of the equation. He didn't think H372 was the vehicle to address the issue.

There was discussion about the dates ground water districts set budgets.

Representative Barrett asked to go on record in opposition to the inclusion of livestock and domestic water right holders.

Chairman Wood said others who use water needed to be included.

Mr. Tominaga said, for the Committee's information, 60 domestic wells equal one irrigation well.

INFORMATIONAL

Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), said the association took no position on the bill as a whole. He said there was concern that irrigation districts had the option to join a ground water district, but were not compelled to join. He said if cities or business wanted to join a district, there currently was a vehicle for them to exercise to do that; the question was whether they should be compelled to join. Mr. Semanko said, if there was a call, those within a ground water district could put together a mitigation plan. He said the issue of whether a plan was acceptable was another issue. Mr. Semanko said, relative to domestic and stock water rights, those rights are not compelled to come into a ground water district and, also of note, they are immune from delivery calls.

CON

Terrell Sorensen, Manager, Falls Irrigation District, American Falls, rose in opposition to H372.

PRO

Dan Temple, Manager, A & B Irrigation District, A&BID, testified in support of H372 saying irrigation districts do need the ability to opt-in or opt-out of ground water districts. He said A&BID had the authority to tax its members and are doing so; if mitigation was required, they could take care of it on their own without the involvement of another entity. Mr. Temple said, although he signed in opposing H372, he did approve with the amendments.

PRO

Harold Mohlman, Board Member, A&BID, said he came prepared to oppose H372; but with the proposed amendments, he supported the bill.

CON

Don Munkers, Executive Director, Executive Director, Idaho Rural Water Association (IRWA), testified in opposition to H372 because it mandated membership in groundwater districts. He said if fairness was an issue,

mitigation costs should be borne by the state because mitigation will improve stream flows and benefit aquifers. He said it created an ex post facto law, on that might not survive constitutional review. Regarding the domestic water right situation, Mr. Munkers said he wasn't sure that domestic wells or private wells need a water right. He said the municipalities he represents already have a tremendous number of rules and regulations, with a "horrendous cumulative effect," making it difficult to comply with them; and they were not adequately funding. He said H372 was an unfunded mandate.

Questions/discussion for Mr. Munkers: Representative Raybould asked Mr. Munkers how he felt the state should pay, if not from fees. Mr. Munkers said he didn't know, but the general fund of some state-wide fund would be appropriate. He said he heard that three districts might be formed in other parts of the state. He said it should be a state issue, and not a user fee issue.

CON

Josephine Beaman, attorney, ConAgra, Lamb Weston, Basic American Foods, City of Pocatello, testified in opposition to H372 saying her constituents had been following the legislative path, but have only had the new portions of the bills since yesterday. She said more time was needed to work with her constituents and the legislature. Until there is time to consider the new portions, and to determine which changes were administrative and which fundamental, she opposes H372. Ms. Beaman said the City of Pocatello has a mitigation plan, that was filed without objections. She said Basic American Foods, ConAgra and the city had a mitigation plan. Her clients have had a technical representative participating in the ground water modeling effort for ten years.

Ms. Beaman said the most notable change was the removal of definitions as to what choice is available for commercial, municipal, and industrial entities to be members of a ground water district; and, when mandated in, there was no provision to provide for an entity subject to assessment when there is another mitigation plan in place. She said her concerns were those of equity.

Ms. Beaman went through the bill addressing specific objections, including: reliable standards and costs are not set (p.9, l.19); there had not been time to consider the new standard set to petition for exclusion of lands (p.12, l.1-28). Ms. Beaman said the process to petition for exclusion was a substantive issue: if someone had their own mitigation plan and was mandated into the district, the provision to request exclusion did not provide for a hearing, and had no provision for review. Ms. Beaman said her objections to H372 could be corrected, but her clients wanted provisions insuring equity.

Discussion/questions: Representative Raybould addressed specific language that might be included to address Ms. Beaman's objections. Ms. Beaman said the suggested changes were appropriate, but didn't deal with all problematic issues.

Representative Raybould asked if Pocatello had surface water rights that were being used as part of their mitigation plan; and how she envisioned dealing with them in amendments. Ms. Beaman said that issue was

representative of what she didn't know due to the short time frame. She said she would need to confer with her clients. Ms. Beaman thanked Mr. Semanko and said she would be available to meet with him immediately to work on amendments.

Representative Jaquet was concerned about the time involved to approve a mitigation plan. Ms. Beaman said that her client had filed a mitigation plan with Idaho Department of Water Resources (IDWR) in March 2004 that hasn't yet been finalized. They, and their expert, believe the plan to be appropriate, but have no affirmative answer.

Representative Stevenson closed his presentation saying that mitigation costs had to be kept separate from operating expenses in ground water districts.

Discussion/Questions: Representative Wood said she saw no reference in H372 to businesses. Representative Stevenson said businesses were included under commercial water rights, and businesses were currently members of ground water districts.

Representative Raybould asked Karl Dreher, Director, Idaho Department of Water Resources (IDWR), if including an exclusion for individuals and entities that had a plan in place would be problematic. Mr. Dreher said he didn't think it would, but that Ms. Beaman's comments did raise a number of issues. He asked, if someone was excluded when an approved mitigation plan was in place, what would happen during the time it took to provide notice, hold hearings, and so on. He said if the plan was approved, and a mechanism for exclusion provided by the legislature, how would that affect on-going obligations for indebtedness. Mr. Dreher said H 372 was more complicated than it might at first appear. He emphasized that he did not have an opinion at that time.

Representative Jaquet asked if an ex post facto law was being created, and what did that mean exactly. Mr. Dreher suggested the question be addressed to the person who raised the issue. Mr. Munkers said he wasn't an attorney, but that it means "after the authority." Representative Stevenson told how a ground water district was formed. He said the voluntary opt-in, opt-out aspect created the question of an ipso facto law. A case could be made that previous statute had provided a provision to opt-out. He told Representative Jaquet he didn't have an answer; but an attorney had looked at the draft and had not questioned it. With regard to Pocatello, Representation Stevenson said the city is not within ESPA boundaries, and not within the boundaries of a ground water district, even though they do mitigate and have a plan.

MOTION H372:

Representative Field made a motion to SEND H372 TO THE AMENDING ORDER WITH AMENDMENTS ATTACHED.

Discussion/questions: Representative Stevenson noted that RS15184A1 are the amendments referred to. They were prepared prior to those amendments recommended in Committee.

Representative Raybould said time would be saved if a new bill were prepared, including amendments, sent to Ways and Means, and then to second reading.

**SUBSTITUTE
MOTION H372:**

Representative Raybould made a substitute motion to HOLD H372 IN COMMITTEE, and to SEND TO WAYS AND MEANS TO BE REDRAFTED, PRINTED WITH AMENDMENTS INCORPORATED, AND SENT TO SECOND READING.

Discussion/questions: Representative Wood asked if the motion would preclude Ways and Means from offering additional amendments.

**AMENDED
SUBSTITUTE
MOTION H372:**

Representative Barrett made an amended substitute motion TO HOLD H372 IN COMMITTEE without going forward in any other manner. She said H372 was prepared too fast, and too soon; and the issue was too important to rush.

Discussion/questions: Representative Jones argued in favor of the Representative Field's original motion. He said that was probably the correct procedure at this point. He said he wasn't sure that RS15184A1 was the only amendment that should be included; but more could be added to reflect those proposed in Committee. He said the bill must pass before the legislature ends.

Representative Raybould said it wasn't his intention to limit the amendments to those included in RS15184A1, but to facilitate a new bill through the legislative process.

Discussion ensued about procedural efficacy.

Representative Roberts spoke against all three motions. He said it would be best to table the bill TIME CERTAIN, and present a new bill in Ways and Means without amendments. He said the time table wouldn't be affected, and there would be an opportunity for Committee discussion.

Representative Stevenson said he didn't disagree except that there was no Committee meeting date until Thursday, March 29th.

Discussion ensued about Committee time lines, scheduling, and suggested amendments.

**WITHDRAW
SUBSTITUTE
MOTION H372**

Representative Raybould withdrew his substitute motion, in support of the original motion.

Discussion/questions: Representative Stevenson said any amendments had to be to the clerk in the morning. Representative Jaquet asked Ms. Beaman how that would affect her. She said she had a proxy and could work on amendments. Representative Barrett asked how Ms. Beaman could confer with her clients and prepare amendments by morning. She said it was wrong to fat track the bill.

Representative Moyle said the effort was to go to general orders to make changes. He said all amendments would be included.

Representative Stevenson said it was important to pass the legislation this session because mitigation plans, required for ground water districts to continue with mitigation and have some security to borrow money to meet their mitigation plans, had to have assurity.

Discussion on process and timing continued.

**ROLL CALL VOTE
ON SUBSTITUTE
MOTION H372:**

Representative Raybould withdrew his substitute motion. Representative Barrett's amended substitute motion becomes the substitute motion.

Representative Barrett called for a roll call vote on the substitute motion to HOLD H372 IN COMMITTEE without going forward in any other manner. Representative Barrett voting AYE. Representatives Stevenson, Wood, Field(23), Jones, Bell, Barraclough, Denney, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Saylor, Jaquet and Mitchell voting NAY. The substitute motion failed 1;17.

**MOTION ON
AMENDMENTS TO
H372:**

Representative Raybould made a motion to accept RS15184A1 as written. Representative Stevenson seconded the motion.

**VOTE ON THE
ORIGINAL MOTION
H372:**

The vote on the original motion to SEND H372 TO THE AMENDING ORDER WITH AMENDMENTS ATTACHED passed by voice vote. Representative Stevenson will carry H372 on the floor.

H373:

Representative John A. Stevenson presented H373 addressing serious water shortage problems in the state by authorizing the Idaho Water Resource Board to fund a water rights acquisition and mitigation program through the issuance of revenue bonds security by program revenues paid by water users who will benefit from the program, and from other sources.

Discussion/questions: Phil Rassier, Deputy Attorney General, Idaho Department of Water Resources answered questions relative to bonding authorities, the acquisition of water rights, the definition of water projects, caps on water projects, and repayment time-frames.

MOTION H373

Representative Roberts made a motion to SEND H373 TO THE AMENDING ORDER WITH AMENDMENT 181895A attached.

PUBLIC TESTIMONY

PRO

Lynn Tominaga, Executive Director, Idaho Ground Water Users Association rose in support of H373.

PRO

Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), testified in support of H373 as amended saying IWUA would like the state and not the Bureau of Reclamation to own water. He said it was appropriate for the Bureau to rent water from the state. Mr. Semanko said IWUA's support did not constitute an acknowledgment that flow augmentation was necessary, or that water users should pay for it. He said the changes to the bill made it more clear that there would be no water use fee for purposes of sending water downstream for to meet ESA requirements.

CON

Josephine Beaman, attorney, ConAgra, Lamb Weston, Basic American Foods, City of Pocatello, testified in opposition saying her previous comments on H372 were pertinent to H373.

Lin Hintze, Custer County, asked if H373 covered all water districts. Representative Raybould said it would give the water board authority to acquire water rights anywhere rights might be needed, on a case-by-case basis. He said in areas where rights were not available and use not mandatory, it would be up to the water board and its patrons to decide whether or not to petition to buy water. Mr. Hintze asked questions specific to the mitigation plan he has been involved with.

Discussion/questions: Karl Dreher, Director, Idaho Department of Water Resources (IDWR), clarified that the structure of H373 was broader than Mr. Hintze's concerns. He said under existing law, the water board was authorized to issue revenue bonds to finance water projects, but existing law was silent on what constituted a water project. He explained definitions of water projects under H373; and the mechanics and functions of the water board.

Representative Wood asked what part water users would have in a decision by the water board to issue bonds. Mr. Dreher said water users were represented through their entity; the board didn't make loans to individuals.

Representative Bedke asked if the existing Idaho state water plan was broad enough to approve mitigation plans. Mr. Dreher said the nature of that question was "mixing things." He went through H373 section by section explaining the intent and ramification of the bill.

Representative Bedke asked if ground water districts were included in the list [p.3, (b)] of eligible entities for the purpose of loans. Mr. Dreher said they were not listed specifically, but were covered. He said last year the water board did loan money to ground water districts.

Representative Andrus asked Mr. Semanko if RS15195A1 included language to meet his concerns. Mr. Semanko said the amendments did address their concerns and made it clear that indebtedness was to be repaid by the water user entity; that there was no fee between the water board and the water user, and that the state would own water and not the Bureau of Reclamation.

Representative Barraclough said passage of H373 would prevent Oregon and Washington from wanting to buy Idaho's water. He said it was a first step to resolve problems.

**MOTION ON
AMENDMENTS TO
H373:**

Representative Raybould made a motion to accept RS15195A1 as written. Representative Stevenson seconded the motion.

VOTE H373:

The motion to SEND H373 TO THE AMENDING ORDER WITH AMENDMENT RS15195A1 attached passed by voice vote. Representatives Raybould and Stevenson will carry H373 on the floor.

H374

Representative John A. Stevenson presented H374 saying it added a new section to Idaho Code providing for the collection of a special annual assessment from water users within water districts established or to be established on the Eastern Snake River Plain. He said the assessment

was to pay added water administration costs to implement, monitor and enforce the provision of the Eastern Snake Plan Aquifer (ESPA) Conceptual Settlement Framework (the "Straw Man Proposal").

Karl Dreher, Director, Idaho Department of Water Resources (IDWR), explained the bill, going through it section by section.

Discussion/questions: Representative Bedke asked if an inflation factor would be determined by JFAC, or if they would follow an index. Mr. Dreher said the last change applied to the cap, and was suggested by JFAC.

Mr. Dreher provided background history on H374, including the concerns of the 2004 Interim Committee on Natural Resources. He said the Legislature needed to be educated on the complexities of issues; a good part of the time the interim committee met was to do that. He said the "Straw Man Proposal" was drafted by Deputy Attorney General Olive Strong and himself to do a number of things, but primarily to put forward a broad sweep of measures for debate. It also developed cost estimates for a broad range of contemplated actions, and a funding proposal to pay for those actions. Mr. Dreher said by this time next year, new water districts 110 and 140 would be in place, assuming that a filing was made with the SRBA court and SRBA grants were forthcoming for administrative funding. He said by the next irrigating season, Idaho would have water districts covering the entirety of the ESPA; and IDWR will be in a position to include an equitable apportionment of costs in their budget. Mr. Dreher said the inflation factor, discussed briefly above, placed a cap on expenses at \$1.2 million dollars, but didn't set costs. He said policy to accommodate inflationary increases was set keeping in mind the requirements of coordinating with federal agencies, particularly the U. S. Geological Survey.

Representative Barraclough said Mr. Dreher presented a scenario more bleak than necessary because data and long-term records were available to work from. Mr. Dreher said that was true, but it was necessary to look forward as well backward in time; if funding wasn't available to continue studies, programs would stop.

PUBLIC TESTIMONY

NO POSITION

Lynn Tominaga, Executive Director, Idaho Ground Water Users Association (IGWU), said IGWU hadn't had time to look at the amendments, but were in favor of the concept.

PRO

Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), distributed Amendments to House Bill 374 (Exhibit 4), saying H374 was not a settlement, but a tool for administration. He said the issues had been around for years; recommendations to address issues should be considered on their merit and, if found beneficial, funding sources had to be found. Mr. Semanko said action could have been taken through water districts during the past ten years to collect information, but the public wasn't ready to pay. Mr. Semanko went through the amendments proposed in Exhibit 4. He said the amendments made H374

a better bill, but the bill did not constitute a solution.

Discussion/Questions: Representative Wood asked what course there was for legislators representing water user constituents who were not in favor of H374. Mr. Semanko said those people needed to be heard, and their concerns addressed wherever possible. He said a delivery call was the exercise of private property rights, and was not an issue for the legislature to resolve; rather it was the prerogative of the courts or the water users.

CON:

Linda Lemmon, Thousand Springs Water Users Association (TSWUA), testified in opposition to H374 saying their board thought the legislation was premature, and it was pushed through too quickly. She said TSWUA was crafting a comprehensive water plan this year. Ms. Lemmon said, at this point in time, TSWUA was in opposition to H374.

Representative Wood asked if TSWUA was opposed to H372 and H373. Ms. Lemmon said no.

Discussion/Questions: Representative Jaquet said at some point the legislation would have to be funded. She was concerned about the Legislature ending without funding in place for another year. Representative Jaquet said people across the state didn't feed good about paying for the programs. Mr. Dreher said everyone knew a comprehensive plan was important. Committee members discussed scheduling issues relating to budgetary deadlines in water districts.

Representative Jaquet asked if Mr. Dreher saw a rule process going before the boards if H374 were passed. He said he saw no need to promulgate rules, however water districts would not be able to accommodate the ramifications of H374 if it was just "dumped on them right before their annual meeting." Mr. Dreher said time was needed to form an advisory committee, to resolve details arising from the process provided in the Straw Man Proposal, and to provide for apportionment among water districts. He said he understood Ms. Lemmon's concerns; but did not see how the process could be taken completed at the beginning of the next Legislative session. He also agreed with Mr. Semanko that funding needed to be provided if the issues were deemed important.

Representative Wood asked if canal companies and water users had looked at the proposal. Mr. Dreher said there has not been a lot of time, but effective communication and distribution had occurred. He said he reviewed the legislation with the Idaho Water Resource Board yesterday; it was not appropriate for them to take a position, but they had not opposed it.

Representative Stevenson, relevant to Representative Jaquet's question as to whether H374 could be postponed for a session, said ground water districts were required to fix their assessments in July. They would need to know in July what would be assessed the following January. He said to delay until next session would be to delay a full year.

Representative Andrus said District 29 had their water meeting the first Monday in March, and their assessments were already set for 2005. If the

legislation was postponed until next session, it would be delayed another year in District 29.

PRO Former Senator Laird Noh, Twin Falls Canal Company, testified in support of H374, saying the legislation and amendments had the full support of the canal company. He said it represented a step that had been felt to be important for years.

MOTION/VOTE H374: Representative Roberts made a motion to SEND H374 TO THE AMENDING ORDER WITH COMMITTEE AMENDMENTS ATTACHED.

The motion passed by voice vote. Representatives Raybould and Stevenson will carry H374 on the floor.

H371: Representative Moyle said that Idaho Department of Parks and Recreation (IDPR) would make internal fee changes that would preclude the need for H371. He asked the Committee to Hold H 371.

MOTION/VOTE H371: Representative Roberts made a motion to HOLD H371 IN COMMITTEE.

The motion passed by voice vote.

ADJOURN: The meeting adjourned at 4:54 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 29, 2005

TIME: 1:30 p.m. or upon adjournment

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** None.

GUESTS: See sign-in sheet (Exhibit 1).

Chairman Stevenson called the meeting to order at 3:16 p.m. The secretary took a silent roll call.

**MINUTES OF
FEBRUARY 23,
2005** Representative Saylor made a motion to accept the minutes of February 23, 2005 as written. The motion passed by voice vote.

H391: Co-sponsor Representative Wendy Jaquet presented H391, legislation to remove the exemption for domestic and stock users from participation in ground water districts. She said the bill would include domestic and stock users participation in mitigation and membership in ground water districts. Representative Jaquet said the statutory exemption made sense in the 1950*s, when it was written, but not today. She gave an over-view of previous discussions held at the 2004 interim committee; and reviewed the definition of domestic use.

Co-sponsor Representative Doug Jones, said the H391 was presented in response to general agreement at the hearing of H372, that domestic and stock users should be included in ground water districts because they receive benefits that accrue through better monitoring and mitigation plans. He said he had talked with the speaker and the chairman in the process of putting together this trailer bill. He said, even if all the wells weren*t located in a ground water district, they could be included—perhaps without a fee assessment. The principle was, if you use water within the boundary of a ground water district, you benefit from ground water district activities. Representative Jones said H391 struck the exemption from code, but added no new language.

Discussion/questions: Representative Bedke asked if the affected entities could opt-out, as debated on the floor. Representative Jones said yes, that language had not been affected. Chairman Stevenson said they were already out unless they opted-in, as they were already excluded unless H391 passed.

Representative Bedke asked for clarification. Representative Jones said

domestic wells were not subject to curtailment because they were constitutionally protected; but that didn't mean they couldn't be participants in aquifer studies and mitigation plans.

Representative Bedke said if the entities participating were beneficiaries, why wouldn't a fee be assessed, especially when there would be a heavier administrative burden from keeping track of domestic and stock users. Representative Jones said those entities could be assessed a fee, and the department could assess it in rule. He said a discussion took place at the 2004 Interim Committee suggesting a flat rate; but that no fee need be assessed during the first year.

Chairman Stevenson said if entities were in the ground water district, the assessment would be done by the ground water district. He said the department would have to notify the ground water district of wells within their boundaries.

Representative Raybould said cities were included in H372, and didn't have to opt-in or opt-out; commercial users are out, and only have recourse to opt-in. He said by taking the exclusion language out of statute, domestic and stock users would immediately bring cities back in, as far as domestic use of water was concerned. Representative Raybould said cities could be vulnerable to a water call and needed a mitigation plan. Although the constitution gives domestic use priority over all other water users, it doesn't give a license date priority. He said a municipality with a 1960 license would not have priority over an irrigation well licensed in 1949. A municipality did have the right of eminent domain because it was a government entity. An earlier water right could be condemned to pay to mitigate a municipal water right, but a water call could shut the municipality off. Representative Raybould said he hadn't spoken with the director, but assumed if a municipality had the same obligation of mitigating a water right by condemning a junior priority rate, that would affect other domestic wells. He said H391, brought so late in the session, created problems; but agreed with the sponsors of the bill that it would be better if domestic and stock users were part of ground water districts. Representative Raybould said the issue should be considered at the 2005 interim committee. He asked Norm Semanko to comment. Mr. Semanko said a provision was included, at the Idaho Constitutional Convention by the state's founders, to provide a water preference vehicle for domestic use during times of drought or shortage. He said it was a preference, not a priority, and allowed condemnation.

PUBLIC TESTIMONY

NO POSITION

Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), said IWUA had no position on H391, but wanted to make comments. He said under current conjunctive management rules, small domestic and stock people were exempt from administration; they couldn't be shut off if the director was to adhere to the rules in place. He said he understood benefits would accrue, but people would understandably ask why they should participate in ground water districts when they couldn't legally be shut off. Mr. Semanko said the issue needed to be addressed. He said a new category would be needed in code since neither "irrigator" or "non-irrigator" included domestic users.

Mr. Semanko said internal inconsistencies existed if both H394 and H391 move forward through the system.

NO POSITION

Lynn Tominaga, Executive Director, Idaho Ground Water Association (IGWA), said IGWA took no position but wanted to state their concerns, including: 1) domestic and livestock users were not under a water delivery call, and had no need for inclusion in ground water districts as they were exempt; 2) there could be performance expectations made by non-paying members of a ground water; 3) the department doesn't have a good data base in terms of locating domestic and small stock wells. Mr. Tominaga said the idea needed refinement before enactment.

CON

Dick Rush, Legislative Advisor, Idaho Association of Commerce and Industry (IACI), said IACI was in opposition to H391 for all the reasons mentioned by Mr. Semanko and Mr. Tominaga. He said it was a constitutional issue; and even though, state-wide, a fair amount of water was represented, it still was a small part of the total water use. He said the idea had some merit.

Representative Jones made closing remarks, saying the comments made were valid. He said he was somewhat frustrated by the process, and felt the concept should be seriously considered by the interim committee. He said all members of the district who take water out of the ground, benefit by better modeling, monitoring and stabilization of the aquifer. He said there were some unresolved issues since H391 was drafted as a trailer bill to H372 not H394.

MOTION H391

Representative Jaquet said she would work to craft a finer bill during the summer.

Representative Jaquet made a motion to HOLD H391 IN COMMITTEE.

Discussion/Questions: Representative Raybould said he hoped the sponsors of H391 would work with the interim committee to craft similar legislation.

Representative Wood agreed with Representative Raybould. She said the issue was one of fairness.

Representative Andrus said he appreciated the discussion and debate. He said the Committee ought to consider an assessment for stock and domestic wells, no matter how small the assessment.

Representative Barrett said she supported the motion to hold H391. She said constitutional issues were involved.

Chairman Stevenson apologized to the sponsors, saying he wasn't thinking of H391 when H394 was being drafted. He said he would work with them on new legislation.

VOTE H391:

The motion to HOLD H391 IN COMMITTEE passed by voice vote.

Discussion/Questions: Representative Mitchell asked the chairman to

relay the Committee's concern about issues raised in H391 to the interim study committee.

**SETTLEMENT
AGREEMENT OF
2004**

Bruce Newcomb, Speaker of the House, came to Committee to announce that the Nez Perce Tribe had just ratified the Settlement Agreement of 2004, otherwise known as the Nez Perce Agreement.

SJM109:

Senator John W. Goedde presented SJM109, a joint memorial to the President of the United States, the Senate and House of Representatives of the United States, and to the Idaho Congressional Delegation supporting the bipartisan legislation sponsored by U.S. Senators Larry Craig and Ron Wyden. The legislation has financially assisted counties with large tracts of federal timber land within county boundaries.

**MOTION
SJM109:**

Representative Eskridge made a motion to send SJM109 to the floor with a DO PASS RECOMMENDATION.

The motion passed by voice vote.

S1171a:

Representative Mike Moyle presented S1171a, a bill to combine the big game primary and big game secondary depredation accounts and create a non-expendable big game depredation fund to generate revenues, and an expendable fund from which depredation payments would be made. He distributed the Idaho Department of Fish and Game Funding Web (Exhibit 2) and a memorandum Fiscal Impact of SB 1171aaS (Exhibit 3). Representative Moyle explained the exhibits. He said S1171a would simplify the current formula at Idaho Department of Fish and Game (IDFG), and provide funds for sportsman access and predator control.

Discussion/Questions: Representative Saylor said there seemed to be two philosophies in two different bills about the best way to handle depredation and prevent crop damage. He asked why the method proposed in S1171aa was the better method. Representative Moyle said there was only one philosophy: to clean up the formula and make it more transparent. He said S1171aa would demonstrate where reallocation money went and how it was used.

Representative Jaquet asked if S1171aa had been promulgated through IDFG or with the department's support. Representative Moyle said no. He said it had been talked about, but not at a formal meeting.

Representative Jaquet said she was concerned that the agency had not been involved when it affected its budget. She asked if that was unusual. Representative Moyle said legislators were policy-setters; S1171aa was an attempt to establish the direction IDFG takes. He said it put more money where sportsmen wanted.

Representative Saylor said there were twenty groups opposed to S1171aa, and asked Representative Moyle to comment (Exhibit 4). He said there were always people in opposition to change. He said he knew of members from the referenced groups in support of the bill.

PUBLIC TESTIMONY

CON

Thomas A. Judge, President, Idaho State Bow Hunters, and District 14 voter, testified in opposition to S1171aa saying the bill micro managed, was not supported by scientific data, and forced money into the Access Yes program. He asked the Committee to hold S1171 aa, and submitted written testimony (Exhibit 5).

Representative Barrett said Mr. Judge had referred to a promise made, and asked him to explain what had been promised and by whom. Mr. Judge said the bill that originally set up the structure and created the funding was a codified promise, in his opinion.

Representative Eskridge said he didn't have an historical understanding of depredation funding, or know whether allowing hunters on private property was required if depredation funding had been received. He asked for comment. Mr. Judge said there was a requirement to allow reasonable access either for hunting or cross for access to hunting.

Representative Barraclough said there were empirical studies that showed predator studies did work, and also studies that showed they didn't. He said Mr. Judge's comment about scientific data was one-sided and asked for comment. Mr. Judge said he understood there were two sides; the studies he was aware of indicated predator studies weren't cost effective, not that they were completely ineffective.

PRO

Barton Hill, sportsman, representing himself, rose in support of S1171aa He said wildlife needed to be actively managed, but landowners should be compensated for loss due to wildlife. He said additional funding for depredation was a valid expenditure of funds.

PRO

Jack Oyler, sportsman, representing himself, rose in support of S1171aa He said the legislation gave transparency as to what happened to the sportsman's dollar. He said there were many ways to control predators that were cost effective, and gave examples. Mr. Oyler said predator control was vital to big game.

PRO

Byrd Bolay, sportsman, representing himself rose in support of S1171aa He said the groups talking to IDFG wanted to help, not hinder. He made an analogy between predator control and pruning rose bushes.

PRO

Jay C. Neider, sportsman, representing himself rose in support of 51 171aa He said, as a landowner and sportsman, he looked at the issue from two sides of the issue. Mr. Neider said the legislation made IDFG more accountable, directed funds to animal damage control and depredation, and gave an incentive to "pay out more freely."

PRO

Judy Bartlett, lobbyist, Idaho Farm Bureau Federation (IDFB), rose in support of S1171aa She said a study wasn't needed to see what predators do to livestock, wildlife and birds. Ms. Bartlett said the bill would benefit landowners, wildlife and hunters.

PRO

Mary Hagedorn, sportsman, representing himself, rose in support of S1171aa He said there had been miscommunication regarding the bill to sportsmen. Mr. Hagedorn said the legislation was a strategic step forward, and streamlined the management of predators and depredation

payment. He said sportsmen didn't want money to pay for studies, but wanted it put directly to pay depredation and predator management.

PRO

Jeffrey Robbins, sportsman, representing himself, rose in support of S1171aa He said farmers grow crops that feed wildlife, and money should go for depredation payment; money that isn't used for depredation should go towards sportsman access.

CON

Steven Huffaker, Director, Idaho Department of Fish and Game (IDFG), testified in opposition to S1171aa Referring to previous testimony, he said there were more cost effective methods of killing coyotes, but the five-year research project was a complicated study with various objectives. He said the bottom line, regarding coyote predation on mule deer, was that in two of five years there was a measurable effect on the survival of mule deer in the summertime. Mr. Huffaker stated other findings of the study. He said the question was "how much and where." He said S1171aa overturned a negotiated agreement created to address depredation, and placed long-lasting statutory constraints on issues having changeable parameters. Mr. Huffaker said the diagram (exhibit 2) was complicated, but the one generated by S1171aa would be also.

Representative Jaquet asked if IDFG programs involved public participation, and if the department listened. Director Huffaker said all meetings were public, and notice was given. He said the last commission meeting was not well attended because, in general, people were happy.

Representative Jaquet asked for other examples where the House Resources and Conservation Committee made statutory changes of the nature proposed in Si 171aa Director Huffaker said the existing legislation was promulgated through the legislative process, but with the recommendation of the IDFG Commission as advised by the IDFG Advisory Committee. He said agricultural and sportsman's issues were negotiated at that time. He said that legislation would be changed by S1171aa

Representative Saylor asked for a before and after comparison, and asked if there would be more or less money for predator control, habitat improvement and sportsman access. Director Huffaker said there would be more money for predator control every year, limited to that done by the USDA Wildlife Service through the depredation account. He said the \$100,000 going to that program currently was statutorily created, and that the commission had directed half toward predator control, and left half "on the table for the commission to do with as it saw fit." He said sportsman access was a popular program, with continued funding and growth. Director Huffaker said he wasn't sure what the commission would do with the additional amount going toward depredation.

Representative Saylor asked if the language change (p.6, l. 47-48) allowed reasonable sportsman access. Director Huffaker said access was one of the negotiable points between sportsmen and landowners.

Representative Bedke said sportsmen didn't make allegations lightly; the request for a language change addressed a problem. He said it bothered him that IDFG decided whether or not an operation was impacted by sportsman access. Director Huffaker said IDFG appreciated private land owners' role in improving habitat and tolerating wildlife activities on their

properties. He said he was not aware of extensive problems with regard to providing reasonable access to sportsmen.

Representative Bedke referred to Exhibit 2 saying it stood to reason that IDFG liked more money in the fish and game fund than less money. He said money flowing from the depredation account provided a disincentive to fund depredation activities. Chairman Stevenson said he wouldn't speak on behalf of the advisory committee, but the reversion provision returning to IDFG was reallocated to programs the commission and sportsmen agreed on, and was approved every year by JFAC. He said that would fundamentally change under S1171aa

Representative Wood gave an historical account of the original of the original depredation agreement. She said the decision at that time was contentious, discussed vehemently in Committee, and passed by one vote. Director Huffaker said the issue was contentious. He clarified that the Fish and Game Advisory Committee advised the IDFG Commission that proposed legislation; the advisory committee were advisors and not decision-makers.

Representative Bedke said the point was that there was a disincentive to pay depredation claims, and that was what the depredation fund was all about.

Representative Andrus asked where funds came from to purchase private land. Director Huffaker said prior legislation provided for a set-aside fund, taken from each hunting license and put toward habitat acquisition and sportsman access. That fund still exists. He said the commission decided whether to use funds for land acquisition, access acquisition, habitat development, etc.

Representative Mitchell said Mr. Judge was a member on the Sportsmen's Advisory Council (Exhibit 4), and asked if the council was well informed about S1171aa. Mr. Judge said they he believed they were. Individuals may not have been contacted in every instance; but groups had an opportunity to give input.

PRO

Nate Helm, Executive Director, Sportsman for Fish and Wildlife (SEW), testified in opposition to S1171aa saying the language change clarified what reasonable access meant. Mr. Helm said predator control was the primary concern of 75 percent of sportsmen, according to an IDFG survey. He said agricultural interests were included on the IDFG Advisory Council, and that there were people on the council in support of S1171aa. Mr. Helm said all money coming to IDFG was not spent, but it was all budgeted into IDFG priorities. He said sportsmen wanted the money spent "on the ground."

**MOTION
S1171aa:**

Representative Bedke made a motion to send S1171aa to the floor with a DO PASS RECOMMENDATION.

Discussion/Questions: Representative Jaquet said it didn't seem right to bring legislation against the department. She would vote no.

Representative Bedke said the IDFG fee issue was still pending. He repeated from previous testimony, "If you always do what you've always

done, you always get what you've always got." He said sportsmen he had talked with were willing to pay twice as much to have predator control first on the list of priorities.

Mark Collins, U. S. Department of Wildlife Services, said it was up to the body to decide how money would be spent.

Representative Saylor said he opposed the motion because it changed the intent of the law. He said the discussion today had been more about predator control than depredation to crops.

Representative Jones said he supported the motion reluctantly. He said it seemed every year that was an effort in Committee to "tie one hand behind the back of IDFG." He said if people didn't like the way IDFG was run, it was appropriate to change personnel. Representative Jones said IDFG was created a long time ago, and people ought to have some authority to do what they were hired to do. He said he was frustrated with the process.

Representative Jaquet asked for a roll call vote, and for a disclosure under Rule 38.

Representative Bedke said he had taken depredation money in Nevada, and may take it in either Nevada or Idaho in the future. He didn't think that action constituted a problem with the vote on S1171aa

Representative Roberts said he had been involved with depredation farming operations in the past, and had received funding from the state for depredation claims. He declared Rule 38. Chairman Stevenson said it was his decision to vote or not.

Representative Denney said he did not have a conflict. He responded to Representative Jones's previous comment, saying he didn't feel the Committee intentionally handicapped IDFG. He said IDFG was improving, and S1171aa was a policy decision the Committee needed to vote on.

Representative Field said she had never received depredation money, although she fed wildlife on her property.

Representative Raybould said he provided big game and game bird habitat, but had never taken or applied for depredation funds.

VOTE S1171aa: The vote on the motion to send S1171aa to the floor with a DO PASS RECOMMENDATION passed by roll call vote. (15:3)

Representatives Stevenson, Wood, Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, and Shepherd (8) voting AYE. Representatives Saylor, Jaquet and Mitchell voting NAY.

ADDITIONAL TESTIMONY

The following written testimony was submitted for the record:

S1171aa: Marty Anderson, Ammon ID (Exhibit 6)
Mary Hagedorn, The Hagedorn Group, Inc., Meridian ID (Exhibit 7)
Daniel M. Herrig, Boise ID (Exhibit 8)
Kelton Larsen, President, Sportsmen for Fish and Wildlife (Exhibit 9)
Rick Waitley, Executive Director, Food Producers of Idaho (Exhibit 10)

ADJOURN: Chairman Stevenson said any future meetings would be at the call chair. He said a fee increase bill was still expected to come before Committee.

The meeting adjourned at 5:18 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 31, 2005

TIME: 1:00 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field (23), Jones, Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd (8), Saylor, Jaquet, Mitchell

**ABSENT/
EXCUSED:** Representative Field (23)

GUESTS: See sign-in sheet (Exhibit 1).

A quorum being present, Chairman Stevenson called the meeting to order at 1:08 p.m. He told the Committee the final minutes could be approved by the Chairman and one other member, and would not require another Committee meeting.

Representative Stevenson thanked Representative Saylor for faithfully reading draft minutes throughout the session. It was appreciated and helped the Committee move quickly through its administrative duties.

**MINUTES OF
MARCH 29, 2005** Representative Saylor made a motion to approve the minutes of March 29, 2005 as written. The motion passed by voice vote.

SJM112: Representative John Rusche presented SJM112 a joint memorial urging Congress to take steps to facilitate dredging the Snake and Clearwater Rivers by the U. S. Army Corps of Engineers. The memorial was approved by the Expanded Natural Resources Interim Committee on Water of 2004. Representative Rusche said the memorial was prepared by Senator Stegner at the request of the Lewiston Chamber of Commerce and the Lewiston port district, because it is important to Lewiston's economy.

**MOTION/VOTE
SJM112:** Representative Eskridge made a motion to send SJM112 to the floor with a DO PASS RECOMMENDATION.

The motion passed by voice vote. Representative Rusche will carry SJM112 on the floor.

S1191aa: Steven Huffaker, Director, Idaho Department of Fish and Game (IDFG), presented S1191aa, legislation to increase most license and tag fees by ten percent or less. The increase would be effective at the start of FY2006. The last fee increase was effective on May 1, 2000. The fee increases are necessary to continue most of the department activities sportsmen are familiar with and support through fiscal year 2006. Director Huffaker explained the fee increase bills that have been in the legislature this session. He said the difference in S1191aa is the inclusion of the five-year taxidermist license.

Discussion/questions: Chairman Stevenson said the taxidermist license change was made for his and Representative Bell's constituents.

PUBLIC TESTIMONY

PRO Thomas A. Judge, President, Idaho State Bowhunters and Caucus Advisory Council, testified in support of S1191aa, saying the fee increase was essential to maintain the level of service requested of IDFG by sportsmen. Mr. Judge submitted written testimony (Exhibit 2).

PRO Fritz Ward, sportsman, representing himself, rose in support of S1191aa.

PRO Russ Heughins, Issues Coordinator, Idaho Wildlife Federation, testified in support of S1191aa saying the federation recognized the need for the fee increase.

MOTION S1191aa: Representative Eskridge made a motion to send S1191aa to the floor with a DO PASS RECOMMENDATION.

Discussion/questions: Discussion ensued about specific fee increases, including the fee increase to senior citizens; and about the implementation of a preference system at IDFG.

Representative Barrett said she would not support the bill because the fee increase was too high.

Representative Andrus said he opposed the legislation. He felt passing S1191aa would not be in the best interest of the department, because it would create more dissatisfaction among sportsmen.

Representative Eskridge said he continued to support the motion, because without the fee increase, programs that sportsmen support would not be funded.

Representative Saylor said IDFG had been given a mission. Since the department had no general fund money, but was supported by fees, it would not be well served to deny an inflationary adjustment. He supported S1191aa.

VOTE S1191aa: The motion to send S1191aa to the floor with a DO PASS RECOMMENDATION was passed by voice vote. Representatives Andrus, Barrett, Denney, Roberts and Shepherd (8) voting NAY for the record. Representative Eskridge will carry S1191aa on the floor.

ADJOURN: The meeting adjourned at: 1:42 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary