

# House Resources & Conservation Committee

Minutes  
2006



## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

#### Joint Meeting with the Senate Resources & Environment Committee

**DATE:** January 11, 2006

**TIME:** 1:30 p.m.

**PLACE:** Room 412

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

**SENATORS:** Senator Schroeder, Chair, Senate Resources & Environment Committee, and Senators Pearce, Burtenshaw, Williams, Brandt, and Little

**ABSENT/  
EXCUSED:** Representatives Raybould and Jaquet; Senators Cameron, Stennett and Langhorst

**GUESTS:** Jeff Allen, Policy Advisor, Office of Species Conservation (OSC); Rep. Stan Bastian (14); Michael Bogert, Administrator, Regional Administrator, Region 10, Environmental Protection Agency (EPA); Jim Caswell, Administrator, OSC; Rep. Marge Chadderdon (4); Brad Compton, Big Game Manager, Idaho Department of Fish and Game (IDFG); Marc Gibbs, Commissioner, IDFG; Justin Hayes, Program Director, Idaho Department of Lands (IDL); Steven Huffaker, Director, IDFG; Alex Irby, Commissioner, IDFG; Sharon Kiefer, Legislative Liaison, IDFG; Ron Kreizenbeck, Deputy Regional Administrator, Region 10, EPA; Gary Power, Commissioner, IDFG; Jim Caswell, Administrator, Office of Species Conservation (OSC); Tony McDermott, Commissioner, IDFG; Peter Murchie, Region X, US EPA; Steve Nadeau, Wolf Biologist, IDFG; Jon Scholl, Counselor to the Administrator, US EPA; Dr. Jim Unsworth, Chief, Bureau of Wildlife, IDFG; John Watts, Commissioner, IDFG; James H. Werntz, Director, Idaho Operations Office, Boise, ID, EPA; Cameron Wheeler, Commissioner, IDFG; Wayne Wright, Commissioner, IDFG

See attached sign-in sheet for a listing of additional guests.

**CALL TO ORDER:** Chairman Stevenson called the Joint Meeting with the Senate Resources and Environment Committee to order at 1:37 p.m. He introduced Rep. Bert Brackett (23) to the Committee. Rep. Brackett is replacing Rep. Douglas Jones (23), who has not returned this session.

Chairman Stevenson introduced Johanna Roberts, McCall(8), serving as Page to the House Resources and Conservation Committee for the first half of the legislative session. Ms. Roberts is Rep. Ken Roberts' daughter.

Senator Schroeder introduced Dana Nelson, Gooding(25). Ms. Nelson is serving as page to the Senate Resources and Environment for the first half of the legislative session.

**INTRODUCTION:  
IDFG  
Commissioners**

Chairman Stevenson introduced Cameron Wheeler, Commission Chairman, Idaho Department of Fish and Game (IDFG). Commissioner Wheeler is a former representative and former Chairman of the House Resources and Conservation Committee. As a Commissioner, Mr. Wheeler represents the Upper Snake Region.

Mr. Wheeler introduced the Commission: Tony McDermott is the newest member, from Region 1; Wayne Wright, Twin Falls, represents the Magic Valley Region; Alex Irby is a long-time Commissioner representing the Clearwater Region; John Watts, of Boise, represents the Southwest Region; Gary Power represents the Salmon Region as a Commissioner, and is a Regional Supervisor for IDFG; and Marcus Gibbs, who is the outgoing Chairman, represents the Southeast Region.

Commissioner Wheeler introduced Steve Huffaker, Director, Idaho Department of Fish and Game (IDFG); Sharon Kiefer, Legislative Liaison, IDFG; Jim Caswell, Administrator, Office of Species Conservation (OSC); Jeff Allen, Policy Advisor, OSC; and Jim Unsworth, Chief, Bureau of Wildlife, IDFG.

He said the group had high expectations and good working relationships. As policymakers, they are dedicated to procuring maximum authority for the State from the 10(j) rule.

**IDFG BRIEFING:  
10(j) Rule,  
State Wolf  
Management**

**Jim Caswell,  
Administrator  
OSC**

Jim Caswell, Administrator, Office of Species Conservation (OSC), gave a five-year overview of wolf policy issues affecting Idaho.

Wolves were reintroduced into Idaho in 1995 as a non-essential experimental population as part of the federally-directed wolf recovery program in the northern Rocky Mountain Region. Idaho began to develop a management plan at about the same time. In about 2000, Idaho received the first of five annual federal appropriations for wolf management and depredation compensations. In 2002, the Legislature approved a management plan. The same year the first major wolf recovery goal was met—30 breeding wolf pairs across a tri-state area were identified. In 2003, HB294 passed the Legislature allowing IDFG to manage wolves. In 2004, the US Fish and Wildlife Service (USFWS) accepted Idaho and Montana state plans for wolf management. Significantly, the Wyoming plan was rejected by the Service. In 2004, the draft of the 10(j) Rule was published; hearings were held in Boise. Later that year the Commission made a decision to classify wolves as big game in Idaho. In 2005, the amended 10(j) rule went into effect. That same year, HB132 and HB133 were passed to regulate wolf take and methods of take in Idaho, to include helicopters if the Commission perceived that to be the best method. The Memorandum of Agreement (MOA) was signed in April, 2005 with the Nez Perce Tribe. At the end of 2005, the Governors of Idaho and Montana signed a joint letter to the U.S. Secretary of the Interior on the issue of delisting the gray wolf. Last week, Governor Kempthorne and Secretary of the Interior Gale Norton signed an MOA between the State and the Federal government relative to gray wolf management under the 10(j) rule.

The MOA between the Department of the Interior and the State of Idaho is published at the URL:

<http://www.fws.gov/pacific/news/2006/documents/IDWolfMOA.pdf>

The 10(j) rule is published at the URL:  
<http://www.fws.gov/policy/library/05-136.pdf>

Mr. Caswell said Idaho still reports annually to the Service, and the 10(j) rule is still the rule under which wolf management in Idaho operates as long as the gray wolf is listed as an endangered species. The state management plan can be implemented as long as it is compatible with the 10(j) rule.

Mr. Caswell noted that the same five criteria are required to both list and delist a species: loss of habitat, overuse of the species through commercial or recreational activities, disease and predation, inadequacy of existing regulations, and other natural or man-made factors affecting its continued existence. He said Idaho has met those criteria with regard to delisting the gray wolf but, because of the situation in Wyoming, can not move forward. Although Idaho and Montana have compiled five different management options, the Department of the Interior remains hopeful that Montana, Idaho and Wyoming can move forward together, and that legislation from the Wyoming Legislature this year will be forthcoming toward that end.

**Questions/discussion:** Senator Burtenshaw asked how funding would be affected when Idaho became responsible for wolf management. Mr. Caswell said federal funding would remain the same as in the past—an integrated budget including the Fish and Wildlife Service and the Tribe.

**Steven Huffaker,  
Director, IDFG**

Chairman Stevenson welcomed Director Steven Huffaker, IDFG, who addressed wolf management from an operational perspective. He said he was notified yesterday by the USFWS that the 10(a)(1)(A) rule was published in the Federal Register. The rule proposes a Recovery Permit to IDFG to manage gray wolves in the Idaho Panhandle, north of I-90. Director Huffaker said that was good news. He was also informed that the USDA Forest Service could not make a decision on Idaho's request to land helicopters to regulate wolf populations in the Frank Church wilderness. That request, an application for a categorical exclusion to regulate wolves during aerial big game counts which perfectly fit the criteria for categorical exclusion to USDA Forest Service rule, met with opposition by groups threatening legal action. IDFG is preparing a wolf management proposal to use horses because information is needed on wolves in wilderness areas.

Director Huffaker said Dr. Jim Unsworth would speak to the status of wolves in Idaho, specifically to the management proposal for the Lolo-Clearwater Region. He said there were now over 600 wolves in Idaho, two-thirds of which are in the recovery zone. It has been determined that gray wolf predation is having an unacceptable impact on wild ungulate populations. He said Idaho meets delisting criteria for the gray wolf and is prepared to start species management.

**Questions/discussion:** Senator Schroeder asked, with respect to collaring wolves in the wilderness, if wolves could be shot and anaesthetized legally from the air. Dr. Unsworth said someone baling out from a hovering helicopter was considered to be a landing by USDA Forest Service rule.

Representative Wood said wilderness aerial restrictions seemed to be at cross purposes with wolf management in Idaho. Dr. Unsworth said it is a frustration, occurring because two federal agencies are involved: the USFWS agrees, and USDA Forest Service does not. Representative Wood asked if it was the case that USFWS didn't consult with USDA Forest Service. Dr. Unsworth said apparently that was the case.

Senator Burtenshaw asked if the Tribe would continue collaring wolves. Director Huffaker said the role of the Tribe was defined in the Memorandum of Understanding (MOU). The Tribe will do most of the monitoring in their treaty seeding area—from the Clearwater as far as McCall; IDFG will do it in the rest of the state.

Senator Pearce asked if information was ready regarding detrimental impacts on state deer and elk herds. Director Huffaker said the large state study is just underway. It is premature to submit state-wide information. He said the Lochsa area has been monitored for a long time, and it therefore the first area in which to propose wolf management.

Representative Wood asked if it was accurate that IDFG was prepared to take wolves from her district. Director Huffaker said a report from Dr. Unsworth was forthcoming that would address that issue.

**Dr. Jim Unsworth,  
Chief,  
Bureau of Wildlife,  
IDFG**

Dr. Jim Unsworth said elk and deer have been monitored in Idaho for more than fifty years. Wolf management is more recent, but is not a new project. Dr. Unsworth made a Power Point presentation depicting the current status of wolf populations in Idaho. He said 35 wolves were reintroduced in 1995-96. By 2005 it was estimated that between 513 and 621 wolves were in Idaho—61 packs and 36 breeding pairs. Dr. Unsworth referred to the 2005 Wolf Activity Map providing information on telemetry, and he documented locations of wolf activity in Idaho. The map is published at the URL:

[http://fishandgame.idaho.gov/cms/wildlife/wolves/05\\_activity.pdf](http://fishandgame.idaho.gov/cms/wildlife/wolves/05_activity.pdf)

Dr. Unsworth said wolf removal is warranted as allowed under the 10(j) rule—specifically it provides that the state or the Tribe may remove wolves if wolf predation has an unacceptable impact on wild ungulates. In order for the provision to apply, a science-based document must be prepared that 1) describes what data indicates that an ungulate herd is below management objectives, what data indicates wolf predation on the ungulate population, why wolf removal is a warranted solution to help restore the herd, the level and duration of wolf removal being proposed, and how ungulate population response to wolf removal will be measured; 2) identifies possible remedies or conservation measures in addition to wolf removal; and 3) provides an opportunity for peer review and public comment prior to submitting the proposal with IDFG Commission approval to USFWS for written concurrence. USFWS determines whether the proposal is scientifically based.

Dr. Unsworth reviewed elk management zones and objectives. He reviewed how telemetry, collaring operations, and computer modeling fit into IDFG's management practices. Modeling predicts population declines, and supports telemetric studies.

Wolf predation is a significant mortality factor in ungulate herds. Without wolf management, it is unlikely the state will meet its goals. Three of the twenty-nine elk zones in the state do not meet IDFG's elk population objectives: Lolo, Selway, and Brownlee.

Until a few years ago, the Clearwater Zone was the classic elk hunting area in the U.S. For the last ten years, predation and habitat issues have resulted in herd decline. An initiative and task force are currently in place to try to improve the herd, and there has been some improvement.

If adult cow survival rates drop below 85%, herds decline. That is the situation in the Lolo Zone. IDFG proposes to kill up to 43 wolves (75%) in the Lolo Zone where elk herds have resisted other management efforts. Wolf pup populations will be maintained at 25-40% for five years, and carefully monitored.

The Selway Zone is proposed as a control in Idaho's management study. The Lolo Zone will be compared with the Selway in terms of elk and wolf populations.

Dr. Unsworth said there is a January 16 deadline for peer review on the proposal to remove wolves to benefit elk. Responses will be incorporated into the proposal; it will be posted to the Web; then public meetings will be held in Lewiston and Boise.

In summary, Dr. Unsworth said wolves have exceeded recovery goals in Idaho and there is a harvestable surplus. The wolf population is doubling every two and one-half years. Wolf predation on cow elk is occurring in unacceptable numbers.

**Questions/discussion:** Senator Burtenshaw asked how 43 wolves would be eliminated when they could not be big game take. Dr. Unsworth said in the same manner as wolves are now taken for livestock depredation—by aerial gunning or trapping.

Senator Burtenshaw said people were told that the wolf would be managed like other big game animals when it was identified as a big game animal. He asked when that would occur. Dr. Unsworth said when the wolf was delisted.

Representative Roberts asked how objectives have changed in the Beaverhead Zone since 1995 with regard to bears, mountain lions and wolves. Dr. Unsworth said in the Beaverhead Zone, objectives for elk have not changed because of wolves.

Representative Roberts asked how soon elk populations in other management areas would be affected by predation. Dr. Unsworth said it was hard to predict because each elk population functioned differently. Robust populations tolerate higher levels of predation.

Senator Brandt asked what time frame and what problems were anticipated going into the peer review phase of the current study. Dr. Unsworth said the Commission was reviewing the proposal; it will be published on the web in about a week; it will be on the web for a couple of weeks; meetings will be held in February; then the proposal will be

edited, if necessary. It will go to USFWS the end of February. Normally there is a 30-day comment period at USFWS.

Senator Little said he was perplexed as to how collars could be placed in the wilderness in the snow without using helicopters. Without collars and counts, how would the wolf ever be delisted. Dr. Unsworth said there is a good sample everywhere but in wilderness areas. Helicopters would have assisted enumerating wilderness wolf packs. Following wolf delisting, a hardy radio telemetry effort will be implemented.

Senator Schroeder asked what the model predicts for population recruitment in the Lolo Zone as wolves are killed. Dr. Unsworth said without aggressive control, the animals would recruit back almost immediately through immigration and reproductive effort. Senator Schroeder asked if the population would stay at the desired number at 75% of the current population. Dr. Unsworth said a reduction to 75% was needed to reduce the population.

Senator Brandt asked what it cost to collar wolves per collar. Steve Nadeau, Wolf Biologist, State Program Coordinator IDFG said \$1,000-\$2,000 per collar. It is estimated that 15-20 will be collared from ground trapping. Aerial crews will opportunistically dart wolves when they are doing big game surveys. The goal is to put 1-2 collars in each pack. The department will continue to monitor outside of back country areas. Representative Wood confirmed the price per collar.

Representative Bedke asked how many active, beeping collars were in place. Mr. Nadeau said there were 68-70 collars. Representative Bedke asked if that number of collared wolves represented the 600 wolves in Idaho fairly. Mr. Nadeau said yes.

Senator Schroeder said larger wolf packs split into two packs, and asked if the model took this into account. Mr. Nadeau said yes.

Representative Moyle asked how long batteries lasted in collars. Mr. Nadeau said typically 2-3 years, sometimes as long as 5 years. Representative Moyle asked if collars were reused. Mr. Nadeau said he wasn't sure.

Representative Mitchell asked if it would be helpful for the Idaho Legislature and the Governor to request that the USDA Forest Service reconsider Idaho's proposal. Dr. Unsworth said any input the USDA Forest Service received from the state would be measured, and would carry weight.

Senator Brandt asked if wolf management was financed with federal funds, and how much elk management cost the state. Dr. Unsworth said wolf management is federally funded. Managing elk and deer is one of the largest management programs state-wide. Brad Compton, Big Game Manager, IDFG said deer and elk management costs are close to \$2 million. Dr. Unsworth said IDFG has to be better elk and deer managers because of wolf issues, but that elk and deer have always been the main management program.

Senator Schroeder asked if last session's memorial regarding sporting

dogs had any effect on wolves. Mr. Caswell said it didn't. The 10(j) rules are clear about sporting animals, and the Federal Government is not going to change the 10(j) rule.

Senator Little asked what the down-side risk was, in terms of potential suits from environmental groups, if not enough wolves are collared. Mr. Caswell said the program was collar-based to a degree, but wolf numbers are clearly above the recovery goal.

Senator Little said there would, at some time, be a lawsuit. He asked if there was enough confidence in the science to support the stated wolf numbers. Mr. Caswell said yes.

**Closing Comments and questions to Agency Directors:**

Director Huffaker thanked the Committees and the Legislature.

Mr. Caswell said he was confident that the recovery goal was met. In response to questions, Mr. Caswell clarified which activities were the province of the Nez Perce Tribe and which of the State.

Commissioner Wheeler thanked the House and Senate Committees, and expressed his appreciation of the presentation.

Chairman Stevenson concluded the Joint Meeting with the Senate Resources and Environment Committee. He asked members of the House Resources and Conservation Committee to remain in the room for a brief Committee meeting. The Chairman said Jon Scholl, Environmental Protection Agency (EPA) would be in Committee at 3:00 p.m. to introduce Michael Bogert, Administrator, Regional Administrator, Region 10, EPA.

**HOUSE  
RESOURCES &  
CONSERVATION  
COMMITTEE:  
Administrative  
Rules  
Subcommittee  
Assignments**

Chairman Stevenson made Committee Administrative Rules Subcommittee assignments as follows:

Idaho Department of Lands: Rep. Roberts (Chair), Reps. Barrett, Andrus and Jaquet.

Idaho Department of Parks and Recreation: Rep. Eskridge (Chair); Reps. Shepherd(8), Bedke and Saylor.

Idaho Department of Fish and Game: Rep. Wood (Chair), Reps. Mitchell, Barrett, Moyle and Brackett.

Chairman Stevenson said the full Committee would review Administrative Rules submitted by the Idaho Department of Water Resources and the Outfitters and Guides Licensing Board.

**ENVIRONMENTAL  
PROTECTION  
AGENCY**

Michael Bogert, Administrator, Regional Administrator, Region 10, Environmental Protection Agency (EPA), spoke informally the Committee. He was then introduced by Jon Scholl, Counselor to the Administrator, US EPA.

Mr. Bogert introduced Ron Kreizenbeck, Deputy Regional Administrator, Region 10; Peter Murchie, Region X, US EPA; and James H. Wertz, Director, Idaho Operations Office, Boise, ID, EPA.

Mr. Scholl said his background was in farm policy and family farming operations in central Illinois. He brings a practical perspective, especially from production-level agriculture. He noted that agriculture in Illinois was different from agriculture in Idaho; he is familiarizing himself with specific issues. Mr. Scholl said he took his job in 2004, excited because the Administrator wanted agriculture to be a solution and not a problem. He said his current administrator knows agriculture well, understands issues and the people involved, and looks to find a better way for people to comply with environmental requirements. He is collaborative, and moving the agency in that direction. Many issues before the EPA deal with livestock operations; some with pesticide, renewable fuels, and the ground rules of renewable fuel standards. He hopes to take advantage of pioneering work done in Idaho and other states, and to be proactive in addressing issues.

Peter Murchie is co-coordinator for the Western Project—from Canada to Mexico, including Idaho. He reviewed on-going activities including promoting cleaner diesel, combustion of diesel fuel, developing bio-diesel, cleaner fuels and energy, technologies to make farmers more efficient, and growing the program. He said there were options and opportunities in Idaho to develop the program. Next week a request for proposals for project ideas will be published. There is \$3 Million available, and the EPA wants to implement some of the programs working with Idaho agencies.

**Questions/discussion:** Representative Wood asked if an animal digester, using animal wastes, was under consideration. Mr. Murchie said his interest is in an animal waste trap fuel conversion for farm equipment, itself. Another use for animal waste, is digesters to make electricity; but it is not part of his program. Mr. Scholl said converting waste products is a good example of agriculture being used as a solution.

Representative Wood said Idaho requires gasoline to continue 10% Ethanol. She asked if funds might be available to build a facility. Mr. Murchie said not directly. He spoke about the West Coast Collaborative, and said EPA would try to help people access resources.

Representative Barraclough said it was refreshing to have a positive, sensible response from the Federal agency.

Representative Roberts said he was mindful that only two states remained without language giving the State primacy over EPA regulations. Mr. Bogert said Idaho had many of the same issues as Alaska. He is willing to have discussions and work toward Idaho primacy.

Representative Barraclough said both the House and Senate were considering proposals by way of an Environmental Common Sense Committee which is collecting information. That Committee realizes that Idaho is one of the few states without primacy. It is preparing to take considered action.

Chairman Stevenson thanked EPA for coming before the Committee.

Representative Field thanked Mr. Bogert for speaking to the group.

**ANNOUNCEMENTS:** Chairman Stevenson said there will be no Committee meeting on Friday, January 13. There will be a Committee meeting in Room 412 on January 17<sup>th</sup>. The Committee will meet in joint session with the Senate Resources and Environment Committee on January 23<sup>rd</sup>, 25<sup>th</sup>, and 27<sup>th</sup>.

**ADJOURN:** The meeting adjourned at 3:25 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE:** January 17, 2006

**TIME:** 1:30 p.m.

**PLACE:** Room 412

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

**ABSENT/  
EXCUSED:** Reps. Roberts, Wood

**GUESTS:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL); George Dillard, Idaho Good Sam Club; Karl Dreher, Director, Idaho Department of Water Resources (IDWR); Dean Sangrey, Operations Divisions Administrator, Idaho Department of Parks and Recreation (IDPR); Carl Wilgus, Tourism Development, Idaho Department of Commerce & Labor (CL)

See sign-in sheet for other guests.

**CALL TO ORDER:** Chairman Stevenson called the meeting to order at 1:32 p.m.  
TO order at:1:32

**Approve Minutes of  
January 11, 2006**

A motion was made by Representative Field(23), second by Representative Saylor, to approve the minutes of January 11, 2006 as written. The motion passed unanimously.

**ADMINISTRATIVE  
RULES REVIEW:  
IDWR Docket  
37-0307-0201**

**Docket 37-0307-0201 Temporary Rules governing the administration of  
Stream Channel Alteration Rules:**

Karl Dreher, Director, Idaho Department of Water Resources (IDWR) made the presentation. Mr. Dreher reviewed the docket. He said it was adopted as a temporary rule following a budget roll-back. The decision was based on program priorities. Although there is a substantial backlog of in-stream alteration permits, the department will try to work on those of highest priority. Mr. Dreher said means and funds were identified to restore the affected program during the last legislative session, which IDWR likely would have asked to be extended another year. The Governor's recommendation, however, made it necessary for the department to suspend the program. Reduced funds will be available for Snake River adjudication. IDWR proposes to use the funds intended for the in-stream channel alteration program to pay bills associated with adjudication. Mr. Dreher said IDWR needs this rule.

**QUESTIONS AND COMMENTS:**  
None at this time.

**MOTION:  
Docket  
37-0307-0201**

A motion was made by Rep. Raybould, second by Rep. Field(23), to accept Docket 37-0307-0201.

**VOTE:  
Docket  
37-0307-0201**

The motion to accept Docket 37-0307-0201 passed 15:1.

QUESTIONS AND COMMENTS:

Chairman Stevenson asked Mr. Dreher to return to Committee at another time to discuss other IDWR issues.

Rep. Jaquet asked what IDWR's concerns were about the Governor's budget. Mr. Dreher said it decreases general fund money for IDWR, primarily in operating expenses for the Snake River Basin Adjudication (SRBA). The amount of money left isn't enough to pay half the current fiscal year's expenditures. The department is working with the Governor's office to be sure they understand where SRBA funds are used. In the meantime, there is no choice but to find ways to "plug the hole." Mr. Dreher said the only other item cut in the Governor's budget is an additional hydrologist position for water rights accounting. There are more water rights and more water districts than there used to be. All districts have to do an accounting, which is done with computerized models. IDWR develops and maintains models for the water districts because the districts don't have resources. The workload is more than IDWR can support; and there hasn't been a staff increase for decades.

Rep. Jaquet asked how the in-stream channel backlog would fare with this change. Mr. Dreher said it would be pushed further out, but it is not an option for the department to slow adjudication at this time. Adjudication is six months behind schedule. Of the original 160,000 claims, about 20,000 are left to recommend.

Mr. Dreher said SRBA funds can't be decreased for two reasons: 1) as the adjudication winds down, IDWR needs to transition from adjudication to water management in order to support water districts and be sure the rights are administered properly, and 2) litigation will just be beginning. Without resources, IDWR can't be represented at court hearings. The Governor's office was under the impression that winding down the SRBA would reduce the need for funding; that is not the case. Mr. Dreher said the department had to have funds to continue with adjudication.

With regard to staffing issues, Mr. Dreher said people have been shuffled to avoid layoffs. IDWR is using contract workers to provide some necessary support where shifts have occurred.

Rep. Barraclough asked if IDWR has physical space problems, or funding for the space. Mr. Dreher said there is sufficient space, but not funding. He said 35 positions were associated with SRBA, which is a substantial portion of the department's staff.

Rep. Raybould asked if IDWR would have to add staff in order to implement the Interim Committee's recommendation. Mr. Dreher said the department and the Water Board have a different type of relationship from other boards and agencies. They are separate political entities, but the Water Board is inside the IDWR for the purpose of staffing. Mr. Dreher has the responsibility to staff adequate support for the Board's activities. He said it is different, but it works; and is more efficient than having duplicative human resources. Additional funding, over the Governor's recommendation, would be required to increase efforts toward recharge of the Eastern Snake aquifer. Mr. Dreher summarized

**GOVERNOR'S  
INITIATIVE:  
Experience Idaho**

additional requirements in order to implement and fund the proposed program.

The presentation of the Governor's Initiative, Experience Idaho: Investments in Idaho's State Parks, was made by Dean Sangrey, Idaho Department of Parks and Recreation (IDPR). He said the department was excited about the initiative. It will make improvements to existing deteriorating facilities in six locations and add a new state park in eastern Idaho.

The goal of the initiative is to fund needed improvements in Idaho's park system, preserve Idaho's public spaces, provide economic assistance to local communities, and benefit citizens by expanding recreational possibilities and enriching visitor experiences. Mr. Sangrey made a video presentation

QUESTIONS AND COMMENTS:

Rep. Mitchell asked how the department's historical need for funds to address deteriorating facilities would be met. Mr. Sangrey said those needs and the initiative are two separate issues. Rep. Mitchell asked for the maintenance request for 2007. Mr. Sangrey said between \$18-\$22 million.

Rep. Saylor asked what the proposal requested for new construction, and what for maintenance and repairs. Mr. Sangrey said he didn't have the break-down. A significant element of the initiative is \$34 million for improvements to restore historic structures, to construct new visitor centers, and enhance new RV campgrounds.

Rep. Saylor asked what funding was needed for the lodge at Ponderosa, and what its capacity would be. Mr. Sangrey said the lodge will have 30-35 rooms for overnight stays. Development will include food service facilities and conference facilities. Park expansion will include high end cabins in the vicinity of the lodge. There will be educational programs with community interaction.

Rep. Jaquet asked if the facility would be operated by public-private partnership, or if the department would operate it. Mr. Sangrey said the intent was to develop facilities and contract the operation with a private company or individual.

Rep. Jaquet asked if the department had worked with the community and the McCall Chamber of Commerce. Mr. Sangrey said the department had worked with the Chamber and local businesses, and had held several public meetings. They have worked with the Department of Commerce and Labor on staffing, and to develop strategies and projects with impact on the community.

Rep. Raybould asked about a facility not included in the initiative, but included in budget issues—Lorenzo Bridge and the fisherman's parking lot. He asked if the department had right of way access to the parking lot and, if not, was funding included in the new budget to gain access. Mr. Sangrey said he was not familiar with the parking lot issue. It may have been developed as a grant request through the department, but the development, design and acquisition was not directed or managed by IDPR.

Rep. Eskridge asked how the Ponderosa facility would be funded and financed. Mr. Sangrey said it was part of the Experience Idaho Initiative proposal, and would come through the permanent building fund accessing and making use of a certain percentage of the 2006 surplus.

Rep. Saylor asked about projected rates to be charged at the Ponderosa Lodge. Mr. Saylor said a business plan is being developed. Rate structures are not yet finalized.

Rep. Mitchell asked for a list of unmet IDPR needs, going back two years that were in existence before the initiative; what was done with 2006 funds; what are the department's unmet needs; and what the budget maintenance request is. Mr. Sangrey said he would provide that to the Committee.

Rep. Jaquet said the department was understaffed now, and asked about projected FTEs. She said the initiative "grows the budget considerably." She would rather put resources into existing facilities, such as Dworshak or Hells Canyon, than new projects. Mr. Sangrey said revenue projections exceed operational expense projections. Not many additional staff requirements are expected. Volunteers and seasonal help are used to help with maintenance and park operation. The volunteer program is broad-based and successful. Last year 54,000-55,000 hours were volunteered.

Rep. Jaquet asked how much funding comes from the RV program toward operation of parks. Mr. Sangrey said he didn't have that figure. The RV program significantly contributes to overall operation of facilities, as well as grants developed, and research. It is a productive, positive program.

Rep. Jaquet said she had received a compelling e-mail about expensive RV fees. She would like to see the percentage of RV funds going toward operation, and the operational plan. Mr. Sangrey said the department was aware of the issue and of concerns about the fees collected for high end recreational vehicles. It has been working with Rep. Eskridge for an extended period of time on the issue, and expects the dialogue will be continued, and a compromise reached. Rep. Eskridge said he hoped a solution was forthcoming. He is concerned about the accuracy of projected revenues and costs; and the impact to IDPR if the initiative were pursued. He questioned the budgetary expenditure of \$4.8 million for the new park. Mr. Sangrey said he would provide information to the Committee. He said \$4.8 million was the projected cost of identifying the physical location, and researching and determining the development and design of land and facility concepts for a new facility. He said there has been encouragement from several Board members in Regions 5 and 6 to identify location for a facility for several years. Several potential locations have been identified. The Governor has signed an executive order within the last 48-72 hours identifying a search committee task force in eastern Idaho to assist the department, and provide feed-back to the Board and the Governor's office.

Rep. Bell expressed concern about the request for \$4.8 million for the new park when several hundred thousand dollars in this budget cycle would allow the department to go forward. Her other concerns included: vendors in state parks without money ever returned to the state; Ponderosa State Park has never had a lodge in the planning process; and the department has a backlog of needed repairs.

Rep. Moyle related two anecdotes, both about high park fees keeping visitors away from the parks. He is concerned with proposed fee increases; the department's back-log; and the department getting "into the lodge building business." He asked for a business model to be submitted to Committee showing rate comparisons to neighboring states. Mr. Sangrey said he would be addressing the fee structure in Subcommittee this afternoon.

Rep. Jaquet related an anecdote about a Washington woman who came to Idaho parks because they were so much cheaper, and had hot showers. She said Forest Service parks had no showers, and sometimes not bathrooms.

Rep. Moyle again expressed concern about fees and requested a fee comparison be submitted to Committee. He said the state is changing, and the department needs to remember the parks are for Idahoans. Mr. Sangrey said he would provide it. He said the fees are based on solid, well documented information compiled over a number of years, including comparative fees. Idaho has a reputation of doing a very good job keeping facilities in repair and making improvements. Several elements in the initiative speak to an increasing need to add improvements because there is a demand. The fee structure is an effort to respond to last year's request to remove the \$4 Motor Vehicle Entry Fee. There is a legitimate need to recover that revenue. Minor fee increases in select fees for different types of campsites have been made in response to the legislature's request to remove the entry fee.

Chairman Stevenson asked Mr. Dillard, Idaho Good Sam Club, to address the issue. Mr. Dillard's concern was for the use of the dedicated RV fund. He said money in the dedicated RV fund is only to benefit the RV user and not be used for maintenance or anything else.

Chairman Stevenson asked how many facilities IDPR operated. Mr. Sangrey said 30 parks or recreational trailways.

Rep. Eskridge asked how many campground parks were in Bonner and Boundary counties. Mr. Sangrey said two, Priest Lake and Round Lake.

Rep. Saylor asked the total number of campsites and RV spaces available in the park system. Mr. Sangrey said 1840 campsites in the state. He didn't know how many of those were full service RV sites.

**ANNOUNCEMENTS:** The Committee will meet in the Gold Room January 19, 2006 for the annual Gold Room ICIE Workshop, which it has traditionally hosted.

The Committee will meet in joint session with the Senate in the Gold Room on January 23, 25 and 27 to consider Idaho Department of Fish and Game issues.

Chairman Stevenson announced that the Subcommittee to review Idaho Department of Parks and Recreation rules will meet immediately following adjournment.

**ADJOURN:** The meeting was adjourned at 2:50 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

Idaho Department of Parks and Recreation Administrative Rules Subcommittee

**DATE:** January 17, 2006

**TIME:** 3:00 p.m. or immediately following the Meeting of the Whole

**PLACE:** Room 412

**MEMBERS:** Chairman Eskridge, Bedke, Shepherd(8), Saylor

**ABSENT/  
EXCUSED:** Rep. Bedke

**GUESTS:** George Dillard, Idaho Good Sam Club; Dean Sangrey, Operations Division Administrator, Idaho Department of Parks and Recreation (IDPR)

Chairman Eskridge called the meeting to order at 2:55 p.m.

**IDAHO  
DEPARTMENT OF  
PARKS AND  
RECREATION  
ADMINISTRATIVE  
RULES**

Chairman Eskridge said it is his understanding that any changes to pending fee rules require approval by both the House and the Senate. If only one body approves the rules, they take effect July 1, 2006.

Dean Sangrey, IDPR said most rule changes are intended to clarify language, or to make rules consistent with the on-line reservation system recently implemented by the department. Some changes are made in response to a legislative request to eliminate a park and facility access fee. The fee structure has been adjusted for campground and facility use. Increased fees will partially recover revenue from the loss of that access fee.

Information about IDPR, State facilities, and the new on-line reservation system can be accessed at the following URLs:

IDPR home page: <http://www.idahoparks.org>  
Reservation information: <http://www.idahoparks.org/parks/reserve.aspx>  
On-line reservations: <https://idpr.camis.com/home.aspx>

**Docket  
26-0120-0501  
Pending Fee Rules**

Summary of Committee discussion re: Docket 26-0120-0501:  
Language to define and describe types of campsites and facilities has been set forth, including rules for ADA sites (sites complying with guidelines under the Americans with Disabilities Act). Reservation rules are clarified, and language has been added to clarify operational procedures at IDPR parks and facilities.

Maximum capacity limits are defined as subject to each site's design and size but, unless otherwise specified, as 1) one family unit, or a party of no more than eight persons, 2) one vehicle or RV and 3) up to two tents. All combined people and equipment must fit within the designated camping site. Staff is encouraged to enforce rules evenly and consistently. The rules are worded to give staff flexibility to respond quickly, and to exercise reasonable judgement. The definition of a "campsite" has historically been difficult to identify. The language change is intended to be user-friendly.

Hours of day use are identified as between 7 a.m. and 10 p.m. "Day Fee Use" is a new term,

The "Motor Vehicle Entry Fee" has been eliminated. It was a \$4 fee required of everyone coming into the park. It was considered to be onerous. Overnight campers will no longer pay two fees. Mr. Sangrey noted that the Motor Entry Fee is in place until the new rule package is approved.

In response to the legislature last session, safety helmets will be required for persons under eighteen years of age using motorcycles and all-terrain vehicles (ATVs). The use of snowmobiles on park roads and trails is clarified. They are permitted only when authorized by the park manager.

A campsite is considered occupied only after camping fees are paid and registration information is completed. No person or group is permitted to camp in IDPR facilities more than 15 days in any 30 consecutive day period. Park staff is given authority to make reasonable exceptions as circumstances arise.

Mr. Sangrey said changes to IDPR rules have been discussed in all regions. Feedback has been incorporated into the rules, including the Legislative Services analysis. Public meetings have been held. Proposed rule changes have been included on the agenda of the last two board meetings.

Mr. Sangrey said the new on-line reservation system provides for express check-in. He anticipates that soon the majority of reservations will be made and paid on-line. A visitor will be able to drive through the gate of a IDPR facility, and go directly to a camp site. The web site is programmed for automatic registration; it has maps of all IDPR facilities; and it frees staff to do other park-related activities. Freeing staff from the mechanics of making reservations, allows them to be "on the ground," where they used to be 5-6 years ago. A percentage of camp sites are withheld from the reservation system, and are made available for traveling campers coming in at night. Mr. Sangrey said the average length of stay was about 2.4 days.

Site specification for RV accommodations were discussed. Mr. Sangrey said newer campgrounds will have sites that are longer and wider, have concrete pads, underground utilities, sewer, and perhaps cable and satellite hookups.

Mr. Sangrey said the Campsite Fee Table sets forth maximum fees in each category. Fee increases are intended to compensate for revenues lost from the elimination of the Motor Vehicle Entry Fee. Definitions used in the Campsite Fee Table have been modified to reflect information provided to users on the new on-line reservation system, and with the call center.

The Subcommittee discussed the fee schedule for Serviced Campsites. The definition includes sites which offer different amenities. Mr. Sangrey said park staff could make adjustments based upon circumstances. For instance, it was not unusual to entirely waive fees for non-profit organizations.

Mr. Dillard indicated a preference for one fee for all Serviced Campsites. He said the group he represents prefers a single fee for Serviced Campsites.

The rationale for different fees for different levels of amenities was discussed. The Subcommittee consensus was a preference to provide competitive services and charge the user for the services actually used. Mr. Dillard asked what would be done when a site was not available with the amenities desired. Mr. Sangrey said park staff could accommodate requests, customize fees and make decisions based on customer needs, available sites and amenities.

Subcommittee members discussed the collection of sales tax on IDPR revenue. Mr. Sangrey said that the Campsite Fee Table set forth fees that included sales tax. There is a provision, however, that allows sales tax to be added to all sales except the day use fee. Mr. Sangrey said the provision is included in the rules in order to preclude a problem that has occurred. If it becomes necessary to collect sales tax in addition to the fees in the Campsite Fee Table, that rule will be in place.

It was noted that, percentage-wise, fee increases were not small. Camping cabins and yurts have been raised from \$72 to \$150 per night, for instance. Mr. Sangrey said there is a demand for higher end cabin rentals. High end cabins are included in anticipated IDPR improvements. He said the Parks Board establishes the rate charge up to the maximum allowed fee. It was noted that the Campsite Fee Table does not have any wording to indicate that the fee schedule represents maximum fees. Mr. Sangrey said fees lower than established maximum fees could be charged. The last legislature, for instance, instituted a Senior Discount to encourage expanded park use.

Mr. Sangrey was asked if the increased fee schedule would compensate for revenues lost due to the removal of the Motor Vehicle Entry Fee. He said projections based on 2004 figures indicated it would.

Non-refundable, non-transferrable service charge fees will increase from \$6 to \$10.

Mr. Sangrey said IDPR has not had much public complaint about the proposed fee schedule.

Language proposed to describe criteria for individual campsites, camping cabins, and yurt reservations has been significantly modified, and reflects language used on the new on-line reservation system. People reserving IDPR facilities on-line pay in advance. There are provisions and fees for cancellation that are consistent with IDPR's ability to reschedule the facility. Consecutive reservations were discussed. Mr. Sangrey said it was not a systemic problem to have people consecutively reserving sites in one facility after another. IDPR's goal is for 100% occupancy, which is not occurring. To set more stringent safeguards, creating obstacles to park occupancy, would be counter-productive.

A new section provides for advertisements/ promotions/demonstrations [Temporary Rules (page 88) ADAPA 26.01.20, Subsection 625, Docket 26-0120-0501]. It is included to address a problem that occurred with an unruly group in an IDPR facility. The language does not preclude quiet, peaceful demonstrations; or political gatherings.

Representative Shepherd asked for information showing comparable fee

structures from neighboring states. Mr. Sangrey said information was readily available from Washington, Oregon, Montana and Wyoming. He will submit it to the Subcommittee.

Chairman Eskridge said the Subcommittee would not act on IDPR rules until it had considered the requested information.

**Docket  
26-0131-0501  
Pending Rules**

Mr. Sangrey said changes to Docket 26-0131-0501 were housekeeping changes intended for to provide clarification and guidelines for park staff, and to make the process easier for the public.

**DISCUSSION:**

Mr. Sangrey was asked to clarify removal of the Cross Country Skiing Recreation Account [Pending Rules (page 97) ADAPA 26.01.31, Subsection 001.02, Docket 26-0131-0501]. He said the reference eliminated a definition that was more effectively addressed in another portion of the rules. The account is not eliminated, nor is the Boat Safety Account. Fees are still collected and managed.

Revenues from the Cutthroat License Plate Fund (CLP) go to the Idaho Department of Fish and Game (IDFG), but are managed by IDPR as is required in statute.

Language has been added for clarification, and to reflect how the process actually works regarding the Waterways Improvement Fund [Pending Rules (page 101) ADAPA 26.01.31, Subsection 010.26, Docket 26-0131-0501].

Mr. Sangrey said subsection 075 was removed [Pending Rules (page 101-102) ADAPA 26.01.31, Subsection 075, Docket 26-0131-0501]. It is no longer needed because routine modifications are made upon recommendations from advisory groups, or as required in the field.

Mr. Sangrey called attention to the Waterways Improvement Fund Grant Limit, which limits the total sum of WIF grant funds in any one county to not exceed 30% [Pending Rules (page 104) ADAPA 26.01.31, Subsection 200.03, Docket 26-0131-0501]. This is not a change. However, Kootenai and Bonner counties have concerns. He said the cap does create inequities, but is included for definite reasons. When the cap wasn't in place, some small counties suffered because a large county could capture a significant portion of total funds. Although current concerns are legitimate, no change is recommended this legislative session because any changes need to be well thought out.

It was noted that most of the Pending Rule, regarding motorized equipment purchased with grant funds, has been struck [(page 109) in ADAPA 26.01.31, Subsection 400, Docket 26-0131-0501]. Mr. Sangrey said non-motorized equipment was not at issue, and was covered elsewhere. This section deals with boats and snowmobiles primarily, or capital improvements.

**Docket  
26-0137-0501  
Pending Rules**

Docket 26-0137-0501 has two housekeeping changes to clarify existing rules.

Chairman Eskridge said the Subcommittee would wait to review the

information coming from Mr. Sangrey before taking action on IDPR Administrative Rules. The Subcommittee will meet Friday, January 20<sup>th</sup> at 11:30 a.m. to finalize IDPR Administrative Rules.

Mr. Sangrey said he would promptly deliver the information requested, and would be available to respond to any questions.

**ADJOURN:** The meeting adjourned at 4:38 p.m.

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Representative George Eskridge  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE Idaho Department of Lands Administrative Rules Review Subcommittee

**DATE:** January 18, 2006

**TIME:** 3:20 p.m.

**PLACE:** Room

**MEMBERS:** Chairman Rep. Ken Roberts, Rep. Barrett, Rep. Andrus and Rep. Jacquet

**ABSENT/  
EXCUSED:** None

**GUESTS:** Rep. JoAn Wood  
See attachment 1.

**Chairman  
Roberts:** **Chairman Roberts** opened the subcommittee hearing on Docketts 20-0201-0501; 20-0302-0502; 20-0308-0501; Idaho Department of Lands (IDL) Administrative Rules

**20-0201-0501** **George Bacon, Chief of Operations, Idaho Department of Lands (IDL)**, distributed two handouts for pending and proposed rules. He opened the hearing by presenting comments urging the subcommittee's support for this pending rule on recommendation by the Idaho Forest Practices Act Advisory Committee, and public comments taken during the public comment period. **Mr. Bacon** said this amendment is a feedback loop to determine the best practice methods in logging and forest management between the Department of Environmental Quality (DEQ), and Idaho Department of Lands (IDL). He said the changes are a result of audits taken in 2000 and 2004, and comments from public hearings in support of this legislation. He said these changes include stream protection, and reuse of existing roads within the stream protection zones. **Mr. Bacon** said there is new language in the rule that proposes prescribed burning within the stream protected zones. He said this pending rule also updates topographical, and clerical corrections. **Mr. Bacon** informed the Committee Members there is no fee, and no fiscal impact to the State general fund with the adoption of this rule.

See Attachments 2 and 3

**Questions from  
Subcommittee  
Members:** **Chairman Roberts** asked **Mr. Bacon** if there is a time frame to prove or disapprove of the plans by the operator. **Mr. Bacon** replied no, because they provide assistance anyway they can through the operational phase.

**Rep. Barrett** asked **Mr. Bacon** about changing the wording from "may" to "must". **Mr. Bacon** responded that the current language tightens the rules for a specific reason by enforcing issues that were gathered from the 2000 and 2004 audits, and public comments from the best management practices hearings. He said the Department doesn't need new rules, they only want to tighten up the rules they currently have.

**Rep. Barrett** commented that rules can hamper production, and asked **Mr. Bacon** if the prescribed methods that are suggested being considered, or is this current language. **Mr. Bacon** replied it is current language. He said that the variance in the prescribed rules will result in as good if not better methods for both the forest industry and forest owners.

**Rep. Wood** asked if the wording 'not develop jointly' is taken out will it limit the Department on what they can do. **Mr. Bacon** said they have to be careful how they handle the wording, and the reason they use forest consultants and advisors.

**Rep. Barrett** commented that she cannot see any change in the new rule from the current rule. She asked **Mr. Bacon** about the Stewardship Program and how it operates. He discussed the program stating that owners of forest land can apply for a federal grant to replant trees and/or make improvements on the land. This program is monitored by the State by making sure the federal guidelines are followed. **Mr. Bacon** stated that Government funds and land owners provide the funds for the program.

**Mr. Bacon** talked about the meetings held in Coeur d' Alene, McCall, and Orofino in support of these rule changes, and the numerous letters also received of support of these rules.

**Jane Wittmeyer, Intermountain Forest Association (IFA)**, discussed the Idaho Department of Lands (IDL), and the Idaho Forest Practices Act Advisory Committee. She informed the Committee Members that the public comments received in support of these rules had no substantive rule changes. She talked about the IFA using best management practices for 98 percent of the timber harvested by implementing the quadannual 2000 and 2004 Best Management Practices Report. **Ms. Wittmeyer** discussed some of the people who were involved in the implementation of best management practices report. She said the docket reflects the different practices being implemented in the field, and reviewed each topic listed.

**Chairman Roberts** asked if the Citizens Committee that had been added several years back assisted in these reviews. **Mr. Bacon** said yes. The Citizens Committee is active in reviewing the recommendations that are before this Committee today. He said the Citizens Committee is from the logging industry in one form or another. The Committee held three meetings in various places this last year, and addressed all of the concerns that was presented to them.

**Rep. Barrett** referenced the Independent Logging Contractors Association, and wanted to know if they are part of this change. She also asked if Ken Christopherson, President, of the Loggers Contractors Association, was a part of the Advisory Council mentioned earlier. **Mr. Bacon** responded that the Logging Contractors Association did send letters in support of this rule, but he didn't know if Ken Christopherson had sat in on the meetings.

**MOTION:**

**Chairman Roberts asked for a motion on Docket 20-0201-0501. Rep. Barrett said she didn't like the change in language from 'must' to**

**'may'. Rep. Andrus agreed with her. Chairman Roberts informed the Committee they will come back to this issue later today or at another meeting to vote on this Docket.**

**20-0302-0502**

**Denise Mills, Assistant Director, Department of Lands (IDL),** distributed a handout of a guide showing the amendment for the existing rule. She informed the Committee this rule is from Senate Bill 1169 that amended several sections of the Surface Mining Act. This Act placed certain responsibilities related to regulation of permanent closure of cyanidation facilities with the State Board of Land Commissioners (Board) by and through the IDL.

See Attachment 4

She said that SB 1169 also requires that IDL review and approve permanent closure plans for cyanidation facilities to be constructed or expanded by mine operators to extract precious metals from ore. This bill transfers the bonding authority for cyanidation facilities, and some the aspects of cyanidation facility regulation from Department of Environmental Quality (DEQ) to IDL. She discussed the amended statute, and how it will require that the Board undertake specific actions. The Board will be required to: 1). Determine the adequacy of permanent closure plans, 2). Determine the appropriate level of performance bonding to complete permanent closure activities in accordance with the approved plan; and 3). Undertake closure in the event an operator does not fulfill its obligation. She stated that DEQ is also responsible for water quality protection, and related permitting for cyanidation facilities.

**Rep. Barrett** asked why these duties were transferred from DEQ to IDL. **Ms. Mills** said there are two reasons for this transfer. The first reason was the anticipated application from Atlantic Gold; and secondly, they didn't know what to expect from Atlantic Gold. With this anticipation, the mining industry felt it was best to transfer the duties for bonding requirements from DEQ to IDL.

**Ms. Mills** talked about the nature of DEQ, and how they provide oversight in implementing closure of the mines that used cyanide. **Rep. Barrett** asked about IDL staff having more expertise than DEQ. **Ms. Mills** said that IDL's expertise lies in surface mining such as the Delaware Mine, and DEQ's expertise is in the closure of mines. She said that IDL will work closely with DEQ. She discussed how DEQ has experience in good surface mining and the reason IDL works closely with DEQ.

**Rep. Wood** asked if it could be required for the chemicals to be taxed as hazardous waste. **Ms. Mills** said the focus of IDL is closure and bonding of cyanidation facilities.

**Rep Jaquet** commented about the role of each Department, and understanding how the industry works cooperatively with each other to accomplish this. **Ms. Mills** stated there is a provision between DEQ and IDL regarding Atlantic Gold, and the funding of Atlantic Gold's operation.

**Ms. Mills** discussed IDL's negotiated temporary rule and adoption of the rule to stay in line with DEQ.

**Ms. Mills** talked about substantive changes in these rules for mine operators. They address the cleanup of mines, and facilitate reclamation and closure due to ground water.

She informed the Committee after the 2006 Legislature considers this pending rule, it will become final upon approval. She said that IDL had scheduled two public hearings during the comment period, and said that no one appeared at this hearings. She said that the Legislative Services Office (LSO), and Hecla Mining Company were the only ones who submitted written comments on the proposed rule. She said based on these comments they amended three sections of the proposed rule.

**Chairman Roberts** said he has received a letter from a small mine owner who wrote that he had to pay \$25,000 to receive a bond, and he wanted to know why it was so much. **Ms. Mills** asked if it was a bond or is it a application fee. **Chairman Roberts** said it was for bonding. He asked if this could be changed to \$5,000. **Ms. Mills** wasn't sure about the dollar amount and said she would get the information so he can reply to this small mine operator.

**Rep. Barrett** commented about the agencies inspecting the mines without the owner being present. **Ms. Mills** stated she wasn't aware of this. She said when a operator signs the permit, they are authorizing the agency to come onto the property when they need to. **Rep. Barrett** commented since 1989 the agencies do not need permission to enter on to the land. **Ms. Mills** said it is the Department's preference to have the operator present. **Rep. Barrett** said this rule states the agencies can enter without permission from owner.

**Rep. Wood** wanted to know why 10 meetings. **Ms. Mills** said the rules were difficult to follow and needed to be interpreted, e.g., definition of rule change, and language change. She said the issues were difficult to comprehend.

**Chairman Roberts** said that one of the rules heard in a previous meeting was rejected because it didn't follow statute. He said these statutes must be followed and stay within the boundaries when making rules.

**Jack Lyman, representing the Idaho Mining Association (IMA)**, said the IMA was one of the parties responsible for the rule making of SB 1169, and he asked that the subcommittee accept this rule. He added that it is normally the case where the Department asks the landowner if they can enter onto the operator's land.

**Ms. Mills** commented that the last legislature recommended that mines be regulated. She said hard decisions were made at the table to make these changes.

**Rep. Barrett** commented that access and permit should not be tied together. If access is denied, the agency should not be allowed to hold the mine permit from the operator.

**Pete Skamser, representing Atlantic Gold**, informed the Committee these discussions on the rules were long and painful. **Chairman Roberts**

asked if this took place during the process. **Mr. Skamser** said yes. **Chairman Roberts** informed **Ms. Mills** that the integrity of statute should be followed, and everyone should be invited to participate. He said it is the purpose of Government is to help citizens make a living, not regulate them.

**MOTION**

**Rep. Jaquet moved to approve Docket 20-0302-0502, and send to the full committee. Rep. Andrus and Barrett opposed the motion. Chairman Roberts informed the Committee that with a tie, the Docket will be referred back to the full Committee without the subcommittee's recommendation unless action is taken at a later date.**

**Rep. Andrus** said if wording was changed to make sure the operator is present he would vote for it. **Chairman Roberts** said the subcommittee cannot amend rules, only accept or reject the rules.

**Rep. Barrett** commented that the committee didn't discuss the bonding issues very much, and she asked Mr. Lyman if he is okay with this. **Mr. Lyman** replied yes. **Mr. Skamser** was also asked the same question, and he replied they, the mining industry, has to abide by it.

**20-0308-0501**

**George Bacon, IDL**, said this is the pending fee rule, and it pertains to State owned land fees to be charged for other people to use. This affects state owned land regardless of ownership. He discussed the endowment. fee charges and how they affect different entities, such as the power company. He said these fees have actually been charged since 1993. He gave a summary what the increase in fees will cover. The fees cover the cost when requests come in on interpretation of rules, funding of legal staff, and the field staff who determine the impact of state lands when used.

The Committee Members discussed temporary and permanent easements vs. what is considered a public road. They discussed the agency staff doing appraisals for "other" people to incur this increase in fees.

**Terry Whitaker, Bureau of State Lands, IDL**, informed the Committee Members that a market analysis is required to increase the fees.

**Rep. Jaquet** asked the Department to present a breakdown of the fees so the members can see why there is such a large increase of the fees.

**Motion:**

**Rep. Jaquet moved to approve Docket 20-0308-0501, and send back to the full Committee. The motion passed by voice vote.**

**Adjourned:**

5:50 p.m.

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Representative  
Chairman Ken Roberts

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Mona Spaulding  
Secretary  
Taken by Cj Johnson

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

2006 Gold Room Workshop - Idaho Council on Industry & Environment (ICIE)

**DATE:** January 19, 2006

**TIME:** 1:30 p.m.

**PLACE:** Gold Room

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

**ABSENT/  
EXCUSED:** None

**GUESTS:** George Bacon, Idaho Department of Lands (IDL); Stephanie J. Bonney, Moore Smith Buxton & Turcke, Chartered, Boise; Brian Kane, Assistant Chief Deputy Attorney General, Office of the Idaho Attorney General; Jerry Mason, Mason & Stricklin, Coeur d'Alene, Counsel to Association of Idaho Cities, and member of the Board of Trustees of the Idaho Counties Risk Management Program; Norm Semanko, Idaho Council on Industry & Environment (ICIE), Idaho Water Users Association (IWUA); Ken Webster, Office of the Governor, State of Idaho

See sign-in sheets for other guests.

**CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:33 p.m. He thanked those in attendance, and said he was glad to have the House Resources and Conservation Committee host the 2006 Gold Room ICIE Workshop.

**INTRODUCTIONS:** Chairman Stevenson introduced Norm Semanko, ICIE president.  
**Norm Semanko,  
ICIE President**

Mr. Semanko welcomed attendees. He said ICIE's mission is to promote the use of facts and science and to promote balanced discussion with policy makers and the public. The annual Gold room Workshop helps with that mission.

**2006 ICIE  
Sponsors**

Mr. Semanko introduced the 2006 ICIE Sponsors: Monsanto Corp; Idaho Grain Producers Association; Clear Springs Foods; Idaho Farm Bureau Federation; Barclay Media/Public Relations; Intermountain Forest Association; Idaho Mining Association; Idaho Water Users Association; Potlatch Corporation; Idaho Cattle Association; Port of Lewiston; CropLife America.

Mr. Semanko said when the first Gold Room Workshop was held in 1990, the topic was global warming. A workshop has been held each year since during the legislative session, covering diverse topics. This year the topic is "Idaho's Eminent Domain Laws and the Impact of Kelo v. New London."

**SPEAKER:  
Brian Kane  
Assistant Deputy**

Brian Kane, Assistant Deputy Attorney General, said Idaho is consistently ranked one of the first states, as far as protecting private property rights. He advised keeping Kelo v. New London, a Connecticut case, in perspective:

## Attorney General

The message from the court is for state legislatures to review their state statutes because many statutes are old, and legislatures aren't familiar with them. In Idaho some eminent domain statutes predate the Idaho Constitution adopted by the Territorial Legislature.

Mr. Kane reviewed the Fifth Amendment of the U.S. Constitution, and Idaho's Article 14, Section 1, paragraphs 1 and 2. Paragraph 2 is typically used by cities and counties for general eminent domain takings. At issue in court cases is whether there has been a permanent physical occupation that deprives the property owner of most viable uses, and whether just compensation has been paid. There is also the question as to whether the property was taken for public use.

Typically, courts have been concerned with deprivation of use and just compensation. Recently there has been more attention paid to defining what constitutes a public use. The Kelo case states, for purposes of law, that the state may place restrictions more strict than those in the 5<sup>th</sup> Amendment of the U.S. Constitution. Mr. Kane said the state can declare almost anything to be taken for a public use under expansive provisions. A key factor is the interpretation as to whether a resource can be materially developed without the use of eminent domain. The provision to permit takings is not an unlimited right.

He summarized the historical development of eminent domain through case law.

### QUESTIONS AND COMMENTS FROM THE COMMITTEE:

In response to questions about takings for urban renewal, and subjective definitions of, for instance, "blight and ugliness," Mr. Kane referred to the 1972 case, Boise Redevelopment Agency v. Yick Kong Corporation, where the Idaho Supreme Court held that the Idaho Constitution grants a power of eminent domain much broader than that granted in most other state constitutions. Yick Kong held that the state could use the power of eminent domain to protect the public from "blight and ugliness." He referred to precedent as far back as 1906, citing the Illinois Power and Light Co. v. Peterson, as precedent that private interest might be discriminated against. Mr. Kane said a question could arise as to whether there is a more necessary public use, if a property is already in public use.

Mr. Kane was asked if there was any recent egregious use of eminent domain in Idaho. He said there was not; Idaho ranks high in protecting private property rights. The Kelo case is "an alarm clock waking up legislatures around the nation." A case in Ohio condemned a subdivision seemingly without justification, where people had been living 35-40 years. A private company study found that the subdivision had dead end streets that were inconsistent with growth plans. Mr. Kane said that sort of thing was not happening in Idaho.

Mr. Kane was asked if private property could be taken in Idaho, justified by the rationale that the increased tax revenue from development was more beneficial to the public good than individual homes. He said the likelihood always exists. The larger the project, the more support can be argued for a beneficial public purpose.

**SPEAKER:**  
**Jerry Mason,**  
**Mason & Stricklin**

Jerry Mason said he typically represented counties and cities. His comments today focus on the practical side of things as he sees it in Idaho.

In Idaho, eminent domain is not a government power, but is an expression of a declaration of rights in Article 1 of the State Constitution premised on rights of private parties. This is highly unusual. Idaho has a strict limitation upon government assuming a role to assist a private venture. Mr. Mason reviewed case law to illustrate how eminent domain philosophy and policy has been shaped by Idaho courts over many decades.

Mr. Mason said he, himself, had seen only one condemnation action, which resulted in a heavy award to the property owner. As a practical matter, eminent domain is expensive. He said Idahoans tended to “come from the same roots,” owning and respecting private property interests. There is a political and personal environment that makes unlikely that something like the Kelo case would happen in Idaho.

Mr. Mason said eminent domain in Idaho is most commonly used in the acquisition of rights of way, and easements. He gave a hypothetical example where eminent domain might be considered: an intersection where a five lane road enters the intersection, then narrows to a two lane road on the other side. Mr. Mason developed alternative resolutions which illustrated viable alternatives of resolving the problem.

Mr. Mason said the legislature had great powers in the matter of eminent domain. He recommended a book: Idaho’s Constitution: The Ties that Bind, by Professor Dennis C. Colson. A chapter on eminent domain explains the unique nature of Idaho’s Constitution, summarizes the Constitutional Convention debates, and puts Idaho statutes in context to the U.S. Constitution and other states’ constitutions.

In summary, Mr. Mason said he thought that Idaho officials weren’t interested in using some of the eminent domain powers they have because of the political and cultural climate shared by Idahoans; that it was important to be deliberate about the issue of reviewing eminent domain statutes in Idaho; and that it would be well for Federal courts to recognize the importance of state statutes and state constitutions in matters of eminent domain. Mr. Mason said other states often give incentives for private ventures to locate plants, industries or facilities that are not given in Idaho because of constitutional restrictions.

#### QUESTIONS AND COMMENTS FROM THE COMMITTEE:

Mr. Mason was reminded that the landscape of Idaho is changing as new and different developers come to the state. With change will come a different philosophy.

Mr. Mason was asked if there was an Idaho code now that included general terms like “reasonableness,” “detrimental to public health, morals, welfare,” or other broad terms that could give rise to problematic interpretations. He said the legislature absolutely should review current statutes, but he believes that the “strength of the fibre of political philosophy in Idaho will hold the wolves from the door for quite awhile.”

**SPEAKER:**  
**Stephanie J.**

Stephanie Bonney is a native Idahoan, recently relocated to Boise from Idaho Falls. Her Idaho Falls property is in the process of condemnation by

Bonneville Power for a right of way. She said that fact was in her mind as she prepared her comments.

Ms. Bonney summarized case history and Idaho Supreme Court interpretation of eminent domain in Idaho. She said what gave her pause was that statutes controlling eminent domain in Idaho are not referred to, or their meaning discussed, in any case law. Since 1881, case law in Idaho largely ignores eminent domain statutes.

Ms. Bonney said the term “public use” is flexible and can’t be confined to the type of use mentioned at the time of the constitution. She said the definition has been given a broader use in Idaho than in many of the constitutions of several other states. She cited the 1906 Potlatch Lumber Company case as an example: If a taking tended to enlarge resources, or contributed to the growth of a community, or indirectly contributed to the general prosperity, it could justify eminent domain. To illustrate that the main end could be private gain if the public at large benefitted, Ms. Bonney referenced the 1916 Blackwell Lumber case.

Ms. Bonney referred to Boise Redevelopment Agency v. Yick Kong Corporation where the court said the power of eminent domain may legitimately protect the public from “disease, crime, and blight and ugliness.” She said the Idaho Constitution grants a power of eminent domain broader than that of most other state constitutions. Urban renewal could be upheld for public use.

Ms. Bonney reviewed U.S. Supreme Court cases (Washington D.C. and Hawaii) to illustrate that the lines are blurred regarding what constitutes a public use. She said in the 1993 case, Cohen v. Larson, the Idaho Supreme Court seemed to shift its position, narrowing its definition of public use. She believes the case to be an aberration of the court and not a shift in position. In Cohen the court said the small private party initiating the condemnation brought little public benefit, and that the scenery of the shoreline was also a public resource; there were, therefore, competing resources. The case stands alone in a long line of cases. Cohen reiterated language from other cases, and didn’t overrule any earlier cases.

Regarding the Kelo case, Ms. Bonney, agreed with Mr. Kane that it was along the pro-state’s-right stance that the U.S. Supreme Court had been taking for a long time. Connecticut already had statute declaring the project in question as a public use; and the U.S. Supreme Court mentioned that the state, in its own mind, had declared a public use. The Court said it would afford legislatures broad latitude as to what justified takings power. Some states have limited takings power through legislation; for example, California and Wyoming.

With regard to whether a Kelo could happen in Idaho, Ms. Bonney said she believed there was nothing in case law to prevent it given the Supreme Court’s interpretation up to this point, unless Cohen really does represent a shift of the Court.

#### QUESTIONS AND COMMENTS:

Ms. Bonney was asked if a friendly eminent domain action could occur if a property owner agreed; and if there were tax benefits. She said eminent domain was a forced sale by definition. To her knowledge there were no tax

benefits; but it is not her area of expertise. Mr. Mason said there is a tax advantage if a sale is accomplished on threat of condemnation.

Ms. Bonney was asked about definition in Idaho statute that might be used for takings in urban areas. She said there is an urban renewal act. Rep. Bedke cited Idaho Code 50-2903 as a reference.

**QUESTIONS FROM  
THE PUBLIC:**

Chairman Stevenson asked for question from the public to either the speakers or Committee members.

Trent Clark, Monsanto Corp. asked if ingress, egress, and contractual rights of surface use—especially where they are not recorded rights—are considered real estate. Ms. Bonney said her reading of statute was that any form of property right could be taken, including easement or access rights. Mr. Clark said HB408, introduced yesterday, was limited to real estate. He asked if the issues discussed today were addressed in the bill.

Mr. Mason said they were. All the issues discussed were either interests in real property or incident to real property. He said leasehold interests could also be condemned. Mr. Kane said it was important to remember that Article 2, Section 14 had two paragraphs, addressing two types of takings. The first paragraph regards the development of resources—for example, a takings to get water to a farm by condemning a ditch across someone else's land. He said HB408 is meant to apply to the second takings paragraph concerning public use. The purpose of the first paragraph is development of resources; the second is takings for public use. In HB408, the legislature intends to clarify what constitutes public use. Rep. Raybould read an excerpt from HB408 identifying the germane portion as disallowing condemnation where the taking would be “turned around” and conveyed to a private use.

Rep. Bedke asked is a water right could be condemned where water might then be used by junior water right holders. Mr. Mason asked for clarification. The question was withdrawn for this venue.

HB408 was discussed relative to theoretical urban renewal takings that might occur. Rep. Raybould said he had no part in bringing the legislation. The bill is available on the Legislative web site.

**CLOSE**

Norm Semanko thanked the speakers, the Committee, those in attendance, and the 2006 sponsors that made the ICIE Workshop possible. He said he hoped he would see Committee members and sponsors at the ICIE dinner tonight.

**ADJOURN:**

Chairman Stevenson announced that the House Resource and Conservation Committee would meet in the Gold Room Monday, January 23<sup>rd</sup>, for a joint meeting with the Senate on Idaho Department of Fish and Game issues. He adjourned the meeting at 2:45 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

Idaho Department of Parks and Recreation Administrative Rules Subcommittee

- DATE:** January 20, 2006
- TIME:** 11:30 a.m.
- PLACE:** Room 412
- MEMBERS:** Chairman Eskridge, Representatives Bedke, Shepherd(8), Saylor
- ABSENT/  
EXCUSED:** Rep. Bedke
- GUESTS:** Dean Sangrey, Operations Division Administrator, Idaho Department of Parks and Recreation (IDPR)
- CALL TO ORDER:** Chairman Eskridge called the meeting to order at 11:33 a.m.
- Approve minutes  
of January 17, 2006** A motion was made by Rep. Saylor to approve the Subcommittee minutes of January 17, 2006 as written; second by Rep. Shepherd(8). Motion carried by unanimous vote.
- ADMINISTRATIVE  
RULES REVIEW:  
IDPR Docket  
26-0120-0501** **Docket 26-0120-0501 Pending Fee Rules governing the  
administration of park and recreation areas and facilities:**
- Chairman Eskridge asked the Subcommittee to review the Fee Structure Comparison submitted by Dean Sangrey, IDPR. Since the IDPR Administrative Rules had been reviewed in a previous meeting of January 17, 2006, the meeting was opened to questions.
- QUESTIONS AND COMMENTS:**
- Mr. Sangrey answered questions concerning the fee structure. Committee members calculated fees for various hypothetical camping groups, including groups requiring different amenities, groups of different sizes, and groups with different vehicular parking requirements.
- Subcommittee members had concerns about the Passport Permit--a one-time annual fee set at a maximum of \$35, but charged at \$25 for the past several years. The Passport Permit provides the holder unlimited access to any IDPR facilities requiring an entry fee. Mr. Sangrey said many Passport Permits were sold. Passport Permits give free entry to one vehicle; a second Passport can be purchased for \$5 for a second vehicle per family.
- Subcommittee members felt Passport purchases would decline because there is no financial incentive for campers if the Motor Vehicle Entry fee is discontinued. It was suggested that the Board consider some reduction in other camping fees for Passport holders in order to continue to provide an incentive for people to purchase Passports. Mr. Sangrey said he would make the recommendation to the Board where it could be discussed this spring.

Mr. Sangrey was asked if, by not charging a Motor Vehicle Entry Fee and raising other fees, IDPR would gain back as much as it was losing. He said yes. Based on 2004 revenue, 2006 revenue is projected to be \$305,000. The loss from the Motor Vehicle Entry Fee to IDPR is more, but use fees in 2006 are already up. Revenue is expected to be close to \$350,000.

Mr. Sangrey reviewed Idaho campground fees with those of Oregon and Montana

Subcommittee members had mixed feelings about raising fees because a typical \$50 family camping outing was "getting up there." It was noted, however, that less expensive options were available to families; and that increasingly expensive recreational vehicles required amenities. Mr. Sangrey said utility costs were going up for everyone, including IDPR.

Mr. Sangrey was asked if IDPR considered asking for a general fund increase rather than making fee increases to make up the different for the Motor Vehicle Entry fee. He said, historically, IDPR supports their operation from fees. The general fund money IDPR receives is for staffing.

It was the consensus of the Subcommittee that IDPR user fee increases represent a fair approach to make up the department's short-fall. All other agencies keep up with the cost of inflation. The fee increase affects people who use IDPR facilities, and not taxpayers across the board.

**MOTION:**  
**Docket**  
**26-0120-0501**

A motion was made by Rep. Shepherd(8), second by Rep. Saylor, to recommend Docket 26-0120-0501 to the full Committee.

**VOTE:**  
**Docket**  
**26-0120-0501**

The motion to recommend Docket 26-0120-0501 to the full Committee passed unanimously.

**ADMINISTRATIVE**  
**RULES REVIEW:**  
**IDPR Docket**  
**26-0131-0501**

**Docket 26-0131-0501 Pending Rules governing the administration of Idaho Department of Parks and Recreation recreational program grant funds:**

This docket was reviewed at the meeting of January 17, 2006. There was no further discussion.

**MOTION:**  
**Docket**  
**26-0131-0501**

A motion was made by Rep. Saylor, second by Rep. Shepherd(8), to recommend Docket 26-0131-0501 to the full Committee.

**VOTE:**  
**Docket**  
**26-0131-0501**

The motion to recommend Docket 26-0131-0501 to the full Committee passed unanimously.

**ADMINISTRATIVE**  
**RULES:**  
**IDPR Docket**  
**26-0137-0501**

**Docket 26-0137-0501 Pending Rules governing test procedures and instruments for noise abatement of off highway vehicles:**

This docket was reviewed at the meeting of January 17, 2006. There

was no further discussion.

**MOTION:  
Docket  
26-0137-0501**

A motion was made by Rep. Saylor, second by Rep. Shepherd(8), to recommend Docket 26-0137-0501 to the full Committee.

**VOTE:  
Docket  
26-0137-0501**

The motion to recommend Docket 26-0137-0501 to the full Committee passed unanimously.

**ADJOURN:**

The meeting adjourned at 12:03 p.m.

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Representative George Eskridge  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

Joint Meeting with Senate Resources & Environment Committee

**DATE:** January 23, 2006

**TIME:** 1:30 p.m.

**PLACE:** Room 412

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

**ABSENT/  
EXCUSED:** Reps. Denney, Eskridge

**SENATORS:** Senators Schroeder, Pearce, Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

**GUESTS:** George Bacon, Operations Chief, Idaho Department of Fish & Game (IDFG); Brad Compton, Big Game Manager, IDFG; Marc Gibbs, Commissioner, IDFG; Steven Huffaker, Director, IDFG; Sharon Kiefer, Legislative Liaison, IDFG; Jim Unsworth, Wildlife Chief, IDFG; John Watts, Commissioner, IDFG; Cameron Wheeler, Commissioner, IDFG; Dr. Wayne Wright, Commissioner, IDFG

See sign-in sheet for additional guests.

**CALL TO ORDER:** Chairman Schroeder called the meeting to order at 1:35 p.m. He said the three joint meetings this week will have to do with Idaho Department of Fish and Game (IDFG) issues. Today there is a briefing on bonus point systems, and an overview of the ACCESS YES! program. Various sportsmen's groups will address the Committee on Wednesday, and public testimony will be given as time permits. Public testimony will continue on Friday. The purpose of the meetings is to consider ways to provide increased sportsman access; and to increase awareness of issues and the state's effort to retain public access for hunting, fishing and various other uses.

Chairman Schroeder said the Senate will remain in the room for a brief Committee meeting following the joint session.

Representative Stevenson thanked those in attendance, and IDFG staff for making presentations today.

**STEVE HUFFAKER,  
DIRECTOR IDFG**

**Introductions** Steven Huffaker, Director, Idaho Department of Fish & Game (IDFG), introduced the Commissioners attending: Commissioners Cameron Wheeler, Chairman; Dr. Wayne Wright; Marc Gibbs; and John Watts. He introduced Brad Compton, State Big Game Manager, IDFG, who will give a technical information, and Dr. Wayne Wright who will make the policy-level presentation.

Director Huffaker said two-thirds of Idaho's land is not private land, but the one-third that is has important water, grass, and winter range resources. There are 250,000 big game hunters in Idaho, but only 30,000 controlled hunt permits statewide. Only a few hundred permits are trophy hunts. Director Huffaker said it was important to note that most Idaho hunters are not hunting in controlled hunts;

and most who do aren't participating in controversial hunts. He said Dr. Wright is at the center of all the controversial issues, because he represents the part of Idaho where there are many controlled hunts, private hunts, lots of private land, and some big ownerships of private land.

**DR. WAYNE  
WRIGHT,  
COMMISSIONER:**

Dr. Wayne Wright, Commissioner, IDFG, said he grew up on a farm in southern Idaho where he hunted on private land. He said he was pleased to be on the Commission.

**Controlled Hunts  
ACCESS YES!**

Dr. Wright said the Commission has looked carefully at controlled hunt issues, including input from many sources. IDFG staff has been asked to implement a bonus-squared system because 1) it doesn't have a biological significance requiring more permits to be issued, and 2) a survey with over 2,000 respondents supported the point system by an overwhelming majority. The survey showed broad support for the persevering sportsman; someone who doesn't draw for five years ought to have a better chance than someone drawing the first year. The cost of implementing the system is estimated to be \$2 per application. The Commission has recommended implementation of the bonus point system for Idaho.

Dr. Wright said access is another problematic issue in Idaho and the U.S. because many more people call themselves hunters and fishermen. Idaho has more public than private land; but there are pivotal private lands where roads, habitat, and water issues affect sportsmen. More and more public land in Idaho is closed because of "demographic generational" reasons. Dr. Wright said those reasons include urbanization, absentee landowners, corporate ownership, and a general decrease in landowners trust that sportsmen will take care of private property.

Dr. Wright said economics for the rancher/farmer are difficult. IDFG programs look for ways to show more appreciation for the things landowners do to promote animal and habitat care, and for depredation. Without that appreciation, sportsman access can't be expected. Landowners appreciate the hunting tags they get. The tag program has been reviewed in detail by the Advisory Committee, which recommends continuation of the program, including tags to landowners that can then be transferred to whomever the landowner wishes.

Dr. Wright said the ACCESS YES! was a win-win program. There are acreage requirements for participation. The eligible farmer bids land and agrees to provide certain benefits in exchange for a per acre payment. Dr. Wright said there wasn't enough money to make ACCESS YES! do everything the Department requires. The Department and the Commission are identifying ways to enhance ACCESS YES! that do not include monetary outlays. This month, an exploration will be undertaken in the Magic Valley area to consider the efficacy of a pilot program next year. The Magic Valley was selected, although it has different problems from northern Idaho, because it has a high percentage of Landowner Appreciation Program (LAP) tags, and the highest percentage of ACCESS YES! participation. It also contains problems units. The primary premise of the test program would be to combine the ACCESS YES! And LAP programs.

Dr. Wright said another idea would be to give pledges to landowners, allowing sportsmen to participate in monitoring or patrolling areas, or to help with identified projects—such as fencing ponds, or cleaning up debris. Pledges would be part of the ACCESS YES! bidding process. Sportsmen like the pledge idea. Dr. Wright reviewed similar programs now being used in Oregon and Kansas.

Dr. Wright noted that access issues affect Idaho citizens who are not sportsmen: hikers, bird-watchers, trail-bikers, and horsemen, for example. He said cooperative efforts could develop many ways to reward landowners and to preserve access to Idaho lands for future generations.

**BRAD COMPTON,  
BIG GAME  
MANAGER,  
IDFG:  
  
ACCESS YES!**

Brad Compton, Big Game Manager, IDFG, gave a power point presentation summarizing landowner-sportsman programs historically. They were first established in 1984; the Fish & Game Advisory Committee was created in 1989. There are three components: ACCESS YES!, the Landowner Appreciation Program (LAP), and depredation prevention and compensation. Citizen surveys show interest in developing new ways to compensate landowners for providing access, and to institute a competitive bidding process in Idaho.

Information about IDFG, ACCESS YES!, the LAP program, and tags can be located at the following URLs:

Home page: <http://fishandgame.idaho.gov/>

ACCESS YES! (Including a listing of properties included in the program, and maps): <http://fishandgame.idaho.gov/ifwis/huntplanner/accessyesguide.aspx>

Licenses and tags: <http://fishandgame.idaho.gov/cms/licenses/>

Mr. Compton said the goal was to provide hunting and fishing access to one million acres of private land; and to provide access through private ground to one million acres of public land for hunting and fishing. In 2003, 30 landowners participated in the program; in 2005, 87 landowners participated. Very few landowners leave the program.

Mr. Compton reviewed the LAP program. The original goal was to recognize private landowners for supporting wildlife, maintaining habitat, contributing to Idaho's hunting heritage, and to encourage positive landowner-sportsman relations. To this end, a separate controlled hunt drawing process for qualifying landowners was established in 1992. Sportsmen can apply for the regular controlled hunt and the LAP hunt. In most situations LAP offers better drawing odds. Mr. Compton reviewed changes to the LAP program that have occurred over time: many more tags are transferred outside the immediate family. By law, tags cannot be sold, but landowners can charge access fees.

Mr. Compton said additional incentives could be offered to landowners to increase private land access, to maintain and improve habitat on private land, and to work with corporate owners.

**BRAD COMPTON,  
BIG GAME  
MANAGER,  
IDFG:  
  
Bonus Point  
System**

Brad Compton, Big Game Manager, IDFG, gave an overview of the bonus point system. He said 100,000 people were disappointed annually because that many more applied to hunt than there were tags available. Eleven of thirteen western states use some sort of point system, whereas Idaho uses a random system. No system can guarantee a hunter a tag, but there are methods to improve the odds: Those methods include, requiring longer waiting periods, setting higher fees to cause a reduction in the applicant pool, limiting applications to a single species, and increasing the odds by using point systems. There are two types of point systems: 1) preference points, and 2) bonus points. A preference points system is a "stand in line" system, whereas a bonus point system adds a point every year: The analogy given for a bonus point system is to put names into a hat,

adding the name again for each bonus point.

Mr. Compton said the Commission has set requirements for any Idaho point system. It must 1) provide opportunities for new Idaho hunters and 2) be revenue neutral.

Mr. Compton reviewed the survey, which are published URL noted above. He said the system the Commission adopted for Idaho is a Nevada-style bonus system. Chances go up exponentially each year as long as a person stays in the system. There is a \$2 increase on each application fee to cover administration. The 2006 draw results will be used to fully operationalize the system in 2007.

## **QUESTIONS AND COMMENTS:**

### QUESTIONS AND COMMENTS:

Senator Schroeder asked if landowners would have licenses or tags they could sell, allowing the purchaser to hunt on public as well as private land. Director Huffaker said yes. The current system gives an assignable tag to a landowner. The tag can't be sold, but the landowner can charge for access to private property. The tag that goes with access entitles the holder to hunt anywhere in the unit.

Rep. Field(23) asked if the Department had considered eligibility in the instance where three landowners do not have contiguous holdings. Director Huffaker said it has been considered, but the current system does not make this allowance. Mr. Compton said small landowners make significant contributions to the goals of ACCESS YES!, but don't meet requirements of LAP permits. It is something that could be considered.

Senator Cameron said he saw information indicating that odds would decrease for the first 2-3 years under a bonus point system. Director Huffaker said that was true. If one end of a scale increases, the other must decrease. Senator Cameron asked if survey participants were aware of that fact. Director Huffaker said the department tried to be realistic about information given to participants. The survey was driven by people wanting a change in Idaho similar to procedures now used in other western states.

Senator Williams said it was a fact that the number of "well-heeled" people in the nation were tying up a good share of private hunting preserves. He asked how that fact tied into the bonus point system. Director Huffaker said Committee members have been given a pamphlet, The Death of Hunting, which provides a good overview of the problem. There is no way to turn back the clock; but there is still a chance to reserve some hunting on private land for citizens.

Senator Schroeder said the statistics put together by the Department were compiled at his request. He has constitutional concerns pertaining to private land and harvest percentages.

Rep. Raybould asked what could be done about hunter vandalism. Would the Department be in favor of legislation allowing extremely high fines, or even prison sentences where firearms were involved. Director Huffaker said yes. A small minority of people cause the majority of problems. Self-policing is also part of the solution.

Senator Langhorst asked for clarification if LAP participants could sell access to private property, and transfer a hunting tag to someone hunting on public land and never setting foot on private land. Director Huffaker said yes. The tag is good

for the entire unit, and issued to the landowner who owns a parcel of land in that unit.

Senator Langhorst asked Dr. Wright if he said that the Advisory Committee recommended more transferable tags. Dr. Wright said the Advisory Committee recommended that the LAP program be kept essentially unchanged, but find a method whereby landowners holding less than 640 acres be able to participate. That change would allow for additional tags that could be transferred.

Senator Langhorst asked for clarification in the case where a person gets both permits, LAP and controlled hunt. Dr. Wright said a landowner could sell access to anyone now, including access for an assigned LAP tag. Senator Langhorst said it was not right to compare selling access to selling tags: To sell access is equivalent to selling the tag. Dr. Wright said that was the thinking of many sportsmen. Alternatives create other problems: If, for instance, a tag only allowed the holder to hunt on 80 acres, additional problems would arise.

Senator Little asked if IDFG has established liability protection for landowners in statute: If someone were to be compensated through the LAP or controlled hunt tag would the State's have liability. Dr. Wright said he didn't know. The Commission would appreciate help from the legislature in that regard. Senator Little said the Legislature needed help from the Commission and sportsmen. Any benefit accruing from landowner participation could quickly be negated by a lawsuit. Mr. Bradford clarified that existing statute limited the extent of liability to the landowner and lease agreements with the state. The ACCESS YES! Program is covered.

Rep. Bedke asked if the number of LAP tags that are transferred by landowners and not used are known. Director Huffaker said he would get this information for the Committee.

Rep. Wood asked if some landowner tags were allowed in depredation hunts. Director Huffaker said no; depredation hunts are a separate process. The landowner tag could be used in a depredation hunt because it didn't affect the LAP program.

Senator Langhorst asked how a LAP tag was transferred. Director Huffaker said a person is designated in writing to the Department. IDFG then issues the tag to that individual.

**ADJOURN:**

The meeting was adjourned at 2:55 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

Gold Room - Joint Session with Senate Resources & Environment Committee

**DATE:** January 25, 2006

**TIME:** 1:30 p.m.

**PLACE:** Room 412

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

**ABSENT/  
EXCUSED:** None.

**SENATORS** Senators Schroeder, Pearce, Cameron, Burtenshaw, Williams, Brandt, Little, Stennett and Langhorst

**GUESTS:** See sign-in sheets for additional guests.

**CALL TO ORDER:** Senator Schroeder called the meeting to order at 1:39 p.m. He announced agenda changes made to accommodate travel plans, and emergencies. Public testimony will be heard today as time allows; and additional public testimony will be taken at the Joint Committee meeting Friday, January 27<sup>th</sup>.

Today the Committee will hear from organized groups and large landowners relative to perpetual leases and other access issues.

**FISH & GAME  
ADVISORY  
COMMISSION:  
Kent Marlor**

Kent Marlor, Chairman, Fish & Game Advisory Committee (FGAC), said FGAC recommends adoption of a Landowner Appreciation Program (LAP) Mission statement as follows: "To recognize Idaho's private landowners for supporting wildlife, maintaining wildlife habitat, contributing to Idaho's hunting heritage, and to encourage positive landowner-sportsmen relations." It recommends that LAP be left unchanged; that other incentives should be considered before authorizing landowners to sell tags; that a Legacy Lands Program, designed to accommodate large corporate and industrial lands, be developed in order to preserve and manage public access; that large-acreage and small-acreage landowner access exchange programs be developed; and that legal staff research rules as they relate to corporate enrollment vis-a-vis LAP. Mr. Marlor said programs should not be totally funded from hunting fees, and must also come from other public sources. (Exhibit 1)

**QUESTIONS:** Rep. Saylor asked for a review of the reasons the LAP Program was changed, dropping access requirements and allowing permits to be transferred. Mr. Marlor did not address the reasons, but said the program ought to be designed for LAP appreciation without strings attached. Rep. Saylor said there was no shortage of people willing to take part in LAP. Mr. Marlor said there was excellent participation in the program.

**POTLATCH  
CORPORATION:  
Mark Benson**

Mark Benson, Potlatch Corporation (Potlatch), made a power point presentation entitled "Future Access Realities." Potlatch owns 670,000 acres in Idaho located between the end of Coeur d'Alene Lake and the Clearwater River. Public use of private forest land is increasing. Driving the increase is,

first of all, population growth; but also a renewed interest in outdoor family activities, decreased access to public lands, the increased mobility of users, and fun, new “toys.” The question becomes: Is that use an entitlement or a privilege? Potlatch lands have been open to the public. The current policy is to expect users to respect the land as if it were their own; and to promote responsible use of Potlatch lands. With increased use, there is also an increase in unacceptable use, including dumping junk and garbage, abandoning vehicles, damaging gates, and so on. The annual cost of public use to Potlatch is over \$300,000.

Mr. Benson said things will be different in the future. Potlatch realizes there is a revenue opportunity for providing access to the public. He mentioned several choices available to Potlatch: 1) To maintain the status quo. He said it was important to remember that Potlatch was a group of foresters, not recreation managers. 2) To close Potlatch lands. 3) To manage public access. 4) To manage public use.

Mr. Benson said Potlatch believes the way forward is to manage public access. Potlatch has met with state agencies and the legislature to discuss options and alternatives. There is one chance to “get it right.” Potlatch wants to be good neighbors and to consider the long heritage of public use in Idaho; but it also must consider shareholders.

Mr. Benson identified several methods of managing access: 1) land sales, 2) conservation easements, 3) exclusive leases and permits, 4) user access fees, and 5) landowner incentives. His focus in this presentation was on conservation easements. The St. Joe Basin Forest Conservation Project provides a working forest easement conveying 54,000 of the 80,000 acres Potlatch owns to the state of Idaho through conservation easements, while retaining ownership and ensuring the land will not be developed. Potlatch retains the right to “set rules,” but not to the exclusion of other types of users. Mr. Benson said funding the program was the issue. Idaho, unlike several other states, does not have state money to meet the program requirement of a 25% federal match. Monies from other sources have not been forthcoming. Potlatch has successful projects in other states, including Arkansas and Minnesota, where landowner incentives have been given—i.e., direct payment or reduction in property taxes.

QUESTIONS: Rep. Eskridge asked if Potlatch has enforcement people on Potlatch lands to follow up with civil charges when they are appropriate. Mr. Benson said yes. Potlatch contracts to patrol roads. Some court cases have had satisfactory outcomes. But Potlatch has in excess of 5,000 miles of roads, intermingled with another 5,000-10,000 miles of roads. Patrolling is not a reasonable option.

Senator Stennett expressed his appreciation to Potlatch for what they are doing. He said he thought help had been forthcoming with the easement program on the St. Joe, and asked how much money was needed for the 25% federal match. Mr. Benson said about \$2 million. Sen. Stennett asked if that amount would “tie up” the entire 80,000 acres. Mr. Benson said yes. He said the problematic issue was that appraisals drive the value of easements. There aren’t many comparable transactions, and appraisal values have been disappointing to Potlatch. The \$2 million dollars figure he has given would be the cost given an appraisal value acceptable to Potlatch.

Senator Schroeder said he assumed there were groups willing to pay for access to Potlatch lands. Mr. Benson said people contact Potlatch regularly to inquire about leasing programs. To this point, Potlatch has said it is evaluating the situation. Based on activity in other states, the average going rate for leasing forest land is from \$4-\$7 dollars an acre per year. Typically, for smaller parcels, it is \$7-\$8 dollars per acre per year. A large parcel might be leased for \$3-\$4 dollars per acre per year. There is a market for leasing private land.

Senator Burtenshaw asked what arrangement Potlatch now had. Mr. Benson said land was in the Forest Legacy Program. The state has a deeded conservation easement. Potlatch coordinates with the state on a periodic basis as to how the public will use the land. The program has worked well. There are two problems: 1) Funding: No monies have been forthcoming to meet the federal matching requirement. 2) The appraisal process.

Senator Stennett asked if there was a time frame in which the \$2 million dollar figure would remain satisfactory to Potlatch. Mr. Benson said he didn't know, because he didn't know how the Forest Service would rank the project for fiscal 2007. It is possible it will not be included in the budget. Initially, Potlatch thought the project could be completed within a few years. It has not been. Now over 37 states are offering projects, and representing they have funding in place. It will be a challenge to get this project back on the top of the Forest Service's priority list.

Senator Burtenshaw asked how much federal money was involved with the \$2 million dollar matching funds. Mr. Benson said from \$6-\$7 million dollars. Senator Burtenshaw asked if timber would continue to be harvested. Mr. Benson said in a working forest conservation easement, Potlatch maintains use of the land for its traditional forest projects. It is a win-win program. The land continues to be managed, timber is made available to the local economy, people have use of the land in perpetuity, and there is an assurance it will not be developed.

Senator Stennett asked if the Plum Creek land, to the east of Potlatch land has been shut off from public access. Mr. Benson said not to his knowledge.

Senator Schroeder said he was understanding Mr. Benson's point that Potlatch is a business. In part that business has been giving away assets; indeed, it is costing Potlatch money to give them away. Also, there is a concept of perpetuity involved with the conservation easement program whereas private land is increasingly being leased out on an annual basis to people who are willing to pay. He asked about terms that might be available to the state for a long-term or perpetual easement encompassing the entire 670,000 Potlatch acres. Mr. Benson said it is an important point. Until the work is complete to conserve the 54,000 acres, Potlatch will not begin to address a 670,000 opportunity. He noted that in hunting unit 10, in the Clearwater Region, Potlatch owns 300,000 acres, more than half of which is in that game unit. He said Potlatch would entertain a perpetual lease to a state entity or conservation fund. It is a simple solution. The question is cost: At \$5 per acre, 600,000 acres is \$3 million dollars annually. Into perpetuity, it represents a very large sum of money. Mr. Benson said the concept makes sense and is doable.

Senator Pearce asked if Potlatch ground was fenced, and if its boundaries were easily identified from federal lands. Mr. Benson said no. The user

typically would not know whose land he was on. Potlatch has tried to engage other landholders; it is not a problem exclusive to Potlatch. There are no simple answers.

Senator Schroeder said hunting clubs typically police their borders. Mr. Benson said that was correct. It is the burden of the leaseholder to patrol boundaries, and to cleanup garbage and trash. He said that has worked well in Minnesota.

Senator Langhorst asked if public lands joined Potlatch lands or were interspersed with them; and how many acres of public land would be landlocked if Potlatch were to sell or lease to other parties. Mr. Benson said, to be clear, there are travel corridors through Potlatch lands in some areas, including county and county co-op roads. Senator Langhorst asked if it was safe to say hundreds of thousands of acres would be landlocked. Mr. Benson said he didn't know. Senator Langhorst asked for an estimate to be provided the Committee from Potlatch land management. Mr. Benson said he would provide it.

Senator Schroeder asked if, without progress on public access issues, Potlatch would consider private sources as viable alternatives. Mr. Benson said, in the interest of Potlatch shareholders, Potlatch is obligated to understand and act upon revenue opportunities from Potlatch assets. A long time ago, certain types of timber had no value. As they became valuable, Potlatch monetized that value. It is only prudent business to consider the value of assets.

Mr. Benson thanked the Committee for the opportunity to make his presentation.

Senator Schroeder announced that no Senate Resource & Environment meeting would follow the Joint Committee session today.

**ADA COUNTY FISH  
& GAME LEAGUE:  
Bob Minter**

Bob Minter, President, Ada County Fish & Game League, said the League was an affiliate of the much larger, Idaho Wildlife Federation, and a member of the Idaho Sportsman's Caucus Advisory Committee . The organizations have a common mission of working to protect Idaho's wildlife resources and the hunting, fishing and other recreational opportunities the wildlife resources provide.

LAP has the League's full support as it was originally structured. Modifications in recent years have made the program complicated, and have lost sight of the original intention. The League's main concerns are: 1) Landowner tag transferability should be restricted to immediate family or employee delegates. Idaho's wildlife resource should not be commercialized. 2) The provision requiring participating landowners to provide reasonable public access has been compromised. 3) Unit tag allocations should be returned to 10% levels of the controlled hunt levels, even for oversubscribed units. 3) The ACCESS YES! Program needs funding from a broader range of sources. 4) The Bonus Point System recommended by the Idaho Department of Fish and Game could be changed to improve applicant draw odds. Mr. Minter provided written testimony. (Exhibit 2)

QUESTIONS: None.

**IDAHO WILDLIFE  
FEDERATION:  
Cheri Barton**

Cheri Barton, Idaho Wildlife Federation (IWF) said IWF is a non-profit organization whose mission is to preserve, protect and enhance wildlife populations and wildlife habitat for future generations. It has no lobbyists. The ACCESS YES! Program is very successful, and underfunded. It needs to be preserved and expanded. IWF supports increasing license fees to fund the program on a larger scale. Ms. Barton said public land should not be sold. IWF objects to the method LAP subscribes tags to landowner participants. She submitted written testimony. (Exhibit 3)

QUESTIONS: Rep. Stevenson asked if her statement represented the official position of IWF. Ms. Barton said yes.

**IDAHO  
SPORTSMEN  
CAUCUS  
ADVISORY  
COUNCIL:  
Jerry Bullock**

Jerry Bullock, Idaho Sportsmen Caucus Advisory Council (ISCAC), said the Council opposed transferability of LAP tags. ISCAC's official position is that the LAP Tag Program be returned to its original intent and structure. Mr. Bullock submitted written testimony. (Exhibit 4)

QUESTIONS: None.

**SAFARI CLUB:  
Jerry Bullock**

Jerry Bullock, Safari Club, said the club supported LAP in principle and in its original form. The current trend, in Idaho and across the country, to commercialize wildlife needs to end. He gave instances where, in neighboring states, antlered tags were sold for large sums of money. The Safari Club wants any additional tags offered by IDFG to be available for sportsmen, not to LAP or ACCESS YES! Programs. The club is concerned about incentives to promote outdoor activities for youth; and for narrow funding sources when outdoor resources are available to all citizens.

QUESTIONS: None.

**IDAHO BIRD  
HUNTERS:  
Russ Heughins**

Russ Heughins, Idaho Bird Hunters (IBH), said IBH supports the ACCESS YES! Program and its expansion to provide a sustainable funding base for the program. It supports the acquisition of conservation or recreation easements through private property to public lands. Mr. Heughins referred to Montana's Block Management program. IBH recommends that the current LAP Program not be expanded, and does not support the sale of LAP permits. Mr. Heughins submitted written testimony. (Exhibit 5)

QUESTIONS: None.

**DEER HUNTERS OF  
IDAHO:  
Stan Riddell**

Stan Riddell, Deer Hunters of Idaho (DHI), said DHI's primary efforts are to help preserve the mule deer herd in Idaho, and to promote youth participation in the hunting heritage. DHI is concerned about expansion of the LAP Program for the purpose of funding ACCESS YES! Mr. Riddell submitted written testimony.

QUESTIONS: None.

**FOUNDATION OF  
NORTH AMERICA  
WILD SHEEP:  
Chuck Middleton**

Chuck Middleton, Foundation of North America Wild Sheep (FNAWS) said no one has yet talked about hunting odds decreasing in controlled hunt areas due to LAP tags. LAP originally addressed landowners wanting the opportunity to hunt animals on their own land. Tag transfer should be restricted to a landowner's deeded property. Wildlife should not be commercialized in Idaho, as it has been in other places. FNAWS does support other parts of the LAP

Program. Funding for IDFG programs should include broader public participation than sportsmen, perhaps a user fee as is charged in Idaho parks.

**NATIONAL WILD  
TURKEY  
FEDERATION:  
Mark Bell**

Mark Bell, National Wild Turkey Federation, was not able to stay, but will return Friday.

**QUESTIONS:**

Senator Langhorst asked Director Huffaker if IDFG has researched Montana's block management program. Director Huffaker said he would provide that information to the Committee.

**ANNOUNCEMENTS:**

Rep. Stevenson announced that two Resource & Conservation Subcommittees would be held this afternoon: the Idaho Department of Lands Administrative Rule Review Subcommittee will meet immediately following the joint session in room 412; the Idaho Department of Fish and Game Administrative Rules Subcommittee will meet at 4:00 p.m. in room 412.

**ADJOURN:**

Chairman Schroeder adjourned the meeting at 3:03 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

MINUTES

**HOUSE RESOURCES & CONSERVATION COMMITTEE**  
Idaho Department of Lands Administrative Rules Review Subcommittee

**DATE:** January 25, 2006

**TIME:** 3:00 p.m.

**PLACE:** Room 412

**MEMBERS:** Rep. Roberts, Chairman; Reps. Barrett, Andrus and Jaquet

**ABSENT/EXCUSED:** None

**GUESTS:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL); Jack Lyman, Idaho Mining Association; Denise Mills, Assistant Director, IDL

See sign-in sheet for other guests.

**CALL TO ORDER:** Chairman Roberts called the meeting to order at 3:17 p.m.

Rep. Jaquet made a motion to approve the Subcommittee minutes of January 18, 2006. The motion passed by unanimous voice vote.

**ADMINISTRATIVE RULES REVIEW:** **Docket 20-0201-0501, Rules pertaining to the Idaho Forest Practices Act.**  
Idaho Department of Lands

**Docket 20-0201-0501** Chairman Roberts revisited Docket 202-0201-0501, relative to the inclusion of the word "may" (Page 45, Subsection .002, Pending Rules) as opposed to "must." At issue is whether to recommend the rules to the full Committee without change.

**MOTION:** Rep. Jaquet made a motion to recommend Docket 20-0201-0501 to the full Committee.

**Docket 20-0201-0501**

**DISCUSSION:** Rep. Jaquet said her earlier concerns regarded small operators. She has discussed the rule with small operators and has no objection.

Chairman Roberts said his earlier concern was whether small operators had input in the rule making process. He has heard from small operators, and has no further objection.

Rep. Andrus said he has made inquiries, and is comfortable with the Docket.

**VOTE:** The vote on the motion to recommend Docket 20-0201-0501 to the full Committee passed unanimously by voice vote.

**Docket 20-0201-0501**

**ADMINISTRATIVE RULES REVIEW:** **Docket 20-0302-0502, Rules Governing Exploration and Surface Mining in Idaho**  
Idaho Department of

Chairman Roberts said Docket 20-0302-0502, Subsection .160.01 (Page

**Lands** 58, Pending Fee Rules) was again before the Subcommittee for discussion.

**Docket 20-0302-0502**

DISCUSSION: None at this time.

**MOTION:** Rep. Barrett made a motion to recommend Docket 20-0302-0502 to the full Committee, except Subsection .160.01, Right of Inspection.  
**Docket 20-0302-0502**

DISCUSSION: Rep. Barrett said there is a problem with agencies, in general, flushing out statute in their Administrative Rules. There is a statute covering inspection, that currently gives the Agency authority to make inspections. The statute allows for landowner due process.

**SUBSTITUTE MOTION:** Rep. Jaquet made a Substitute Motion to recommend Docket 20-0302-0502 to the full Committee as it is.  
**Docket 20-0302-0502**

DISCUSSION: Rep. Jaquet said Subsection .160.01 is a good rule. At the last meeting the Docket and Subsection was not rejected, therefore it was approved by consensus. It is reasonable to add this language to rule given concerns about emergency access and chemicals, specific to this intent .

Rep. Barrett spoke in opposition to the Substitute Motion. During the last meeting there was lengthy discussion, which included how some negotiated rule making transpired. To her mind that did not make conclusive consensus. There is too much reorganization through the rule making when it isn't necessary. Statute, as it is written, allows for due process.

Rep. Andrus spoke in opposition to the substitute motion saying the rules, in his view, go against the statute. The previous discussion was about that point. He said due process given in the statute is ample.

**VOTE ON THE SUBSTITUTE MOTION:** The vote on the Substitute Motion to recommend Docket 20-0302-0502 to the full Committee as it is failed 1:3 by voice vote.  
**Docket 20-0302-0502**

**VOTE ON THE MOTION:** The vote on the Motion to recommend Docket 20-0302-0502 to the full Committee, except Subsection .160.01, Right of Inspection, passed 3:1 by voice vote.  
**Docket 20-0302-0502**

**ANNOUNCEMENTS:** Chairman Roberts cautioned the committee about engaging in "personalities" in any Committee he chairs in the future. It will not be tolerated.

**ADJOURN:** The meeting was adjourned at 3:25 p.m.

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Representative Ken Roberts  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

Idaho Department of Fish & Game Administrative Rules Review Subcommittee

**DATE:** January 25, 2006

**TIME:** 4:00 p.m.

**PLACE:** Room 412

**MEMBERS:** Representative Wood, Chair; Reps. Barrett, Moyle, Brackett and Mitchell

**ABSENT/  
EXCUSED:** None.

**GUESTS:** W. Dallas Burkhalter, Deputy Attorney General, Department of Fish & Game (IDFG); Sharon W. Kiefer, Legislative Liaison, IDFG; Dennis Stevenson, Administrative Rules Coordinator

See sign-in sheet for additional guests.

**CALL TO ORDER:** Chairman Wood called the meeting to order at 4:03 p.m. She made several introductions: Rep. Elizabeth Chavez is replacing Rep. Mike Mitchell during a brief absence; Rep. Bert Brackett is a new member of the Resources & Conservation Committee; Sharon W. Kiefer, is the new legislative liaison for IDFG; and W. Dallas Burkhalter, Deputy Attorney General for IDFG, will make the Administrative Rules presentation for IDFG.

**ADMINISTRATIVE  
RULE REVIEW:** Docket 13-0104-0501, Rules Governing Licensing (Pending Rules)

**IDFG Docket  
13-0104-0501** Chairman Wood asked Mr. Burkhalter to proceed through the IDFG rules, identifying where substantial change occurs, and summarizing the reason for the change and/or the resulting impact. Only a summary of substantive dialogue, comments or questions follows:

Page 4: This is a change requested last legislative session allowing a rain check or refund for military personnel on active duty. Originally this was called the Iraq War Refund Rule. It has been changed to reflect the broader scope of military involvement around the globe. Various questions were asked to ensure that military personnel had reasonable ways to enact the provision.

**IDFG Docket  
13-0108-0501** Docket 13-0108-0501 (Pending Rules)

Page 6: Mr. Burkhalter was asked why the reference to “development of application criteria, drawing criteria and marketing procedures “ was in IDFG rule when it isn’t in the department’s statutes. He said the Commission originated the ACCESS YES! Program, and used certain controlled hunt tags to fund it. This language is included in rule to give the legislature a review opportunity. The program comes under the auspices of Controlled Hunt, for which the Commission does have statutory authority. Ms. Kiefer noted there was no new fee. Rep. Moyle asked if IDFG had the authority, through statute, to decide where funds are directed—for instance, to divert funds to the ACCESS YES! Program; and if tag money still accrues to the IDFG account. Mr. Burkhalter said Controlled Hunt is silent as to where funds go.

The Commission has authority to set program parameters. Funding is done through the budget and the Joint Finance and Appropriations Committee (JFAC). Clarifying discussion ensued. Rep. Barrett said it was backwards for the department to operationalize a program, then come to the legislature to cover the practice in statute.

Page 10, Section h: A possible conflict in IDFG rule was identified between Subsection 260.02.h, and Subsection 261.03.h (Page 14) relative to who can apply for controlled moose hunts. Mr. Burkhalter said language could be clarified without a change in these rules. Rep. Chavez cautioned against using convoluted language in rules, making it difficult for people to interpret the regulations. Rep. Wood noted that wrong interpretations could result in penalties and fines for citizens.

Page 11: Mr. Burkhalter clarified that unlimited Controlled Hunts are different from standard Controlled Hunts; anyone can draw leftover tags for unlimited Controlled Hunts. Rep. Moyle commented that although the Commission has the authority to make rules, sportsmen would like an opportunity to be heard—especially on Superhunts. Ms. Kiefer said rule making includes a public hearing process. Rep. Moyle said, although it is easier to promulgate rules, it would be better to put changes in statute. Discussion ensued over issues raised recently in the Resource & Conservation Committee of this date, held in Joint Session with the Senate Resources & Environment Committee.

Page 14: It was noted that approximately 1,000 of 100,000 applications are invalidated by reason of erroneous or illegible information. The fact that an application can be invalidated is disclosed in the brochure most sportsmen reference. Ms. Kiefer noted that most unsuccessful draws are due to the random nature of the draw, and not due to invalidated applications.

Page 15: Subsection 261.06.f contains new language, referring to the ACCESS YES! Program. It does not institute new procedure.

Page 17: Subsection 410.03.d.ii states that Sabots are not allowed. Discussion ensued as to when in-line muzzleloaders are allowed in hunts.

Page 18: Subsection 412 restricts motorized vehicles in areas and hunts in specified units. Restrictions are published in a brochure available at the department's offices and license vendors. Rep. Moyle said, in practice, IDFG restrictions were very confusing. Rep. Wood said there was much public complaint about enforcement. Rep. Moyle said restrictions seemed to be increasing every year, and asked what would be added this year. Mr. Burkhalter said information would be available in early March. Rep. Brackett asked if this rule was a complete ban on motorized vehicles. Mr. Burkhalter said actual motor vehicle restrictions were located in Section 4.11; there is no change to that Section and it is not included in the rules package the Committee is reviewing. It says, in hunts identified in the hunting brochure, motor vehicles must be kept on roads that can be traveled by full-sized vehicles, and that are open to travel by authority of the land manager, which could include a private land owner.

Page 19: Subsection 800.03 gives returning military personnel priority for depredation hunts.

**IDFG Docket  
13-0110-0501**

Docket 13-0110-0501 (Pending Rules), Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife

Page 21-38: A general discussion ensued concerning the intent and the operational procedures the rule enforces relative to possessing or raising wildlife. Ms. Kiefer said it was not the intent to require the licensing of private game birds, or to institute the licensing of a species where it is already exempt. Rep. Barrett questioned replacing “big game animals” with “wildlife” throughout the docket, without accurate definition or clarification. Rep. Moyle said similar rules were presented by the Department of Agriculture. They have been withdrawn, and a statutory change is being prepared. He said he would like to see IDFG withdraw this docket also. Ms. Kiefer said the intent was to monitor those animals that are not identified elsewhere, where there is cause for concern either of wildlife health or human safety. Discussion as to the differentiation between wildlife parks, captive wildlife facilities, commercial wildlife research facilities, medical facilities and several other classifications ensued. Rep. Wood said it is too difficult for the public to discover the intent of the law. Rep. Moyle referred to several sections of Idaho Code: Section 36-201 setting forth the classifications of wildlife in Idaho; Section 36-202(g) defining wildlife as “any form of animal life”—a term too broad to be enforced; and Section 36-701 regarding the possession of wildlife, including exceptions. Mr. Burkhalter agreed that there were multiple references that applied. He said the proposed rules are the result of the State Veterinarian working with IDFG and the Department of Agriculture to “close loopholes.” Rep. Moyle again stated that IDFG should withdraw the docket. Mr. Burkhalter said he would convey the Subcommittee’s concerns to the department.

**IDFG Docket  
13-0117-0501**

Docket 13-0117-0501 (Pending Rules), Rules Governing the Use of Bait for Taking Big Game Animals

Page 39: Rule changes are made at the request of specific outfitters, requesting more time to bait bears in the back country. The units included in the rule are those where an elk recovery effort is underway. A general discussion ensued about the practice of baiting, danger to human and animal populations, efficacy of the practice, outfitter’s concerns, required permits, and enforcement practices. Rep. Moyle said outfitter’s would like to see this rule expanded. Mr. Burkhalter said he would convey that to the department.

**MOTION:  
IDFG Docket  
13-0117-0501**

IDFG Docket 13-0117-0501: Rules Governing the Use of Bait for Taking Big Game Animals

Rep. Moyle made a motion to recommend Docket 13-0117-0501 to the full Committee without change.

**VOTE:  
IDFG Docket  
13-0117-0501**

The motion to recommend Docket 13-0117-0501 to the full Committee without change passed unanimously by voice vote.

**MOTION:  
IDFG Docket  
13-0108-0501**

IDFG Docket 13-0108-0501: Rules Governing the Taking of Big Game

Rep. Moyle made a motion to recommend Docket 13-0108-0501 to the full Committee without change.

**VOTE:** The motion to recommend Docket 13-0108-0501 to the full Committee  
**IDFG Docket** without change passed unanimously by voice vote.  
**13-0108-0501**

**ANNOUNCEMENTS:** Chairman Wood said the IDFG Administrative Rules Review Subcommittee would meet again early next week. Members will be notified.

**ADJOURN:** The meeting was adjourned at 5:06 p.m.

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Representative JoAn Wood  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

Joint Session—Senate Resources & Environment Committee

- DATE:** January 27, 2006
- TIME:** 1:30 p.m.
- PLACE:** Gold Room
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Saylor, Jaquet, Mitchell
- ABSENT/  
EXCUSED:** Reps. Denney, Moyle, Raybould, Shepherd(8)
- SENATORS:** Senators Schroeder, Pearce, Burtenshaw, Williams, Brandt, Little, Stennett and Langhorst
- GUESTS:** Mark Benson of the Potlatch Corporation  
See the sign-in sheet for additional guests.
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:32 p.m.  
  
Senator Schroeder read a statement of purpose, saying that public dialogue of issues is important to sportsmen and landowners as it gives both the legislature and the public an opportunity to engage in discussion concerning the future. He said the discussion recognizes some broader issues; for example, public access issues and the preservation of public areas. He thanked Mark Benson of the Potlatch Corporation for participating in the discussion today. (Exhibit 1)  
  
Chairman Stevenson told guests that the hearings of January 23<sup>rd</sup>, 25<sup>th</sup>, and 27<sup>th</sup> were for educational purposes. He encouraged those in the room to attend meetings of the Idaho State Fish and Game Commission. The Chairman said he would call people who have indicated on the sign-in sheet that they want to speak.
- SPORTSMEN FOR FISH & WILDLIFE IDAHO:** Scott Allan, President and Chairman of the Board of Sportsmen for Fish & Wildlife Idaho (SFWI) said sportsmen must work with landowners to create a program encouraging them to provide access and improve wildlife habitat. He said first, however, questions need to be answered: 1) To what degree do sportsmen have the ability to direct negotiations? 2) What is it that sportsmen bring to the negotiating table? 3) What can sportsmen offer? 4) What does the landowner bring to the table? 4) What does the landowner own?
- SCOTT ALLAN** Mr. Allan submitted his testimony in writing, and a letter dated 6/7/05 from SFWI to the Idaho Department of Fish and Game (IDFG) Commission. (Exhibit 2)
- QUESTIONS:** None.

**J. R. SIMPLOT, CO:**

**VINCENT  
RESTUCCI**

Vincent Restucci, J. R. Simplot, Co., said he is here at the request of Senator Schroeder. The Simplot Company purchased the rights in Idaho to operate a franchise of the Hunting Lease Network last year. It is a service that matches landowners who want to allow hunting for a fee on their property with hunters who want exclusive rights to certain properties. 11,800,000 acres in Idaho are privately held. Private landowners are coming to see wildlife and wildlife habitat as another rotation crop. Many landowners aren't allowing sportsmen access because they don't understand the value. The program tries to bring sportsmen and landowners together for a fee.

QUESTIONS: Senator Langhorst asked how many other western states are included in the program, or in hunting lease networks. Mr. Restucci said they are the only franchise in the western United States. The franchise isn't as active in Idaho as, for instance, in Nebraska because landowners in the west are typically owner-operator farmers. Where there is a preponderance of absentee owners, hunting leases are more common.

Senator Langhorst expressed his concern that hunting leases would contribute to losing cooperation for public access. Mr. Restucci said the practice of leasing has been going on for a long time. The Hunting Lease Network serves as a broker between the landowner and the sportsman.

Senator Schroeder thanked Mr. Restucci for his testimony. He asked about the "Cabella connection." Mr. Restucci said Cabella is a member of Farmers National Real Estate, and is in the business of selling prime hunting properties. There really isn't a connection.

Senator Schroeder said the reality of the situation is that landowners can lease land. There is no public policy to allow or disallow that practice. Mr. Restucci said that is correct. Senator Schroeder said he asked Mr. Restucci to attend the meeting in order to explain the leasing trend for agricultural land, and talk about lease values. Idaho has never been "driven to create habitat." Although a farmer might have an excellent habitat in a field of corn one year, the next year the field might be in potatoes. It is a new concept to pay landowners to leave crops in place, or to make habitat improvements.

Senator Schroeder asked for information about typical lease fees. Mr. Restucci said \$7-\$10 per acre was typical, although some leases are less or more. \$25 per acre, or more, would not be too much for a corn field.

**RUSTY TEWS:**

Rusty Tews is a farmer near Shoshone who belongs to many sportsmen's associations. He said farmers and ranchers, who provide most sportsman opportunities in the lowlands, need incentives for allowing access. He said wildlife will not be valued in our society until a dollar value is placed on it. Farmers and ranchers need a monetary value to include in financial statements. He said IDFG is the appropriate middleman.

QUESTIONS: None.

**MARK SMITH:**

Mark Smith is a Boise resident who hunts turkeys and upland game birds. Access to good hunting is sportsman's issue most important to him. He supports ACCESS YES! and is willing to pay for it, but favors a better

funding source for the program. He supports legislation: 1) to put a general increase on hunting licenses directed to the ACCESS YES! program; or 2) to put an extra cost validation on hunting licenses allowing sportsmen to use access lands. Mr. Smith opposes legislating access through the sale of big game trophy tags. The public resource of wildlife should not be turned into a commodity, as is already happening in the Landowner Appreciation Program (LAP). He submitted written testimony. (Exhibit 3.)

QUESTIONS: None.

**JIM LYONS:**

Jim Lyons is an attorney. He has a background in public rights of way through public lands, and was General Counsel for the Schweitzer Resort, representing major Idaho landowners. His work included RS2477 filings. He told the Committee the RS2477 law created rights of way for public use. Mr. Lyons said two federal laws made it unlawful to block public land from the public: 1) the Unlawful Enclosures Act of the Federal Code, and 2) a USDA Forest Service law making it unlawful to block access to federal forest lands. Mr. Lyons said court cases result in heavy fines. These laws have not been used in Idaho, so far.

QUESTIONS: None.

**JERRY M. CONLEY:**

Jerry M. Conley has been Fish & Game Director in three states for a total of 25 years, 15 of those in Idaho. Each state takes a specialized approach to a fair distribution of limited tags. No matter what approach is used, someone isn't satisfied. He said the IDFG Commission's recommendation is a good approach. Mr. Conley would like ACCESS YES! funding increased to the level at which land is currently being leased, in order to help sportsmen for a decade or two. He cautioned that leasing is coming; and gave examples from other states to illustrate how quickly leasing can change the dynamics of public access for sportsmen. Written testimony was submitted. (Exhibit 4)

QUESTIONS: None.

**JACK TRUEBLOOD:**

Jack Trueblood was Information Officer for IDFG when the ACCESS YES! program was developed. He supports the program, and additional funding for it. User permit moneys should be directed to a dedicated fund. Mr. Trueblood is not in favor of additional LAP tags. He submitted written testimony. (Exhibit 5)

QUESTIONS: None.

**FRED CHRISTENSEN:**

Mr. Christensen resides in Caldwell. He testified in support of the recommendation made by the IDFG Advisory Committee, although he is disappointed that the original LAP program has been changed. Mr. Christensen supports ACCESS YES! and an increase in license fees going to a dedicated fund.

QUESTIONS: None.

**FORMER SENATOR  
LIN WHITWORTH:**

Former Senator Lin Whitworth expressed concern for the dwindling number of youth showing an interest in outdoor sports. He said he was convinced that the cause could be attributed to changes in hunting seasons and regulations. It is no longer easy to have a wholesome family group experience. Senator Whitworth is concerned about conservation enforcement practices. He gave an illustrative example. He also objects to increasing the number of LAP tags. Written testimony was submitted. (Exhibit 6)

QUESTIONS: None.

**GLENN GORE:**

Glenn Gore said he supports ACCESS YES! Mr. Gore is concerned about many occurrences where state and federal public access roads have been blocked. He gave a number of very specific locations he experienced where public roads were blocked in the McCall-Payette Lake areas. Regarding sportsman access across private land, Mr. Gore said payment should not be made to landowners for access if no access is given. He noted that handicapped people desire access to the outdoors. Access for this group is difficult because they can't hike in to back country. Wheelchair hunters ought to be able to access public land.

QUESTIONS: None.

**JACK FISHER:**

Jack Fisher resides in Nampa. He was on the IDFG Advisory Committee when the ACCESS YES! program was developed. He said the "A" in LAP stands for "appreciation." The program was intended to acknowledge landowners for their contribution to wildlife and habitat by allowing them to hunt on their own property, and to eliminate the situation where a landowner couldn't hunt on his own property because it wasn't in the general hunt area. The original program also provided for reasonable public access. Mr. Fisher said the definition of "reasonable access" has been removed, and needs to be reinstated to the current program. He objects to allowing landowners LAP tags that can be assigned to parties outside immediate family or farm workers. Since tags can't be legally sold, landowners are selling access at a premium and giving tags away free. It isn't an honest system. Mr. Fisher said large landowners are subdividing their properties in order to get more tags--sometimes as many as 10-20 tags. Those tags are then sold for access rights generating "big bucks." If the practice is continued, the legislature needs to make the sale of tags legal. Mr. Fisher said ACCESS YES! needs additional funding; and recommends a version of Montana's Block Management Lease Program.

QUESTIONS: None.

**DENNIS TANIKUNI:**

Dennis Tanikuni, Idaho Farm Bureau Federation, presented written testimony for the record. (Exhibit 7)

**RICHARD  
TRUDEAU:**

Richard Trudeau is a member of Idaho Bird Hunters. His primary concern is having access to public land from private property. He supports ACCESS YES!, but thinks the program is "just buying time" because people who can pay high prices will outbid people who can't. Mr. Trudeau said there are more property owners who are reluctant to provide access

to hunters every year for a number of reasons, including: more people are asking for access; and many landowners have grazing leases on public lands. Conservation organizations have raised issues for landowners with grazing leases. Landowners have no way of knowing who they are allowing on their land. Mr. Trudeau asked the legislature not to support public wilderness initiatives if sportsmen were excluded from the process; and suggested that IDFG be an active member of all initiatives in the future.

QUESTIONS: Rep. Jaquet asked Mr. Trudeau if he had taken part in planning and zoning issues for large properties adjacent to public land, where he could request public access. He said he didn't know planning and zoning would be part of that issue.

**BRENT E.  
CROWTHER:**

Brent E. Crowther of Rexburg, spoke to one issue: privatization of public tags. He said most western states offer premier tags. He gave examples to illustrate that advertisements are routinely placed in magazines to sell hunting tags. Mr. Crowther does not agree with the practice because game animals belong to the people. He dislikes the transformation of hunting from a family practice to one of corporate avarice. Written testimony was submitted. (Exhibit 8)

**MIKE VEILE:**

Mike Veile resides in Soda Springs. He said landowners provide access to the public by allowing friends and family on their property. If the LAP program is expanded to allow tag sales and revenue directly to landowners, all forms of public access will cease. Mr. Veile gave examples from other states where tag sales resulted in reduced public access. Written testimony was submitted. (Exhibit 9)

QUESTIONS: None.

**LLOYD  
OLDENBURG:**

Lloyd Oldenburg said sportsmen were not the only citizens requesting access to public lands. A broader funding base for access programs should be instituted. He favors a \$5 dollar increase on hunting and fishing licenses to be used solely for access programs, but with the state matching that amount each year. Mr. Oldenburg said the "check book should not be balanced on the backs of trophy animals."

**NATIONAL WILD  
TURKEY  
FEDERATION:**

Mark Bell, National Wild Turkey Federation (NWTF) said NWTF has polled all its chapters. The consensus is that hunters must have access through private land to public land in order to hunt in the spring. Mr. Bell had two comments regarding LAP: 1) He is sympathetic to property damage that may occur. 2) He supports ACCESS YES! and favors a license increase of from \$2-\$5 with proceeds going in perpetuity toward a dedicated access fund.

**MARK BELL**

QUESTIONS: None.

**TED EISELE:**

Ted Eisele is primarily a bird hunter, and belongs to a number of sportsmen's organization. He supports ACCESS YES! Because of tremendous growth in southwest Idaho, more people are competing for the same land. There has been no increase in wildlife management. Mr.

Eisele said he is respectful of farmers. Nevertheless, he has lost access this year because of a land lease. Most sportsmen cannot compete monetarily for hunting leases. Mr. Eisele noted that although Idaho is home to some of the best goose hunting in the west, there are no public hunting grounds for that activity. At the Deer Flat National Wildlife area, geese can't be shot on the lake, and all adjacent fields are private property.

QUESTIONS: None.

**ANNOUNCEMENTS:** Chairman Stevenson said there will be no Committee vote today. Written testimony can be submitted for the record at the end of the meeting. He encouraged everyone to attend IDFG Commission meetings, and to express their opinions.

**ADJOURN:** The meeting was adjourned at 3:03 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE:** January 31, 2006

**TIME:** 1:30 p.m. or upon adjournment

**PLACE:** Room 412

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

**ABSENT/  
EXCUSED:** None.

**GUESTS:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL); Jack Howard, Executive Director, Outfitters & Guides Licensing Board (OGLB); Sharon W. Kiefer, Legislative Liaison, IDFG; Michael J. Murphy, Program Manager, IDL

See sign-in sheet for other guests.

**CALL TO ORDER:** Chairman Stevenson called the meeting to order at 1:47 p.m.

**APPROVE MINUTES:**

**January 17, 2006** A motion was made by Rep. Saylor to approve the minutes of January 17,  
**January 19, 2006** January 19, and January 23, 2006. The motion passed by voice vote.  
**January 23, 2006**

**IDPR Administrative Rules Subcommittee of January 25, 2006** A motion was made by Rep. Shepherd to approve the Idaho Department of Parks & Recreation (IDPR) Administrative Rules Subcommittee minutes of January 25, 2006. The motion passed by voice vote of the Subcommittee.

**LETTER:** Chairman Stevenson told the Committee that a letter has been mailed to Jack G. Troyer, Regional Forester, Ogden, UT over his signature and that of Senator Schroeder. The letter is asking for reconsideration on the decision to allow IDFG to use helicopters in certain wolf management operations. The letter will be provided to Committee members on February 7, 2006.

**Jack G. Troyer  
Regional Forester  
Ogden, UT**

**RS15327:** Sharon W. Kiefer, Legislative Liaison, IDFG, presented RS15327, legislation to authorize the IDFG Commission to assess a certain application surcharge to implement, operate and maintain a bonus or preference point controlled hunt system. Ms. Kiefer said this legislation was to provide authority, but not to define fees. Fees will be addressed through separate legislation.

**MOTION RS15327:** A motion was made by Rep. Wood to recommend RS15327 to printing.

**VOTE RS15327:** The motion recommend RS15327 to printing passed by voice vote.

**RS15336C1:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL),

first gave an overview of the seven pieces of IDL legislation before the Committee today: six have to do with the Lake Protection Act; one with timber sales on state-owned land.

Mr. Bacon presented RS15336C1, legislation relating to navigational and nonnavigational encroachments, and amending section 58-1312 Idaho Code to provide requirements for the permitting of existing navigational or nonnavigational encroachments. He said the original statute gave free permits to landowners who filed by the end of 1974. RS15336C1 allows landowners who have some proof that an encroachment existed prior to 1974 to still be grandfathered without a fee. It will facilitate IDL management, and reduce the number of incidents where the department is asked to mediate encroachment issues.

QUESTIONS/DISCUSSION: Rep. Wood asked for clarification as to what constitutes modification (line 18). Mr. Bacon said the intent was modification of the footprint of the encroachment, which meant size and shape. It is assumed that landowners will maintain and repair improvements.

**MOTION RS15336C1:** A motion was made by Rep. Roberts to recommend RS15336C1 to printing.

**VOTE RS15336C1:** The motion to recommend RS15336C1 to printing passed by voice vote.

**RS15337:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented RS15337 relating to navigational and nonnavigational encroachments. It amends section 58-1302 Idaho Code to revise a definition and make technical corrections. Section 58-1302 determines how far an encroachment can protrude into a lake. It now is determined by the customary size of a boat in a lake; RS15337 allows the line of navigability to be determined by the length of existing legally permitted encroachments.

QUESTIONS/DISCUSSION: Rep. Saylor asked if RS15337 was in any way relevant to the high water mark at Sanders Beach in Coeur d'Alene. Mr. Bacon said Sanders Beach was an unrelated problem.

**MOTION RS15337:** A motion was made by Rep. Mitchell to recommend RS15337 to printing.

**VOTE RS15337:** The motion to recommend RS15337 to printing passed by voice vote.

**RS15338:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented RS15338 relating to navigational and nonnavigational encroachments. It amends section 58-1307 Idaho Code to revise fee and cost provisions for certain permits, and to authorize the Board of Land Commissioners to charge specified applicants the actual costs of processing applications in the event that actual costs exceed the non-refundable fee. Mr. Bacon said applicable fees have not been changed in thirty-two years. He referred to a chart projecting revenues and expenses. (Exhibit 1) With the recommended fee increase, the revenue deficit could be reversed by 2010.

QUESTIONS/DISCUSSION: Rep. Moyle asked what the impact would be to the general fund. Mr. Bacon said none. Currently the fees IDL collects are less than those allocated to administer the program. The program is now a net drain on the general fund. Mr. Bacon said IDL is considering bringing

legislation next session to establish a dedicated fund in order to have a self-sustaining program.

**MOTION RS15338:** A motion was made by Rep. Jaquet to recommend RS153238 to printing.

**QUESTIONS/DISCUSSION:** Rep. Eskridge asked for clarification of current permit fees. Mr. Bacon said the application for a permit is currently \$50. New fees have not yet been ascertained. IDL provides other services as well, and realizes revenue from other sources. That analysis has not been done.

Rep. Eskridge asked about the projected \$3,500 fee, which is a CAP on a Commercial Permit. Mr. Bacon said that fee applied to large marinas. He said Exhibit 1 was submitted to the Committee only as a projection. IDL fees still are subject to an Administrative Rules review.

**VOTE RS15338:** The motion to recommend RS153238 to printing passed by voice vote.

**RS15339:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented RS15339 relating to navigational and nonnavigational encroachments. It amends section 58-1308 Idaho Code to revise certain civil penalty provisions. He referred to Exhibit 1 (the small table) to illustrate minimum and maximum civil penalties that now exist at the rate established in 1974. The table projects a rate change and sets a CAP. Mr. Bacon said the current rates were not large enough to act as a deterrent

**QUESTIONS/DISCUSSION:** Rep. Roberts asked for clarification as to whether IDL was asking for an enforcement “hammer,” and would the department use it. Mr. Bacon said the provision has never been used. There is perhaps one case now under review. When the penalties were established in 1974, they represented a significant penalty. In today’s dollars, with the penalties unchanged, they are not significant. IDL will use the provision if it becomes necessary.

Rep. Wood asked why the fee increase was so extreme. Mr. Bacon said an increase representing the true time value of money would be higher. IDL believes these changes to be reasonable. The department’s Administrative Rules would have to be reviewed for changes to become final.

Rep. Mitchell said it seemed that IDL was not sure whether the existing penalties were acting as a deterrent or not; and asked for comparative fee schedules from neighboring states. Mr. Bacon said IDL was confident that the penalties were losing effectiveness every year. Comparative rates were not considered.

Rep. Roberts asked how IDL could be confident about whether penalties were acting as a deterrent when they have never been enforced. Without some basis for acting, it is hard to justify the increases. That approach has never been used as, for instance with traffic tickets. Mr. Bacon said at issue was the change in the value of money since 1974. Typically, these penalties would apply to wealthy people for whom the current penalties are insignificant.

**MOTION RS15339:** A motion was made by Rep. Bedke to return RS15339 to Sponsor.

QUESTIONS/DISCUSSION: Rep. Mitchell asked if the motion on the table would allow RS15339 to come before the Committee at a later date; and allow Mr. Bacon an opportunity to provide information to the Committee. Chairman Stevenson said the Committee could request information, but RS15339 would be off the table if the motion passed.

Rep. Eskridge asked if IDL had the authority to require landowners to comply with encroachment violations: for instance, to modify or remove structures. Mr. Bacon said yes, but the court process is expensive.

**VOTE RS15339:**

The motion to return RS15339 to Sponsor passed by voice vote.

**RS15340:**

George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented RS15340 relating to navigational and nonnavigational encroachments. It amends section 58-1305 Idaho Code to provide for the effect of recordation and to make technical corrections; to amend section 58-1306 Idaho Code to provide for community navigational encroachments; to provide correct terminology; to provide for application process and procedures relating to community navigational encroachments; to provide for recordation of permits issued for nonnavigational encroachments, commercial navigational encroachments and community navigational encroachments; and to make technical corrections.

Mr. Bacon said recordation of navigational encroachments is not now required. He said the problem RS15340 is correcting occurs with property transfers, which are increasing exponentially in Idaho. A new landowner has a difficult time ascertaining whether a dock has a permit or, if a permit can be established, if the configuration was changed. Mr. Bacon likened the process to having title insurance. It provides protection for the buyer and seller, and makes administration easier for IDL.

QUESTIONS/DISCUSSION: Rep. Wood asked if IDL had discussed RS15340 with the counties as they prepared the legislation. Mr. Bacon said counties routinely provided recordation services; the legislation would require recordation in the county where the encroachment existed. Rep. Wood asked what that would cost. Mr. Bacon said it varies from county to county. Typically \$1-\$2 page. He estimated the total cost per recordation to be less than \$10. The procedure would establish a good record of what is owned, and what has been permitted by IDL. Rep. Wood said she was puzzled that RS15340 was not being heard in the Local Government Committee. Chairman Stevenson said the Speaker would send the bill where he desired following the print hearing.

Rep. Eskridge asked if IDL kept files on permit activity. Mr. Bacon deferred to Michael J. Murphy, Program Manager, IDL, to answer technical questions. Mr. Murphy said the department's Administrative Rules require that a permit be recorded after it is issued. RS15340 intends to align statute with rules, and help the landowner determine whether a permit has been issued. He clarified that counties were not involved in the permitting process, just in the recordation. A permit would be recorded in the same manner as an easement or title transfer.

Rep. Wood asked if a person would know where to get a permit. Mr. Murphy said applications were available at all IDL area offices.

Rep. Raybould suggested that a Committee amendment might be appropriate. Chairman Stevenson said that could be done at the bill hearing. Rep. Wood said it would be better to return the RS to sponsor, and bring back corrected legislation.

Rep. Bedke asked if a property owner might avoid recording a permit in order to avoid the county assessor. Mr. Bacon said the county's appraiser makes a physical inspection of the property, but does not cross-reference recordations. Rep. Bedke asked how a county assessor knew what dock belonged to what property owner. Mr. Bacon didn't know.

**MOTION RS15340:** A motion was made by Rep. Jaquet to recommend RS15340 to printing.

**QUESTIONS/DISCUSSION:** Rep. Jaquet said RS15340 would help Realtors.

**SUBSTITUTE  
MOTION  
RS15340:**

A substitute motion was made by Rep. Roberts to send RS15340 to Local Government Committee.

**QUESTIONS/DISCUSSION:** Rep. Roberts said RS15340 is in the wrong Committee and should go to Local Government. Chairman Stevenson said that determination would be made by the Speaker. Rep. Raybould said he disagreed. Until the Committee knows the definition of "private lake," it can't be compared to other language. The legislation could put anyone with a private lake on their property in jeopardy by requiring them to follow these filing rules. It is better to clear up the issue in this Committee; then amend the bill, or hold it in Committee to bring forward another RS with the right language.

**VOTE SUBSTITUTE  
MOTION RS15340:**

Rep. Roberts withdrew his substitute motion to send RS15340 to Local Government Committee.

**VOTE RS15340:**

The motion to recommend RS15340 to printing passed by voice vote.

Reps. Wood, Barraclough and Andrus voting NO for the record.

**RS15341:**

George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented RS15341 relating to navigational and nonnavigational encroachments. When the Lake Protection Act was enacted there was no provision for community docks. As community docs became more popular, IDL began processing them under Idaho Code Section 58-1306 because the impact was closer to that of a commercial encroachment than a single-family dock. This legislation amends sections 58-1305 and 58-1306 Idaho Code to clarify application and processing requirements for community docks, and to enter the idea of community docks into Code.

**QUESTIONS/DISCUSSION:** Rep. Wood asked how the process would work for a specific dock in her district. Mr. Bacon said maintenance and repairs on existing docks are allowed. To change the "footprint" of a dock now requires a permit, whether the dock is a single-family, two-family, community or commercial dock. Mr. Murphy spoke to address confusion about the meaning of the term "community" as it is used here. "Community" generally refers to a dock serving a home owners association. The reference made by Rep. Wood would actually fall under guidelines for a commercial facility,

even though it serves a community purpose.

Rep. Eskridge asked if the permit application procedure is different among the different categories. Mr. Murphy said yes. The 1306 category goes further than others, including a publishing requirement.

Rep. Eskridge said IDL was increasing bureaucracy for the homeowner. Mr. Murphy said the process for community docks is currently in place. The change here is not to change the process, but to put it in code.

**MOTION RS15341:** A motion was made by Rep. Jaquet to recommend RS15341 to printing.

**QUESTIONS/DISCUSSION:** Rep. Jaquet said the change comes about due to growth.

**VOTE RS15341:** The motion to recommend RS15341 to printing passed by voice vote.

Reps. Wood and Eskridge voting NO for the record.

**RS15476:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented RS15476 relating to state-owned timber and amending Section 58-415 Idaho Code. Currently, a timber sale purchase is required to pay for the cost of scaling, and those monies are deposited into the scaling trust account to fund scaling activities. Due to the change in the funding structure passed by the 2001 legislature, there is no longer a need for a separate scaling trust account. Scaling activities can be budgeted from the Earnings Reserve Account the same as all other endowment activities. The proposed changes also clarify that the preferred method of selling state sales is by measuring the actual forest products removed versus selling on a lump sum basis based on a cruise estimate. Mr. Bacon reviewed the current billing procedure. RS15476 increases the department's efficiency by eliminating paperwork. The RS also institutes a practice that will result in higher starting bid prices. Mr. Bacon noted that currently accrued interest is directed to the general fund. IDL believes it should be directed to the endowment funds. He referred to Moon v. The State Board of Land Commissioners, which resulted in a court ruling supporting IDL's opinion.

**QUESTIONS/DISCUSSION:** Chairman Stevenson asked how much money was in question. Mr. Bacon said about \$1 million dollars a year goes in and out. The figure is at \$1.2 million dollars right now, with about \$21,000 interest going to the general fund that would more appropriately be directed to an earnings reserve account.

Rep. Shepherd asked if the cost to purchase would still be fixed at the end of the vetting process. Mr. Bacon said it would. There will be a few changes; but there will be a bill with one figure without associated costs. Rep. Shepherd said the budget would still need to be adjusted if the cost of scaling was miscalculated. Mr. Bacon said yes, but there are still advantages. Now, IDL keeps a contingency in case expenses are higher than anticipated. RS15476 would require a smaller contingency.

Rep. Roberts asked if RS15476 had been considered by the Forest Advisory Council. Mr. Bacon said the department has queried the forest industry associations, and they are supportive.

**MOTION RS15476:** A motion was made by Rep. Eskridge to recommend RS15476 to printing.

**VOTE RS15476:** The motion to recommend RS15476 to printing passed by voice vote.

**ADMINISTRATIVE RULES:  
OGLB  
Docket 25-0101-0501** Jack Howard, Executive Director, Outfitters & Guides Licensing Board (OGLB) presented the Board's Administrative Rules. Docket 25-0101-0501. He said rulemaking was negotiated with input from the industry. A number of Committee members were contacted during the summer as the rules were being developed.

**MOTION:  
OGLB  
Docket 25-0101-0501** A motion was made by Rep. Saylor to accept the OGLB Administrative Rules Docket 25-0101-0501 as submitted.

**QUESTIONS/DISCUSSION:** Rep. Wood said she was not aware that outfitters were restricted on the Teton River. Mr. Howard called attention to Rule 59, page 85, which includes the Board's rules for all rivers. The Teton River is currently in rules. Those rules are not under consideration today as they have gone through negotiation. Chairman Stevenson asked for clarification that they were included in rule. Mr. Howard said they were included.

Rep. Wood referred to page 90 where underlined language refers to the Teton River. Mr. Howard said Rule 59, as written, is one long continuous set of rules. It has been broken out into three sections, but no substantive changes are made.

Rep. Shepherd, referring to page 78, asked if the determination of non-use definitions was strictly up to the Board. Mr. Howard said changes to the non-use section are to make the practice more user-friendly. The rule is ambiguous the way it is written. The Board will be more aggressively managing non-use, but there are times when non-use is an appropriate activity. The change outlines a process to follow, and gives the Board an alternative.

**VOTE:** The motion to accept the OGLB Administrative Rules as submitted passed by voice vote.

**ANNOUNCEMENTS:** Chairman Stevenson announced a Committee meeting for Wednesday, February 1, 2006 upon adjournment from the floor. There will be no meeting Friday, February 3, 2006.

Rep. Wood announced an IDFG Rules Review Subcommittee meeting today which will convene upon adjournment.

**ADJOURN:** The meeting was adjourned at 3:10 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

MINUTES

**HOUSE RESOURCES & CONSERVATION COMMITTEE**

- DATE:** February 1, 2006
- TIME:** 1:30 p.m. or upon adjournment
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Sayler, Jaquet, Mitchell
- ABSENT/  
EXCUSED:** Rep. Bedke
- GUESTS:** Hal Anderson, Administrator, Planning & Technical Services Division, Idaho Department of Water Resources (IDWR); Rep. Jim Clark, District 3; Dean Sangrey, Operations Divisions Administrator, Idaho Department of Parks and Recreation (IDPR); Norm Semanko, Idaho Water Users Association (IWUA); Dennis Stevenson, Administrative Rules Coordinator
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:56 p.m.
- Chairman Stevenson announced that print hearings were being held in Committee today. There will be no public testimony.
- APPROVE MINUTES:  
January 25, 2006** A motion was made by Rep. Sayler to approve the minutes of January 25, 2006 as written. The motion passed by voice vote.
- IDPR Subcommittee  
January 20, 2006** A motion was made by Rep. Shepherd to approve the Idaho Department of Parks & Recreation Administrative Rules Review Subcommittee minutes of January 20, 2006 as written. The Subcommittee passed the motion by voice vote.
- RS15707:** Rep. Ken Roberts presented RS15707, a House Joint Memorial requesting Secretary of the Interior Gale Norton to meet with representatives from Idaho and Montana to agree upon strategies to immediately delist the gray wolf. Rep. Roberts said the Memorial was to support the Governor and staff who are working hard to delist the wolf. He said, if it is the desire of the Committee, RS15707 could be sent to second reading.
- MOTION RS15707:** A motion was made by Rep. Field to send RS15707 to the second reading calendar.
- VOTE RS15707:** The motion to send RS15707 to the second reading calendar passed by voice vote.
- RS15393:** Dean Sangrey, Operations Divisions Administrator, Idaho Department of Parks and Recreation (IDPR) presented RS15393 providing that the director of IDPR may issue citations for violations of Title 65, Chapter 42, 70, 71, and 75; and delegate this authority to qualified employees.

QUESTIONS: Rep. Roberts said he has experience in law enforcement. He asked if IDPR staff was properly trained for enforcement. Mr. Sangrey said yes. IDPR was required to establish effective compliance and enforcement training for staff. That has been done.

**MOTION RS15393:** A motion was made by Rep. Denney to introduce RS15393 for printing.

**VOTE RS15393:** The motion to introduce RS15393 for printing passed by voice vote.

**RS15394:** Dean Sangrey, Operations Divisions Administrator, Idaho Department of Parks and Recreation (IDPR) said RS15394 and RS15395C1 were proposals that came before the Committee last year, passed the floors of the House and the Senate, and then were vetoed at the end of the last session by the Governor.

Dean Sangrey presented RS15394, legislation to standardize procedures and correct inconsistencies. There is no fiscal impact. Expenses are covered by specific recreation program dedicated funds.

**MOTION RS15394:** A motion was made by Rep. Field to introduce RS15394 for printing.

QUESTIONS/DISCUSSION: Rep. Denney asked that the SOP be changed to include Rep. Roberts' name on RS15394 and Rep. Moyle's name on RS15395C1.

**VOTE RS15394:** The motion to introduce RS15394 for printing passed by voice vote.

**RS15395C1:** Dean Sangrey, Operations Divisions Administrator, Idaho Department of Parks and Recreation (IDPR) presented RS15395C1. It creates a new class of off highway vehicles (OHV) called utility vehicles (UTV). UTVs first came to the department's attention several years ago. They are larger than OHVs, with dimensions exceeding those currently in code. RS15395C1 establishes a definition for UTVs; provides for registration, titling, licensing and bonding processes; designates legal roads; and gives UTV owners recognition on the Off-Highway Vehicle Advisory Committee.

QUESTIONS/DISCUSSION: Rep. Roberts said Sen. Joyce Broadword was concerned about the UTV definition. Mr. Sangrey said he would contact her.

**MOTION RS15395C1:** A motion was made by Rep. Wood to introduce RS15395C1 for printing.

QUESTIONS/DISCUSSION: Rep. Jaquet asked who pays expenses incurred for the designated roads. Mr. Sangrey said the roads that have been designated are currently routes maintained by landowners—the Forest Service or BLM.

Rep. Jaquet asked why roads were designated rather than naming an acceptable road width for UTV use. Mr. Sangrey said the roads the department anticipates to be designated for this use are already in existence, and maintained for full-sized vehicles. There is no plan to develop a trail system at this time.

Rep. Eskridge said there are now UTVs being manufactured that are larger than the proposed definition. He has a constituent who has been registering an Argosy (with 10 wheels and wider than 60") as a \$16,000 unit. Last year, the Department of Transportation notified him that the vehicle could no longer get stickers, and requested that he return the title. Mr. Sangrey said IDPR was aware that larger UTVs exist. He introduced Roy and Arlene Cossairt who own a UTV business, and who have shared their concerns with him about size constraints. Mr. Sangrey said the department hopes to move RS15395C1 forward as it currently reads. The legislation will be revisited to address the size issue, but more time is needed to examine user concerns and communicate with the public.

Rep. Eskridge asked for clarification that the 60" definition is not "cast in stone." Mr. Sangrey said the definition including 60" is deliberate. It is a dimension that covers a large range of existing UTVs.

Rep. Wood asked if IDPR is working with the Department of Transportation (DOT). Mr. Sangrey said yes. DOT is represented in the Committee room today.

**VOTE RS15395C1:** The motion to introduce RS15395C1 for printing passed by voice vote. Rep. Jaquet voting NO for the record.

**RS15670:** Norm Semanko, Idaho Water Users Association (IWUA) presented RS15670, to amend Idaho Code Sections 43-111 and 43-112 dealing with election procedures within irrigation districts, to allow land owners within a district to select an alternative form of voting. The amendments require a district-wide election under existing statutory voting procedures before the method of voting could be changed. The alternative form of voting would provide votes to be based upon assessed acres owned within the irrigation district. No change could be instituted without majority voter approval in a duly noticed election of the irrigation district considering the change.

Mr. Semanko said IWUA met with their legislative committee prior to the session. RS15670 allows weighted voting in an irrigation district under the parameters listed above. The reason for the change is that both benefits and burdens in an irrigation district are apportioned according to the size of acreage: The person with the most land, pays more; it is appropriate that monetary decisions take that fact into account.

**MOTION RS15670:** A motion was made by Rep. Moyle to introduce RS15670 for printing.

**VOTE RS15670:** The motion to introduce RS15670 for printing passed by voice vote.

**RS15705:** Rep. Jim Clark presented RS15705 to authorize the initiation of general water rights adjudication for those portions of northern Idaho not included within the snake River Basin. Rep. Clark said RS15705 comes from the Ground Water Management Plan Advisory Committee that worked on the Rathdrum Prairie-Spokane Aquifer. It starts the process of adjudicating the Rathdrum aquifer at a cost of \$1.3 million dollars over nine years from the general fund. Rep. Clark reviewed line changes in RS15705.

**MOTION RS15705:** A motion was made by Rep. Roberts to introduce RS15705 for printing.

QUESTIONS/DISCUSSION: Rep. Wood asked if the \$1.335 million dollars estimated cost shown in the Fiscal Note would come from IDWR. Rep. Clark said one-third is paid by IDWR from water users fees; the other two-thirds is paid from the general fund. It is the same ratio as that used on the Snake River Basin Adjudication.

**VOTE RS15705:** The motion to introduce RS15705 for printing passed by voice vote.

**RS15809:** Hal Anderson, Administrator, Planning & Technical Services Division, Idaho Department of Water Resources (IDWR) presented RS15809 to allow the Water Resource Board to facilitate loans from the revolving loan fund in excess of \$500,000. Currently there is a \$500,000 funding CAP on loans the Board makes from that fund. Since the relevant statute passed in the 1970s, there have been inflationary increases in building and construction for water projects. There are also technical corrections.

**MOTION RS15809:** A motion was made by Rep. Roberts to introduce RS15809 for printing.

**VOTE RS15809:** The motion to introduce RS15809 for printing passed by voice vote.

**RS15787:** Rep. Ken Andrus presented RS15787, a House Joint Memorial to Congress and the Idaho Congressional Delegation requesting that they urge the U. S. Forest Service to enter a decision as soon as possible granting a special use permit allowing the Idaho Department of Fish and Game to allow helicopters in wilderness areas as requested for the purpose of monitoring gray wolves in those areas which is essential for the State of Idaho to fulfill its obligations under the Idaho Wolf Recovery Plan of 2002, the U.S. Fish and Wildlife Service 10(j) rule of 2005, as well as requirements imposed by the Endangered Species Act.

Rep. Andrus said the state took over management of wolves January 5, 2006. Permission has been requested from USDA Forest Service to land helicopters under a special use permit that has not been granted. RS15787 is legislation to allow the state to manage wolves. It is not a proposal to kill wolves. Rep. Andrus said with Committee approval, RS15787 could be sent to second reading.

QUESTIONS/DISCUSSION: Rep. Mitchell said he thought the request had been denied. Rep. Andrus said the request was not denied, the USDA Forest Service failed to give a decision.

**MOTION RS15787:** A motion was made by Rep. Wood to send RS15787 to the second reading calendar.

**SUBSTITUTE MOTION RS15787:** A substitute motion was made by Rep. Jaquet to introduce RS15787 for printing.

DISCUSSION: Rep. Jaquet said a full hearing should be held to allow the public to testify.

**VOTE ON THE  
SUBSTITUTE  
MOTION RS15787:**

The vote on the substitute motion to introduce RS15787 for printing failed by voice vote.

**VOTE RS15787:**

The main motion to send RS15787 to the second reading calendar passed by voice vote. Reps. Saylor, Jaquet and Mitchell voting NO for the record.

**SUBCOMMITTEE  
REPORT:  
Idaho Department of  
Parks & Recreation  
Administrative Rules  
Review**

Rep. George Eskridge, Chairman, Idaho Department of Parks & Recreation (IDPR) Administrative Rules Review Subcommittee, said the Subcommittee recommends all dockets as written: Dockets 26-0120-0501, 26-0131-0501 and 26-0137-0501.

With regard to Docket 26-0120-0501, Rep. Eskridge said the fee increases submitted by IDPR are made to compensate for lost revenue which occurred with removal of the Motor Vehicle Entry Fee. The fee increases are competitive with those of neighboring states. Rep. Eskridge said subsequent to the last Subcommittee meeting, it was learned that sales tax is not included in the fee increases. The Subcommittee still recommends acceptance of that docket.

**MOTION:**

A motion was made by Rep. Eskridge to accept the Administrative Rules for the Idaho Department of Parks and Recreation as submitted. [Dockets 26-0120-0501, 26-0131-0501 and 26-0137-0501]

**VOTE:**

The motion to accept the Administrative Rules for the Idaho Department of Parks and Recreation as submitted passed by voice vote. [Dockets 26-0120-0501, 26-0131-0501 and 26-0137-0501]

**ANNOUNCEMENTS:**

Chairman Stevenson announced that there will be no Committee meeting Friday, February 3, 2006.

All proposed legislation should be submitted to the committee by Wednesday, February 8<sup>th</sup>. The last day to hear RSs in Committee will be Thursday, February 9<sup>th</sup>.

The target deadline for Administrative Rules is February 3<sup>rd</sup>. This Committee will finish Rules review the following week.

**ADJOURN:**

The meeting was adjourned at 2:45 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

Idaho Department of Fish & Game Administrative Rules Review Subcommittee

**DATE:** February 1, 2006

**TIME:** 4:00 p.m. or upon adjournment

**PLACE:** Room 412

**MEMBERS:** Chairman Wood, Representatives Barrett, Moyle, Brackett, Mitchell

**ABSENT/  
EXCUSED:** None.

**GUESTS:** W. Dallas Burkhalter, Deputy Attorney General, Department of Fish & Game (IDFG); Sharon W. Kiefer, Legislative Liaison, IDFG; Dennis Stevenson, Administrative Rules Coordinator

See sign-in sheet for additional guests.

**CALL TO ORDER:** Subcommittee Chair Wood called the meeting to order at 3:06 p.m. She commended Rep. Elizabeth Chavez acting in the place of Rep. Mitchell last week for her contribution.

**APPROVE  
MINUTES:  
January 25, 2006** A motion was made by Rep. Moyle to approve the minutes of January 25, 2006 as written. The motion passed by voice vote.

**IDFG Docket  
24-0117-0501** The Subcommittee was reminded that Docket 24-0117-0501 was recommended without change to the Full Committee at the last meeting of January 25, 2006.

**ADMINISTRATIVE  
RULES:  
IDFG** DISCUSSION:

**DISCUSSION:** Docket 13-0110-0501:  
The Committee discussed the process of rejecting Administrative Rules Docket 13-0110-0501. Rep. Moyle said there were questions with regard to the description of wildlife.

Docket 13-0108-0501:  
Rep. Moyle asked if the money from the extra moose tags reverted to the ACCESS YES! program, and if any of the Dockets under consideration gave that authority. Ms. Kiefer said the superhunt tags are a special type of Controlled Hunt tag, with revenue allocated to ACCESS YES! She said information about the Commission's authority was provided to Rep. Moyle.

Rep. Moyle said IDFG had provided him information regarding funding for ACCESS YES!, but it did not address whether a portion of ACCESS YES! funds passed through to subordinate funds. Sharon Kiefer said it did, regardless of whether a Controlled Hunt was a regular hunt or a superhunt. Rep. Moyle said the funding was a line included in JFAC.

Rep. Wood asked where the legislature authorized the use of fees in the ACCESS YES! program. Dallas Burkhalter said it was not in statute; but Commission action identified the program in the budget. It passes through JFAC earmarked for ACCESS YES! Rep. Wood asked if IDFG was satisfied with the procedure. Ms. Kiefer said yes. Rep. Moyle recommended that IDFG come back with legislation for the funding mechanism in statute. He said it isn't recommended for departments to bypass the legislature. Most people support ACCESS YES! There should be no problem passing the legislation, but having it in code is a better way. Rep. Wood said it was also a better way for legislators to answer to their constituents.

Rep. Wood said the issue would be noted in the Subcommittee's report.

Summary:

The Committee consensus is that all are in agreement on the rules except for Docket 13-0110-0501.

**MOTION:  
IDFG Docket  
13-0108-0501:**

A motion was made by Rep. Wood to bring Docket 13-0108-0501 back to the table for reconsideration.

**VOTE:  
IDFG Docket  
13-0108-0501:**

The motion passed by voice vote.

**MOTION:  
IDFG Docket  
13-0108-0501:**

A motion was made by Rep. Moyle to recommend Docket 13-0108-0501 to the full Committee.

**VOTE:  
IDFG Docket  
13-0108-0501:**

The motion passed by voice vote.

**MOTION:  
IDFG Docket  
13-0104-0501:**

A motion was made by Rep. Moyle to recommend Docket 13-0104-0501 to recommend Docket 13-0104-0501 to the full Committee.

**VOTE:  
IDFG Docket  
13-0104-0501:**

The motion to recommend Docket 13-0104-0501 to the full Committee passed by voice vote.

**MOTION:  
IDFG Docket  
13-0110-0501**

A motion was made by Rep. Barrett to recommend that the full Committee reject Docket 13-0110-0501.

Discussion: Rep. Moyle said he has spoken with Senator Little who also has concerns.

Rep. Wood said she has spoken with Senator Brandt, who has the same concerns.

**VOTE:  
IDFG Docket  
13-0110-0501**

The motion to recommend that the full committee reject Docket 13-0110-0501 passed by voice vote.

**IDFG Docket  
13-0117-0501**

Rep. Wood reminded the Committee that Docket 13-0117-0501 was recommended to the full Committee without change at the meeting of January 25, 2006.

**ADJOURN:**

The meeting was adjourned at 3:20 p.m.

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Representative JoAn Wood  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** February 7, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Saylor, Jaquet, Mitchell
- ABSENT/  
EXCUSED:** None.
- GUESTS:** Norm Semanko, Idaho Water Users Association (IWUA)  
  
See sign-in sheet for additional guests.
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:35 p.m.
- APPROVE  
MINUTES:** A motion was made by Rep. Saylor to approve the minutes of January 27 and January 31, 2006 as written. The motion passed by voice vote.  
**January 27, 2006**  
**January 31, 2006**
- IDL**  
**January 25, 2006** A motion was made by Rep. Andrus to approve the minutes of the Idaho Department of Lands Administrative Review Subcommittee of January 25, 2006 as written. The motion passed by voice vote.
- IDFG**  
**February 1, 2006** A motion was made by Rep. Barrett to approve the minutes of the Idaho Department of Fish & Game Administrative Review Subcommittee of February 1, 2006 as written. The motion passed by voice vote.
- RS15948:** Norm Semanko, Idaho Water Users Association (IWUA) presented RS15948 that proposes to amend the deadlines for director nominations to make them consistent with notice provisions for elections; and to amend notice provisions for bonding to make them consistent with other notice provisions throughout Title 43; and to eliminate language in 43-1808A to clarify that judicial confirmation is not required when irrigation districts enter into contracts with the United States.
- MOTION RS15948:** A motion was made by Rep. Wood to introduce RS15948 for printing.
- QUESTIONS:** Rep. Jaquet asked if there was a provision for a write-in. Mr. Semanko said he was sure there was. He didn't know if it was included in RS15948. He will research it.
- VOTE RS15948:** The motion to introduce RS15948 for printing passed by voice vote.

**INVITATION:**  
**Jack G. Troyer**  
**Regional Forester**  
**Ogden, UT**

Chairman Stevenson referenced the letter of January 30, 2006 to Jack G. Troyer, Regional Forester, Ogden, UT sent over his signature and that of Senator Gary Schroeder. (Exhibit 1) Mr. Troyer has accepted a request to address a joint session of the Senate and House Resources Committees relative to Idaho's request to land helicopters in wilderness areas for the purpose of wolf management.

**IDFG PUBLIC**  
**HEARING:**  
**Lolo Zone Wolf**  
**Proposal**

Chairman Stevenson referenced the Lolo Zone Wolf Proposal (Exhibit 2), the topic of a Idaho Department of Fish & Game (IDFG) Public Hearing on February 2, 2006. Committee members may submit written comments to IDFG until February 17<sup>th</sup>. For your convenience, the secretary will collect your written comments.

**Subcommittee**  
**Report:**  
**IDFG**

Subcommittee Report: Idaho Department of Fish & Game (IDFG)  
Administrative Rules Review

Rep. JoAn E. Wood, Chair, submitted the Subcommittee report by letter dated February 1, 2006. (Exhibit 3) All IDFG Administrative Rules are recommended as submitted, except that the Subcommittee recommends to reject all of Docket 13-0110-0501, Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife. The Subcommittee has also recommended that IDFG submit legislation to provide for the funding of the ACCESS YES! program in code.

DISCUSSION: Rep. Eskridge said the Senate Resource & Environment Committee is aware of the Subcommittee's recommendations and agrees with them.

**MOTION:**

A motion was made by Rep. Wood that the Committee accept the IDFG Administrative Rules Review Subcommittee's report and recommendations.

**VOTE:**

The motion to accept the IDFG Administrative Rules Review Subcommittee's report and recommendations passed by voice vote.

DISCUSSION: Rep. Wood said the Subcommittee recommended that IDFG submit legislation to provide for funding ACCESS YES! in statute.

**Subcommittee**  
**Report:**  
**IDL**

Subcommittee Report: Idaho Department of Lands (IDL)  
Administrative Rules Review

Rep. Ken Roberts, Chair, submitted the IDL Subcommittee report by letter dated February 1, 2006. (Exhibit 4) All IDL Administrative Rules are recommended as submitted, except that the Subcommittee recommends to reject Subsection 160.01, Docket 20-0302-0502, Rules Governing Exploration and Surface Mining in Idaho, Enforcement and Failure to Comply, Right of Inspection.

Chairman Roberts noted secretarial errors in the Subcommittee Report related to Docket titles. Those errors will be corrected.

**MOTION:**

A motion was made by Rep. Roberts that the Committee accept the IDL Administrative Rules Review Subcommittee's report and

recommendations with corrections to Docket titles.

**VOTE:** The motion to accept the IDL Administrative Rules Review Subcommittee's report and recommendations, including secretarial corrections to Docket titles, passed by voice vote.

**ANNOUNCEMENTS:** Chairman Stevenson asked Committee members to bring forward any legislation to be heard before the Committee. The last day to hear RSs in Resources & Conservation Committee is Thursday, February 9<sup>th</sup>. Any RSs coming after that day will go through a privileged Committee.

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

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE:** February 9, 2006

**TIME:** 1:30 p.m.

**PLACE:** Room 412

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

**ABSENT/  
EXCUSED:** Reps. Roberts, Denney

**GUESTS:** George Bacon, Operations Chief, South, Idaho Department of Lands (IDL); Karl Dreher, Director, Idaho Department of Water Resources (IDWR); Rep. Tom Loertscher, District 31; Rep. Bob Nonini, District 5; Dean Sangrey, Operations Divisions Administrator, Idaho Department of Parks and Recreation (IDPR); Rep. Tom Trail, District 6

For other guests, see sign-in sheet.

**CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:32 p.m. The secretary took a silent role call.

**APPROVE  
MINUTES:  
February 1, 2006** Rep. Saylor made a motion to approve the minutes of February 1, 2006. The motion was approved by voice vote.

Chairman Stevenson told the Committee and guests that no public testimony would be taken today in the RS hearings.

**RS15878:** Karl Dreher, Director, Idaho Department of Water Resources (IDWR) presented RS15878, legislation to adopt a Concurrent Resolution approving an application to appropriate water for Minimum Streamflow on Niagara Springs Creek. Director Dreher said RS15878 resolves a 15-year controversy which resulted from reliance on a source of water by a state park for aesthetic purposes, by Idaho Power for a fish hatchery, and by Rim View Trout Hatchery—a commercial hatchery. The Niagara Springs Agreement results from the Snake River Basin Adjudication. Director Dreher emphasized that RS15878 will preserve the flows that are there, and not impact any other flows.

The Minimum Stream Flow Fact Sheet--Permit Numbers 36-08670 and 36-08347 provides information. (Exhibit 1)

**MOTION/VOTE  
RS15878:** A motion was made by Rep. Field to introduce RS15878 for printing.

The motion passed by voice vote.

**RS15879:** Karl Dreher, Director, Idaho Department of Water Resources (IDWR), presented RS15879, legislation to adopt a Concurrent Resolution

approving an application to appropriate water for Minimum Streamflow on the North Fork of the Clearwater River, which comes under the provisions of the Snake River Water Rights Agreement (the Nez Perce Agreement) ratified last year. The Agreement establishes Minimum Streamflows under state law to replace claims for instream flows made by the U.S. Government and the Nez Perce Tribe. There was some uncertainty about the extent of this part of the Minimum Streamflow last year when the ratifying Agreement was passed by the legislature. The uncertainty has been resolved, resulting in RS15879 and RS15995C1. The 2 RSs conclude obligations resulting from the Nez Perce Agreement, and provide for the Secretary of the Interior to begin disbursing monies: \$2 million dollars is to be paid to reimburse counties for diminished economic activity; \$11 million dollars to fund northern Idaho habitat measures; and federal funds will begin to flow to the Nez Perce Tribe.

Passing this legislation is a necessary action. It was contemplated under the Nez Perce Agreement, and represents nothing new. It simply wasn't possible to bring the legislation forward last session.

The Minimum Stream Flow Fact Sheet--Permit 83-11962 provides information. (Exhibit 2)

QUESTIONS/DISCUSSION: Rep. Mitchell asked what impact would result if the federal government didn't come forward with money as expected. Director Dreher said it was the other way around. The money is ready to be release; but won't be released until RS15879 and RS15995C1 pass.

**MOTION/VOTE  
RS15879:**

A motion was made by Rep. Mitchell to introduce RS15879 for printing.

The motion passed by voice vote.

**RS15995C1:**

Karl Dreher, Director, Idaho Department of Water Resources (IDWR), presented RS15995C1, legislation creating a Minimum Streamflow water right on segments of the North Fork of the Clearwater River immediately below Dworshak Dam to the confluence with the Clearwater River. Director Dreher noted that the prior two RSs were both Concurrent Resolutions of the legislature authorizing approval pursuant to the statutory process. RS15995C1 is not a Concurrent Resolution, but an RS which by law creates a Minimum Streamflow on the Clearwater River below Dworshak Dam Reservoir. It is the last necessary piece of legislation needed before "the books can be closed on the Snake River Water Rights Agreement."

Director Dreher said the main provision is that the Minimum Streamflow is subordinated to all existing water rights, the operation of Dworshak Reservoir, future domestic, commercial, municipal and industrial uses and up to 283 c.f.s. of other future uses. RS15995C1 removes all ambiguity on the Dworshak Reservoir.

The Minimum Stream Flow Fact Sheet--Permit Number 83-11963

provides information. (Exhibit 3)

QUESTIONS/DISCUSSION: Rep. Mitchell said that when the Dworshak Dam was originally constructed, the #1 priority was recreation. That priority has never been honored. He asked if RS15995C1 would help to honor that priority. Director Dreher said it doesn't influence it one way or the other. Rep. Raybould said the clause that subordinates the Streamflow to the operation of the dam enhances the opportunity for recreation. It limits the Streamflow below the dam, and helps stabilize the opportunity for recreation.

**MOTION/VOTE  
RS15995C1:**

A motion was made by Rep. Field to introduce RS15995C1 for printing.

The motion passed by voice vote.

**RS15910:**

Karl Dreher, Director, Idaho Department of Water Resources (IDWR), presented RS15910, legislation to amend Idaho Code Sections 67-5708B and 67-5711 to exempt certain public works projects for the Department of Water Resources (IDWR) and the Water Resource Board from administration and review by the director of the Department of Administration (ADM) or his designee and the Permanent Building Fund Advisory Council. The exemption doesn't relieve IDWR or the Board from complying with the procedures of Idaho Code Section 67-5711C relating to the advertising and bidding for contracts. Director Dreher said there are some exceptions to certain types of public works to which the ADM has no expertise or interest in oversight—for example, parks constructed by the Idaho Department of Parks and Recreation (IDPR). RS15910 adds IDWR to the list of exempted agencies for certain projects. Director Dreher gave examples.

**MOTION/VOTE  
RS15910:**

A motion was made by Rep. Wood to introduce RS15910 for printing.

The motion passed by voice vote.

**RS15915:**

Dean Sangrey, Operations Divisions Administrator, Idaho Department of Parks and Recreation (IDPR), presented RS15915, legislation to correct various inconsistencies in statutory guidelines established for the Grant Advisory Committees whose members assist the Idaho Park and Recreation Board with grant application review and approval. Mr. Sangrey explained that after RS RS15394 (H542) was introduced for printing, a technical error was discovered. RS15915 corrects that error.

**MOTION/VOTE  
RS15915:**

A motion was made by Rep. Field to introduce RS15915 for printing.

The motion passed by voice vote.

**RS15963:**

George Bacon, Operations Chief, South, Idaho Department of Lands (IDL), presented RS15963, legislation amending Idaho Code Section 58-1302 clarifying the definition of "Navigable Lake" to ensure that privately owned, man-made reservoirs are not considered a "Navigable Lake" falling under the jurisdiction of IDL.

**MOTION/VOTE  
RS15963:**

A motion was made by Rep. Moyle to introduce RS15963 for printing.

The motion passed by voice vote.

**RS15576:**

Rep. Mike Moyle presented RS15576, legislation amending Idaho Code, Section 36-1112 to correct terminology and revise provisions relating to the transfer of moneys into the animal Damage Control Fund. He said currently the statute references the wrong section of code.

**MOTION/VOTE  
RS15576:**

A motion was made by Rep. Bedke to introduce RS15576 for printing.

The motion passed by voice vote.

**RS15895:**

Rep Tom Loertscher presented RS15895, legislation ensuring that small surface mining operations receive proper credit for moneys contributed to the Reclamation Fund; and requiring refund of an unused balance when reclamation is complete. Rep. Loertscher said the issue was discovered during the interim. Under current law, fees are assessed to small mining operations and interest accrues. If the operator does the reclamation, they should get their money back.

**MOTION/VOTE  
RS15895:**

A motion was made by Rep. Barrett to introduce RS15895 for printing.

The motion passed by voice vote.

**RS15921:**

Rep. Saylor introduced RS15921, a resolution to express legislative support for the development of the Idaho Birding Trail now being completed by the Idaho Department of Fish and Game (IDFG). RS15921 acknowledges the economic contribution of birding to Idaho's economy; declares the trail to be the official state birding trail; and encourages the Department of Commerce and Labor (CL) to include it in its promotional literature. The birding trail is a driving tour with four main loops and approximately 200 sites. Most areas of the state are included. More than a dozen states have such trails. Rep. Saylor said IDFG hopes to introduce the trail in time for International Migratory Bird Day in May of 2006.

QUESTIONS/DISCUSSION: Rep. Wood asked about the availability of a map. Rep. Saylor said the map and literature was being developed. Rep. Wood asked about obstacles in the route. Rep. Saylor said the route was along existing public roads, with one or two exceptions. Access isn't an issue.

Rep. Moyle asked how much it cost to put the program together. Rep. Saylor said costs were minimal, and most were incurred as an incidental part of normal employment at IDFG and IDL. There are no dedicated FTEs involved.

Rep. Barrett asked about the wording ". . . hopes to introduce . . ." saying the trail doesn't appear to be developed. Rep. Saylor said it is developed. The resolution is to promote the trail, and offer legislative endorsement.

**MOTION/VOTE  
RS15921:**

A motion was made by Rep. Eskridge to introduce RS15921 for printing.

The motion passed by voice vote.

**RS15931:**

Rep. George Eskridge presented RS15931, a House Joint Memorial asking for repeal of the Federal Lands Recreation Act. He said the federal government is the largest landowner in Idaho, owning over 60% of total acreage. Thousands of acres are set aside for public use. The Act includes criminal penalties, and changes the way public land is funded and managed. The Memorial states that fees imposed by the Act constitute a regressive tax placing an undue burden on the people living in rural areas adjacent to or surrounded by large area of federal land; and it discriminates against lower-income and working Idahoans by placing financial obstacles in the way of their enjoyment of public land.

QUESTIONS/DISCUSSION: Rep. Barraclough expressed surprise at the use of the word “demands” on page 2, line 14. Rep. Eskridge said the word has been used in other resolutions. There was Committee discussion about the merits of the word. No change was forthcoming.

**MOTION RS15931:**

A motion was made by Rep. Moyle to introduce RS15931 for printing.

QUESTIONS/DISCUSSION: Rep. Bedke asked for clarification about fees in Idaho. There was Committee discussion.

**VOTE RS15931:**

The motion to introduce RS15931 for printing passed by voice vote.

**RS15967:**

Rep. Bob Nonini presented RS15967, legislation authorizing board(s) of county commissioners to form an aquifer protection district to protect the quality of underground waters in counties that include a state-designated “Sensitive Resource Aquifer.” The aquifer protection district will fund aquifer protection programs and provide coordination of efforts across jurisdictional lines; will have no taxing or regulatory authority; and will be formed only upon the favorable recommendation of a qualified study commission. Currently, in Idaho, this legislation applies to the Rathdrum Prairie-Spokane Valley Aquifer. It is the sole drinking water source for 500,000 people, 350,000 of which are on the Washington State side of the aquifer.

QUESTIONS/DISCUSSION: Rep. Barraclough said the Rathdrum Prairie-Spokane Valley Aquifer was designated as the first sole source aquifer; and that it is “orders of magnitude cheaper to prevent contamination than to clean it up.”

**MOTION RS15967:**

A motion was made by Rep. Eskridge to introduce RS15967 for printing.

**VOTE RS15967:**

The motion to introduce RS15967 for printing passed by voice vote.

**RS15885:**

Rep. Tom Trail presented RS15885, legislation to provide for the creation of Moscow Mountain State Park by amending Chapter 42, Title 67 Idaho Code to include a new Section 67-4250. \$1.3 million

dollars would be appropriated from the Permanent Building Fund and paid to the school trust endowment fund. The Park site is 296 acres located in Latah County. It includes a 60 acre ancient cedar grove and 300 plus acres of buffer habitat. During the past 10 years, the Nature Conservancy has leased the site for about \$6,000 per year. That agreement is ending and will not be renewed. RS15885 proposes to include the site in the state park system, and to preserve it for wildlife, education and heritage values. Rep. Ringo, Co-Sponsor reinforced the value of preserving the site and including it in the state park system.

**QUESTIONS/DISCUSSION:** Rep. Eskridge said RS15885 was discussed in JFAC this morning, and is not supportive. He asked if the Idaho Department of Parks and Recreation (IDPR) had been included in drafting the legislation. Rep. Trail said IDPR is willing to work with the local group. The sponsors thought RS15885 might be included in the Governor's Initiative. The reason RS15885 is brought forward now has to do with timing—including the expiration of the Nature Conservancy lease. Rep. Trail asked to have Paul Kimmell, Latah County Commissioner, address the Committee. Chairman Stevenson said he appreciated that there was local support for the legislation, but that public testimony was not normally heard during a print hearing.

Rep. Bedke asked who owned the site. Rep. Trail said the state; corrected by Rep. Bell who said the endowment. Rep. Bedke asked about the lease. Rep. Trail said it was a ten-year lease with Nature Conservancy who pays about \$6,000 per year to the endowment fund.

Rep. Raybould asked if Rep. Bell would yield to a question: Regarding \$1.3 million dollars from the Permanent Building Fund. It is his understanding that the fund is committed. He asked if there were surplus in that fund. Rep. Bell said it is over-appropriated, and IDPR has a back-log of \$20 million dollars now. She said RS15885 is a wonderful idea, but the timing is not good. There is no money for anything new.

Rep. Barrett said it would not be good to get into the habit of “going to one spot in the budgeting process and shifting.”

**MOTION/VOTE  
RS15885:**

A motion was made by Rep. Bedke to return RS15885 back to sponsor.

The motion passed by voice vote.

**DISCUSSION:** Chairman Stevenson said people who supported RS15885 should meet with IDPR in order to find an accommodation to protect the Moscow Mountain property, because the legislature is not friendly to creating state parks without IDPR's involvement and endorsement.

**RS16009:**

Rep. Tom Trail presented RS15885, a Concurrent Resolution encouraging the Department of Lands (IDL) to protect an ancient cedar grove and its essential surrounding habitat buffer, located on Moscow Mountain in Latah County. Rep. Ringo, Co-Sponsor said there is more general support for RS16009 than for RS15885. She

urged finding a way to preserve the site.

QUESTIONS/DISCUSSION: Rep. Eskridge asked why the Nature Conservancy (NC) was giving up the lease. Rep. Trail said the lease was ending and NC now had other priorities.

Rep. Wood asked why RS16009 didn't go to IDL. Rep. Trail said the legislation was brought with constituent support. Timing was a consideration, since the NC lease is ending. There will be a meeting with IDL February 14, 2006.

Rep. Raybould asked about "establishing" an ecological buffer zone, when line 34 specifically refers to protecting the site from "harvest." He asked if establishing a buffer zone would protect the grove from forest fires. Rep. Trail said foresters say the buffer zone is essential to help protect the grove. It also provides a transition zone and cover for wildlife. There is a clear cut on one side of the grove which is useful as a partial barrier to forest fire.

Rep. Barrett asked why interested local groups couldn't lease the site. Rep. Trail said RS16009 also establishes a clear understanding and a strong message that the site is an "Idaho Gem."

Rep. Wood asked Denise Mills, IDL to yield to the question: Is the site within the province of IDL; and will IDL seek another lessee. Ms. Mills said IDL was advised late last year that the NC wasn't going to renew the lease. IDL does recognize the value of the land and the resource, and is communicating with IDP and local county commissioners. There is interest in entering into a new lease. Counties and local governments can enter into 25 year leases. The market rate for rent is \$5,500, "or a little more." IDL would be interested in a new lease providing there is a willing lessee.

Rep. Wood said it seems that IDL has an interest in protecting this site. She asked if the site is in imminent danger, or if the matter can wait until all parties work out the details. Ms. Mills said the State Board of Land Commissioners is aware of the value of the property; the site is on the next Board meeting agenda for discussion. She can't forecast what will happen in future agreements.

**MOTION RS16009:** A motion was made by Rep. Saylor to introduce RS16009 for printing.

COMMENTS: Rep. Saylor said printing RS16009 encourages IDL to work with county commissioners to negotiate some lease agreement. The cedar grove is a valuable heritage for the state.

**SUBSTITUTE MOTION RS16009:** A substitute motion was made by Rep. Barrett to return RS16009 to sponsor.

Discussion: Rep. Moyle told Rep. Saylor the fiscal impact would "take money from the kids of the state." Rep. Saylor said it was his understanding that a new lease would replace the NC lease; but that certain sites have inherent value beyond a dollar value. Rep. Moyle said if there is a new lease, the legislation isn't necessary. He

supports the substitute motion.

Rep. Eskridge expressed his concern that the legislation by-passes the State Land Board. The legislature shouldn't be getting into the business of the Land Board.

**VOTE ON  
SUBSTITUTE  
MOTION RS16009:**

The vote on the substitution motion to return RS16009 to sponsor passed by voice vote. Rep. Saylor voting NO for the record.

**ANNOUNCEMENTS:**

Chairman Stevenson said today was the final day to introduce RSs in Resources & Conservation Committee. Any RSs in the future must be taken through privileged committees.

The Committee meeting Monday, February 13<sup>th</sup>, will be held in the Gold Room in joint session with the Senate Resources & Environment Committee. Jack G. Troyer, Regional Forester, Ogden, UT will be in Boise to report on the IDFG Wolf Management request to land helicopters in wilderness areas; and on the new policy for ATV use on Forest Service lands.

Chairman Stevenson thanked Paul Kimmell, Latah County Commissioner, and other guests who were in the room. He apologized for the policy not to take public testimony during RS hearings.

**ADJOURN:**

The meeting was adjourned at 3:02 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

#### JOINT SESSION - SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** February 13, 2006

**TIME:** 1:30 p.m. or upon adjournment

**PLACE:** Room 412

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

**ABSENT/EXCUSED:** Rep. Denney

**SENATORS:** Senators Schroeder, Pearce, Cameron, Burtenshaw, Williams, Brandt, Little, Stennett and Langhorst

**GUESTS:** Andy Brunelle, Boise Field Office, Intermountain Region, USDA Forest Service (USDA FS); Jim Caswell, Administrator, Office of Species Control; Lee Flinn, Director, Conservation Voters for Idaho; Steven Huffaker, Director, Idaho Department of Fish & Game (IDFG); Bob Meinen, Director, Idaho Department of Parks & Recreation; Erin O'Connor, Director of Strategic Communication, USDA FS; Dean Sangrey, Operations Division Administration, Idaho Department of Parks & Recreation; Clive Strong, Deputy Attorney, Office of Attorney General; Jack G. Troyer, Regional Forester, Ogden, UT; Darren Williams, Staff Attorney, Nez Perce Tribe

See sign-in sheet for other guests.

**CALL TO ORDER:** Chairman Stevenson called the meeting to order at 1:40 p.m. He thanked Mr. Jack G. Troyer for appearing before the Committee today, and announced the order of business.

**STEVEN HUFFAKER,**  
**DIRECTOR:**  
**Idaho Department of Fish & Game**

Steven Huffaker, Director, Idaho Department of Fish & Game (IDFG), directed his comments to the letter sent to Jack G. Troyer, Regional Forester, of January 30, 2006 (Exhibit 1), requesting a decision on IDFG's request for a limited use of helicopters in the Frank Church Wilderness for the purpose of radio-collaring wolves to gather research data. He said the 1964 Wilderness Act signifies that one of the purposes of wilderness is to provide for the public purposes of scientific, education and conservation use. The Central Idaho Wilderness Act, which created the Frank Church Wilderness, repeats that statement; and states that nothing shall prevent any activity from gathering information on resources. Further, the Regulations for Wilderness on the National Forests, Section 293.15 provides for gathering information about resources. Director Huffaker said IDFG recognizes that there is also a mandate to undertake these activities

in the least intrusive manner possible; and that motorized vehicles is a “high bar to be cleared.” He said IDFG looks forward to the future when wolf management will not include placing radio collars in every wolf pack. There will have to be less expensive methods. In order to progress to that point, basic information about how wolves use their huge habitat must be collected. Director Huffaker said IDFG went through an extensive evaluation process that resulted in minimum requirements decision guidelines and culminated in a Categorical Exclusion (CE) application to the USDA Forest Service (USDA FS). The CE asked to be able to opportunistically land helicopters in the wilderness while flying Big Game counts—an activity requiring no permit. The January 30<sup>th</sup> letter requests a formal decision by USDA FS. Director Huffaker emphasized the history of cooperation between IDFG and USDA FS, Intermountain Region. On this issue, allowing Idaho to operationalize the jurisdictional management of wolves, an acceptable agreement hasn’t been reached.

**ANDY BRUNELLE**  
**USDA Forest Service**  
  
**Boise Field Office**  
**Boise, ID**

Andy Brunelle, US Forest Service, Boise, ID, introduced Jack G. Troyer, Regional Forester and Erin O’Connor, Director of Strategic Communication who are here today from Ogden, UT. Mr. Brunelle summarized USDA Forest Service (USDA FS) Intermountain Region authority. It encompasses nearly 34-million acres of National Forest System land; consists of 13 National Forests and one National Grassland. In Idaho, the Region includes the Boise, Caribou-Targee, Payette, Salmon-Challis and Sawtooth National Forests. Mr. Troyer is here today in response to the letter of January 30, 2006 from Rep. Stevenson and Senator Schroeder about landing helicopters in wilderness areas to radio-collar wolves; and to discuss the Forest Service off-highway vehicle (OHV) policy on Forest Service lands.

**JACK G. TROYER,**  
**REGIONAL FORESTER:**  
**USDA Forest Service**  
  
**Intermountain Regional**  
**Office, Ogden, UT**

Jack G. Troyer, Regional Forester, Ogden, UT, told the Committee that he was glad to speak to the letter of January 30, 2006 (Exhibit 1) and to the new USDA FS policy regarding off-highway vehicle (OHV) use on Forest Service lands. Written testimony was submitted. (Exhibit 2)

Mr. Troyer said the helicopter issue is difficult, but emphasized that cooperative efforts between USDA FS and Idaho agencies generally go well. Although “things are not going as fast” as Director Huffaker wanted, Mr. Troyer said it “will get there.” Today he will address the components of postponing a decision regarding Idaho’s request to land helicopters in the Frank Church River of No Return Wilderness.

Mr. Troyer congratulated Idaho and the legislature for now having jurisdiction on gray wolf management in Idaho. He said USDA FS recognized the state’s role in managing wildlife species. The responsibility of USDA FS is to balance all the competing issues that occur, acting within the laws and regulations that apply.

Mr. Troyer said IDFG doesn’t need authority from USDA FS to collar wolves in wilderness areas without motorized vehicles. The decision to use motorized vehicles, however, legally requires USDA FS to go through an administrative decision making process. That process is going forward. There are designated landing strips in wilderness areas that IDFG may use in their wolf management effort. As part of the required process, Mr. Troyer said notices have been sent to 750 individuals and interest groups. 160 comments have been returned. Mr. Troyer said at least 3 organizations have contacted USDA FS and the US Attorney giving notification that they

would immediately file suit and a temporary restraining order if the CE authorizing helicopters was granted.

Mr. Troyer pledged to work with IDFG to put together a proposal moving forward. He said the process would not move fast enough to allow helicopter collaring this winter. In the short run USDA FS will cooperate with IDFG to support a trapping program.

## QUESTIONS:

QUESTION/COMMENTS FROM COMMITTEE: Rep. Barrett said it seemed in applying laws and regulations that some aspect of common sense should prevail. Laws can't cover every circumstance. Mr. Troyer said the common sense rule is used when possible. This is not the first time the helicopter issue has come up. Twenty years ago, an agreement was signed that governs the process. The International Association of Fish and Wildlife Agencies (IAFWA) represents government agencies responsible for North America's fish and wildlife resources. It applies expertise in science, policy, economics and coalition-building to serve its members as a voice on a broad array of wildlife and conservation issues. Mr. Troyer said it is always a question of balance. There is a trust to preserve wilderness areas as an enduring resource for the American people. When the USDA FS goes through its determination process, it is not supposed to weigh comfort, convenience or economy very heavily when making its decisions. If there is another way to proceed, that is taken into account. On this controversial CE request, an environmental analysis process can't be categorically excluded.

Rep. Wood asked if three groups and 160 comment letters had more weight than the state of Idaho. The state has always had jurisdiction over most operations concerning public land, whether the land belongs to Idaho or someone else. She asked what the state's standing was with USDA FS. Mr. Troyer said he looks at the state as a partner: IDFG manages wildlife; USDA FS is responsible for habitat. He said about one-third of the letters received were supportive of the CE, for the reasons Director Huffaker has cited: humane practices, efficiency, and economy. There were also, however, three groups who were opposed and willing to litigate; and people truly concerned about motorized use in the wilderness. The largest group of respondents were concerned about the CE.

Rep. Wood asked if the voice of the Idaho legislature, which represents the people of Idaho, was not an overwhelming consideration. Mr. Troyer said it was a huge consideration. The need to balance federal and state mandates occurs frequently. The decision will be processed as quickly as possible.

Senator Little said Idaho has a mandate to manage wolves. He asked if keeping the wilderness "untrammled" isn't the Forest Service's ultimate goal and the "keystone language." Motorized vehicles are ancillary to that end. Could a case be made for the CE that it would prevent hours of hovering aircraft. Mr. Troyer said that was taken into consideration, and will be a cornerstone of the analysis. Along those lines, it would be easier to collar an alpha male or alpha female from the air. At issue is the need to make the environmental analysis for this complex level of decision-making.

Rep. Jaquet said she thought motorized use was allowed in the Frank Church wilderness, unlike all other wildernesses in the lower 48 states. Mr. Troyer said part of the act allows for air strips, and for jet boats on the main fork of the Salmon River. The middle fork does not allow jet boat use.

Outside those permitted areas there is a ban on motorized use.

Rep. Bedke asked about the likelihood of allowing the CE. Mr. Troyer said the question was whether there are other ways to accomplish the same end. Rep. Bedke asked if there was precedent to allow the CE as a final result. Mr. Troyer did not have specific examples, but said there has been motorized use in wilderness areas for research and other purposes. They have, however, gone through the analysis process.

Senator Williams asked what kind of environmental damage would actually occur with strategic helicopter landings. Mr. Troyer said noise was an issue. Solitude is an enduring value of the wilderness. The comments received by USDA FS reflected that value. He said in wilderness areas, for example, chain saws are not used.

Rep. Andrus asked if the CE was not granted because the responses submitted to USDA FS triggered a legal response; or was it a judgement call. Mr. Troyer said further analysis was a legal requirement; but it was also a judgement call to give the public a chance to make appeals. The decision was do undertake an environmental analysis and postpone the CE decision.

Rep. Barrett asked for clarification as to the number of comments. Mr. Troyer said around 160-165. Rep. Barrett said it appears that much weight was given to the comments. Rep. Troyer said the point was not the number, but the quality of the comments made. Rep. Barrett asked if the quality of the comments saying "no" was greater than the quality of those saying "yes." Mr. Troyer said there were thoughtful letters on both sides of the issue.

Rep. Eskridge asked if there was litigation on the issue now. Mr. Troyer said no. Rep. Eskridge said he was confused to be hearing that the CE was a better idea—less impact, less stress on animals and the environment—but that there is no supporting decision. The concern seems to be that the application doesn't qualify for a CE. Mr. Troyer said the key point is that if desired results can be accomplished by another means, even if it is more expensive and less efficient, Forest Service policy tends in that direction. He said litigation is a consideration, but not the only constraint. Any position must be defensible.

Rep. Wood said it would seem that the USDA FS would be cooperative with the federal government's mandate for Idaho to manage wolves. Mr. Troyer said USDA FS tries to work with the sister government agency, but also with IDFG and OSC.

Chairman Stevenson expressed appreciation for Mr. Troyer's responses to the Committee. He said it appears that this is an issue that will be worked through by this time next year. Mr. Troyer said he thinks the answer is yes; he will do what he can to be sure it is.

#### **USDA FS POLICY:**

#### **OHV Use on Forest Service Lands**

Jack G. Troyer, Regional Forester, Ogden, UT, said he was on the national team that led this directive. It sought consistency in the 155 U.S. forests. Outdoor recreation is a huge national activity that has been growing exponentially in the past 30 years. In Idaho, there has been a 356% increase from 1994 to 2004. OHV machines are better, faster, and have more impact on the land. They are an exciting way to experience the

national forests. The new policy seeks to provide responsible motorized recreational experiences in national forests and grasslands for the long run. Mr. Troyer enumerated several key points of the program: 1) the rule applies only to national forests; 2) it requires each district to designate roads, trails and areas open to motor vehicles; 3) designation will include class of vehicle and, if appropriate, time of year for motor vehicle use; 4) the rule will prohibit motor vehicle use off the designated system; 5) designations will be made locally with public input. Mr. Troyer said, in one sentence, the rule is about designated routes and areas; and local decision-making. The rule will take four years to put into place nationally. Until it is in effect, the status quo is in effect. The rule does not affect other machines, such as watercraft and snowmobiles.

Mr. Troyer said the rule is supported in Idaho. A professional, public poll found 82% of Idahoans favored restricting OHVs to roads and trails. He said working with partners to manage use is the only way this will be successful. IDPR has long been a cooperative partner with USDA FS.

Mr. Troyer said new, consistent travel regulations are coming. They are innovative; but the program is not quite ready for release. A person will be able to get on their home computer at night, and print an OHV map route. Mr. Troyer closed his presentation with remarks about the need for enforcement in order to get the cooperation of the small percentage of people who are not compliant.

#### **QUESTIONS:**

QUESTION/COMMENTS FROM COMMITTEE: Rep. Bedke asked what flexibility the district ranger-manager has as OHV travel use plans are compiled. Can, for instance, OHVs be used to check cattle. Mr. Troyer said local flexibility was retained in the program.

Rep. Jaquet asked about educational programs as an off-set for enforcement requirements. Mr. Troyer said OHV users care about their sport. They help with trail maintenance, and help with public education. More signing will be needed; and a presence on the ground will be needed. Rep. Jaquet asked about the budget for signing and enforcement. Mr. Troyer said "if we can get better at being less bureaucratic," and consider the need for the public support, there will be more efficiency at leveraging the budget to take care of the forest.

Rep. Jacquet asked what difficulties supersized OHVs will create. Rep. Troyer said every trail will be designated according to vehicle use. Future budgets are unknown. What budget there is will be "stretched." The land base isn't growing but there are more users. If people stay on trails, more use can be accomplished with less impact.

Senator Stennett asked about an identification program for people who violate rules. Are there programs in other states that have them. Mr. Troyer said it was a great idea. He didn't know about other programs, but law enforcement can be shared with partners.

Rep Wood asked if Idaho state law as it applies to RS2477 trails and rights of way would be observed. Mr. Troyer said the rule, itself, doesn't change the USDA FS approach to RS2477. There is a process to go through to determine RS2477 roads.

Rep. Wood asked about coordination with counties. Mr. Troyer said district

rangers and forest supervisors have close relationships with county commissioners. Rep. Wood related an anecdote: her constituent received a \$116 fine for plowing snow into his cabin where a RS2477 right of way applies. She asked about the appeal process. Mr. Troyer said seeking redress for a law enforcement citation goes through the law enforcement community and the forest service; but it is still important to have contact with the local line officer.

Rep. Raybould said there is a problem with closed roads in the forest. One reason people take OHVs into the forest is because the roads are closed. Mr. Troyer said this was a topic that had to be addressed on a site-specific basis because each area is different. In the Targee Forest, for instance, there are many old logging roads. Some, but not all, of those roads are open. He said the designated system of roads and trails will serve the public best with grass roots involvement.

Senator Schroeder asked if it is true that RS2477 roads guarantee access, but not motorized access. Mr. Troyer said there is a process for RS2477 designation. He believed a certain width was designated with the easement; but will provide that information to Committee upon his return to Ogden. Senator Schroeder said he carried RS2477 legislation fourteen years ago. He said he remembers that even if a road washed out and couldn't be used for motorized vehicles, people could still walk or ride horseback. He asked if the new designated roads could be routed through small communities for economic reasons. Mr. Troyer said yes: Part of the process is to encourage rural economic development.

**ANNOUNCEMENTS:**

Chairman Stevenson thanked those in attendance for coming to the hearing today.

The Senate will remain in the room for a short meeting following the joint session.

**ADJOURN:**

The meeting was adjourned at 2:50 p.m.

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Representative John A. Stevenson

Chairman

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Mona Spaulding

Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE:** February 15, 2006

**TIME:** 1:30 p.m.

**PLACE:** Room 412

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

**ABSENT/** Rep. Bedke

**EXCUSED:**

**GUESTS:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL); Mike Murphy, Head, Navigable Waters Program, IDL  
See sign-in sheet for other guests.

**CALL TO ORDER:** Chairman Stevenson called the meeting to order at 1:35 p.m. The secretary took a silent role call.

**MINUTES:** A motion was made by Rep. Sayler to approve the minutes of January 7 and January 9, 2006 as written. The motion passed by voice vote.

**January 7, 2006**  
**January 9, 2006**

**H641:** Rep. Tom Loertscher, District 31, sponsor, has asked that H641 not be heard in Committee today.

**H524:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented H524 relating to the Lake Protection Act (LPA). Currently the LPA does not provide a permitting process for owners of encroachments built prior to 1974 who did not meet the deadline established in Section 58-1312. H524 makes an allowance for owners of unmodified navigational or nonnavigational encroachments constructed on or before December 31, 1974. Substantive documentation that the encroachment was constructed on or before that date must be made in order to receive an encroachment permit without the requirement of application or publication fees.

**QUESTIONS/COMMENTS:** Rep. Moyle asked if the IDL's permitting process included private lakes. Mr. Bacon said IDL's jurisdiction is defined in a different Code section; but that private or navigable lakes under IDL jurisdiction are better defined in another bill today.

Rep. Roberts asked if a dock, pier, or improvement could be maintained

or reconstructed without a permit. Mr. Bacon said maintenance is expected to occur, and is not a permitted activity. The IDL permit process applies if the “footprint” is changed—that is, if construction is larger than the original improvement.

Rep. Wood asked for a definition of “navigable.” Mike Murphy, Head, Navigable Waters Program, IDL, gave examples of navigable and non-navigable construction by way of providing a definition. Rep. Wood asked for clarification of IDL’s authority. Mr. Murphy said IDL has jurisdiction over the beds of lakes and navigable streams in Idaho and, in the case of lakes, where encroachments protrude onto the lake but are not related to moorage.

Rep. Roberts asked if a permit is needed to replace or modify a retaining wall constructed to prevent erosion. Mr. Murphy said if it is maintained or replaced without modification, no permit is needed. Rep. Roberts asked if a permit is required for a retaining wall constructed since February 1, 1975 that has now decomposed to the point where a new wall is needed. Mr. Murphy said assuming there was a permit, a new permit would not be required.

Rep. Eskridge asked if the Corp of Engineers is involved, if the permit is required from IDL or the Corp. Mr. Bacon said if the Corp is involved, the Corp would have permitting jurisdiction.

Rep. Barrett asked what change is actually being made with H524. Mr. Bacon said the crux of the legislation is to allow encroachments that were constructed before the LPA permit deadline to be grandfathered under the LPA.

Rep. Eskridge asked if IDL could require an encroachment constructed prior to 1974 to be removed if it isn’t properly permitted. Mr. Bacon said technically yes; but it is unlikely. H524 makes provision to allow a grandfathered permit.

**MOTION H524:**

A motion was made by Rep. Field to send H524 to the floor with a DO PASS recommendation.

**QUESTIONS/COMMENTS:** Chairman Stevenson asked if a footbridge across a canal belonging to an irrigation district requires a permit, as canals sometimes are classified as navigable waters. Mr. Bacon said if IDL has jurisdiction over the canal, the permitting process might apply. Rep. Stevenson said wetlands are considered waters of the U.S. and navigable waters statutes apply. Mr. Bacon said that is correct, but IDWR has jurisdiction of the water. IDL has jurisdiction over the beds of lakes and not the waters.

Rep. Roberts asked if IDL jurisdiction occurs within Bureau of Reclamation projects. Mr. Bacon said it does not unless the Bureau gives up their rights to it. There may be a case near Twin Falls where the Bureau will ask IDL to issue permits. Rep. Roberts asked about jurisdiction at specific sites including Lucky Peak, Cascade Reservoir, and American Falls. Mr. Bacon said the IDL permitting process didn’t apply to them but would, for example, apply to Payette Lake. IDL has jurisdiction over reservoirs; but Payette Lake is a natural lake.

Rep. Eskridge asked why IDL wouldn't have jurisdiction over the ground at the bottom of Bureau projects as it does over the ground at the bottom of Corp projects. Mr. Bacon said the test for jurisdiction is whether the body of water is navigable at the time of statehood. Any body of water created since then is not under IDL jurisdiction.

Rep. Moyle asked if IDL would have jurisdiction over the Payette River but not over drainage district #2 in Meridian, ID. Mr. Bacon said that is correct. However, IDL does not have jurisdiction over all reaches of the Payette River. The test for jurisdiction requires that a body of water was navigable at the time of statehood.

Rep. Roberts said the situation is more complicated than it first appears, because there is a natural high water mark and, in some cases, an artificial high water mark where structures have been built for water storage. He asked who has jurisdiction over the land difference between the historic high water mark and the artificial high water mark. Mr. Murphy said IDL regulates the encroachment. IDL only negotiates leases to the "ordinary" high water mark, as opposed to the artificial high water mark. He said each site is different. Court systems establish the ordinary high water mark at any given site.

Rep. Barraclough asked if "navigable" is still defined as occurring where a log 6 inches in diameter and 6 foot long will float. Mr. Bacon said that is the test for public access. There are two tests: one for public access and a federal test for ownership.

Rep. Mitchell said it seems the dock owner is more fairly treated under the provisions of H524. Mr. Bacon said yes.

**VOTE H524:** The motion to send H524 to the floor with a DO PASS recommendation passed by voice vote. Rep. Wood voted NO for the record. Rep. Stevenson will carry H524 on the floor.

**H525:** George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented H525, legislation amending Idaho Code Section 58-1302 to modify the definition of "line of navigability" by changing not only the language, but also the concept employed for determination. The line of navigability is now determined by the concept of "customary type of water craft." H525 allows for several more relevant criteria to be used when determining the line of navigability, including: the line established by the waterward extent of existing and legally permitted encroachments, and the water depth and lake bed characteristics. The new concept is to be applied when no line of navigability has been established on the body of water in question.

**QUESTIONS/COMMENTS:** Rep. Wood asked for a definition of "waterward." Mr. Bacon said it is the direction you're looking towards the water.

**MOTION/VOTE H525:** A motion was made by Rep. Roberts to send H525 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Roberts will carry H525 on the floor.

**H526:** George Bacon, Operations Chief South, Idaho Department of Lands

(IDL), presented H526, amending Idaho Code Section 58-1307 to revise fee and cost provisions for certain permits, and to authorize the Board of Land Commissioners to charge specified applicants the actual costs of processing applications in the event the actual costs exceed the non-refundable fee. Mr. Bacon said the goal is to eventually take the program out of the general fund, and have a dedicated fund to support it. He submitted a fact sheet to illustrate hypothetical increases. (Exhibit 1)

QUESTIONS/COMMENTS: Rep. Eskridge asked how private docks on reservoirs and lakes would be affected. Mr. Bacon said he didn't know yet. Exhibit 1 is a hypothetical example adding an \$80 flat fee increase across the board. It is not a proposed fee, but as a way to illustrate that increases could make the program solvent.

Rep. Eskridge asked why those entities and private persons who add improvements to the benefit of resources—fisheries and wildlife habitat, for example—should bear the burden of increased fees; or any fees. Mr. Bacon said that point had not been considered. As it is now, those entities are paying the full permit fees. A fee structure will be developed and presented to the legislature through Administrative Rules which could take that into account.

Rep. Wood asked if the Idaho Department of Fish & Game (IDFG) would pay a fee to repair a bank problem on a lake. Mr. Bacon said anyone wanting “to do something on the bed of a lake” would need a permit from IDL.

Rep. Roberts said there may be a need for fee increases, but Exhibit 1 indicates a difference among fees from 14% to 500%. He asked if IDL is trying to establish a CAP in Code that would apply for a number of years. Mr. Bacon said IDL is not suggesting that the numbers in Exhibit 1 represent the permit fee, but to establish an upper limit. IDL will regulate fees for the various uses appropriately.

Rep. Roberts asked why it would take five years to “get in the black,” or is IDL “re-couping its losses.” Mr. Bacon said the current fees were established 32 years ago. At that time revenue from fees was greater than costs. To become solvent in one year would require dramatic increases. Rep. Roberts asked if it is the intention to “re-coup losses.” Mr. Bacon said no. IDL is funded from fees collected and from the general fund. IDL income is less than its expenses. It would like to operate more like a business, with income equal to expenses.

Rep. Raybould said Exhibit 1 represents a 4% increase. Over five years that is a 22% increase. He asked if IDL expects more applications each year and why, because water frontage is finite. Mr. Bacon said it isn't only growth that causes new docks to be built. As property changes ownership, there are applications to remove, rebuild, and change improvements. Rep. Raybould asked if IDL rules applies to construction by Idaho Department of Parks & Recreation and the counties. Mr. Bacon said yes.

Rep. Jaquet said passing H526 would mean taxpayers wouldn't subsidize people building private docks. She asked if by setting the CAP established in H526 the legislature would have another chance to review the fees. Mr. Bacon said yes.

Rep. Saylor said his constituents have expressed concern about the length of the permitting process. He asked if H526 would facilitate processing. Mr. Bacon said it would not; but there is other legislation today that would increase efficiency. H526 puts the program “in the black.”

Rep. Eskridge asked, regarding Exhibit 1, what caused a 50% increase in expenses in 2002. Mr. Bacon said IDL’s workload is not linear. One expense, for instance, is the renewal of leases—most of which are commercial leases on beds of lakes—which are not renewed every year.

**MOTION/VOTE**  
**H526:**

A motion was made by Rep. Bell to send H526 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Andrus voted NO for the record. Rep. Bell will carry the bill on the floor.

**H527:**

George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented H527 amending Idaho Code Section 58-1305 to require recordation of single-family and two-family docks in the county where the encroachment is located; and to amend Section 58-1306 to require recordation of community docks in the county where the encroachment is located. Mr. Bacon said IDL Administrative Rules already reflect the changes H527 makes to statute.

**QUESTIONS/COMMENTS:** Rep. Eskridge asked what the penalty is for not recording the encroachment permit in the county of record. Mr. Bacon said the permit becomes invalid because recordation is the final step in the permitting process.

Rep. Mitchell asked if increased revenue from recordation didn’t create a fiscal impact. Mr. Bacon said not to the state because filing fees attribute to the county of record.

Rep. Roberts asked how many individuals are not recording and not paying property taxes without H527. Mr. Bacon said 527 makes no impact on the collection of taxes as counties don’t use the recording process to determine dock ownership.

**MOTION/VOTE**  
**H527:**

A motion was made by Rep. Saylor to send H527 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Saylor will carry H527 on the floor.

**H528:**

George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented H528 to make provision for community docks in the Lake Protection Act (LPA).

**QUESTIONS/COMMENTS:** Rep. Wood asked if the Idaho Department of Fish & Game (IDFG) is required to permit with IDL for a dock on navigable waters. Mr. Bacon said yes.

Rep. Eskridge asked if the fee differed among the categories of single family, 2-family, and community navigable encroachments. Mr. Murphy said the fee for single and 2-family docks is \$50; for community docks it is \$250.

Rep. Eskridge asked why the fee isn’t based on size, since a community dock sometimes might be smaller than a single or 2-family dock. Mr.

Murphy said the fee covers the cost of the process involved, which includes agency review and public notice for community docks.

Rep. Roberts asked if IDL would come back with Administrative Rules reflecting different fees for various uses. Mr. Murphy said he couldn't speak to the future, but that is the intent.

**MOTION/VOTE  
H528:**

A motion was made by Rep. Roberts to send H528 to the floor with a DO PASS recommendation. The motion passed by voice vote. Reps. Wood and Barrett voting NO for the record. Rep. Mitchell will carry H528 on the floor.

**H639:**

George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented H639 to amend Idaho Code Section 58-1302 to clarify the definition of "navigable lake," ensuring that privately-owned, man-made reservoirs are excluded.

**QUESTIONS/COMMENTS:** Rep. Mitchell asked about the status of a reservoir in the Lewiston Orchard Irrigation District. Mr. Bacon said he believed IDL has no jurisdiction; if the irrigation district is incorporated, it is a private entity.

Rep. Roberts asked if IDL has jurisdiction over navigable lakes in his district where the lakes have been extended higher, and are privately owned. Mr. Bacon said IDL has no jurisdiction over water; IDL has jurisdiction over the beds of lakes or rivers. The key distinction is whether the issue is water or how the water is used. If a natural lake is artificially raised, case law would determine jurisdiction on a case-by-case basis. Rep. Roberts said he is referring to the many publically owned lakes in his district located on national forest land. Those lakes have storage built up on top of the natural high water line. He asked if IDL has jurisdiction. Mr. Bacon said IDL doesn't have jurisdiction over every natural lake in the state. There is an additional jurisdictional test requiring that commerce must have occurred on the lake at statehood.

Rep. Raybould said, regarding Rep. Robert's question, if a lake or stream on private property is dammed to raise the water level, that would be deemed to be a private lake. Mr. Bacon said he believed that is correct. It would have to be determined if the water was navigable at statehood.

**MOTION/VOTE  
H639:**

A motion was made by Rep. Raybould to send H639 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Raybould will carry H639 on the floor.

**H529:**

George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented H529 relating to state-owned timber, amending Idaho Code Section 58-415 to revise methods for the sale of state-owned timber. He said currently logging operations from state endowment lands are scaled; the moneys are collected from purchasers and directed to a dedicated account to pay for the work. Endowment reform of 2000 eliminated the need for a separate account, resulting in a budget reduction of approximately \$300,000. The budget decrease can be accounted for by efficiencies created by the reform.

QUESTIONS/COMMENTS: Rep. Barrett asked for clarification about the footnote to the fiscal note. Mr. Bacon said the Moon v. State Board of Land Commissioners court case ruled that it is improper for interest on endowment moneys to accrue to the general fund. The case is probably precedent to the current manner of processing timber scaling moneys. H529 would correct that process.

Rep. Eskridge clarified that the state will not lose interest under H529, just that the interest will accrue to the endowment fund and not the general fund. Mr. Bacon said that is correct. Currently the general fund invests that money at 2-2.5%; the endowment fund invests at 7%.

**MOTION/VOTE  
H529:**

A motion was made by Rep. Eskridge to send H529 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Andrus will carry H529 on the floor.

**ANNOUNCEMENTS:**

Chairman Stevenson said the Committee will meet Friday, February 17, 2006 to hear two water bills, H544 and 576.

**ADJOURN:**

The meeting was adjourned at 2:50 p.m.

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Representative John A. Stevenson

Chairman

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Mona Spaulding

Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** February 17, 2006
- TIME:** 12:30 p.m. or upon adjournment
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Saylor, Jaquet, Mitchell
- ABSENT/  
EXCUSED:** Reps. Andrus, Barrett and Wood
- GUESTS:** Norm Semanko, Idaho Water Users Association (IWUA)  
See sign-in sheet for other guests.
- CALL TO ORDER:** Chairman Stevenson called the meeting to order at 1:34 p.m. The secretary took a silent roll call.  
  
Brock Larson, from Hamer, Idaho, was introduced. He will serve as page to the committee during the second half of the session. Chairman Stevenson presented a thank you card to Johanna Roberts, who served as page the first half of the session.
- H544:** Norm Semanko, Idaho Water Users Association (IWUA), presented H544 that amends Idaho Code Sections 43-111 and 43-112 dealing with election procedures within irrigation districts, and allowing an alternative voting procedure. H544 requires a district-wide election under existing statutory voting procedures before the method of voting in a district can be changed. H544 allows votes to be based on assessed acres owned within the irrigation district. The election process currently allows one landowner one vote. The intent of H544 is 1) to give parity among the irrigation districts, water districts and canal companies; and 2) to acknowledge proportional burdens as a matter of fairness. The U.S. Supreme Court has ruled favorably on the constitutionality of weighted votes in special purpose districts. At the state level, the Constitution was amended in 1932 to allow weighted voting.
- QUESTIONS/COMMENTS:** Rep. Mitchell asked if H544 would impact the Lewiston Orchard Irrigation District (LOID). The irrigation portion of the LOID is owned by BLM and managed by the district; but there is a domestic portion operated by the irrigation district. Mr. Semanko said the LOID, like any other district, could choose a weighted system.
- Rep. Mitchell asked if it was taken into consideration that the irrigation portion of the LOID is not owned, but only managed, by those who are elected. Mr. Semanko said it is not unusual for irrigation works to

be owned by the federal government, with maintenance responsibility attributing to the district. There is a special relationship when the federal government owns a district, but who pays indebtedness is what is important.

**MOTION H544:** A motion was made by Rep. Field to send H544 to the floor with a DO PASS recommendation.

**PUBLIC TESTIMONY:** PUBLIC TESTIMONY: Dan Larkin, Idaho Food Producers, testified in support of H544. He said currently those who have little at stake have a disproportionate influence on the outcome of elections.

**Dan Larkin  
PRO**

**VOTE H544:** The motion to send H544 to the floor with a DO PASS recommendation passed by voice vote. Rep. Mitchell voted NO for the record. Rep. Raybould will carry H544 on the floor.

**H576:** Norm Semanko, Idaho Water Users Association (IWUA), presented H576, legislation to amend deadlines for director nominations to make them consistent with election notice provisions. Mr. Semanko said the regulations that currently apply sometimes require newspaper publication when it is unnecessary, because there is an uncontested election. H544 makes technical corrections and retains the provision for notice on bond issues.

QUESTIONS/COMMENTS: Rep. Mitchell asked for clarification on the publication requirement. Mr. Semanko said the irrigation district is required to pay for notice as provided for in Statute. It is a waste of time and money for the district to be required to notice when there isn't going to be an election.

Rep. Mitchell asked whether notice is published in media other than newspapers. Mr. Semanko said some districts use other methods of notice, but they aren't required.

**MOTION/VOTE H576:** A motion was passed by Rep. Field to send H576 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Field(23) will carry H576 on the floor.

**ADJOURN:** The meeting was adjourned at 1:50 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE:** February 21, 2006

**TIME:** 1:30 p.m. or upon adjournment

**PLACE:** Room 412

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

**ABSENT/EXCUSED:** None

**GUESTS:** Andy Brunnelle, Boise Field Office, Intermountain Region, USDA Forest Service (USDA FS); Karl Dreher, Director, Idaho Department of Water Resources (IDWR); Susan Giannettino, Deputy Idaho State Director, Bureau of Land Management (BLM); Representative Bruce Newcomb, Speaker of the House of Representatives

See sign-in sheet for other visitors.

**CALL TO ORDER:** Chairman Stevenson called the meeting to order at 2:16 p.m. The secretary took a silent roll call.

**APPROVE MINUTES:** A motion was made by Rep. Saylor to approve the minutes of February 15, 2006 and February 17, 2006 as written. The motion to approve the minutes of February 15, 2006 passed by voice vote. The motion to approve the minutes of February 17, 2006 passed by voice vote.

**February 15, 2006**  
**February 17, 2006**

**HCR36:** Karl Dreher, Director, Idaho Department of Water Resources (IDWR), presented HCR36 to approve an application to appropriate water for Minimum streamflow in the Thousand Springs area near Niagra Springs Complex. In the 1970s, the legislature authorized the Idaho Department of Parks and Recreation (IDPR) to hold a Minimum streamflow water right for a state park. The way the Minimum streamflow was described in the legislation caused disagreement that lead to litigation. Through that litigation and the Snake River Basin Adjudication, the Water Board at the request of The Idaho Department of Fish and Game (IDFG) and IDPR filed for a permit to add streamflow below the narrow limited extent determined by the legislature. The dispute is now resolved. An order was in effect dated February 15, 2005. It was too late in the session to bring to the legislature during that session. There are two permits involved, both junior rights not affecting any existing rights. They limit appropriation of discharge for further uses from several hatcheries in the area, allowing those flows to remain instream for esthetics and recreation.

**QUESTIONS/COMMENTS:** Rep. Mitchell asked if there was a fiscal impact to any unit of government. Director Dreher said none that is identifiable.

Rep. Barrett said if there is more water to leave in place, someone must be giving up water use. She asked for clarification. Director Dreher said these water rights will not take water from any other use. The hatchery facilities discharge effluent back into Niagra Stream Creek. This minimum streamflow prevents someone in the future from appropriating that water, removing it from the stream, and harming esthetic and recreational values. Rep. Barrett asked if that was what the quarrel was about. Director Dreher said the quarrel was about the length of the channel involved for minimum streamflow. IDWR at the time believed it meant one thing, the Rim View Fish Hatchery believed it meant another. The court came down on the side of the hatchery.

**MOTION/VOTE  
HCR36:**

A motion was made by Rep. Raybould to send HCR36 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Jaquet will carry HCR36 on the floor.

**HCR37:**

Karl Dreher, Director, Idaho Department of Water Resources (IDWR), said HCR37 and H636 are part of the Nez Perce water agreement from last session. The state agreed to establish minimum streamflows under state law at locations in the Salmon and Clearwater River Basins, which includes the Snake River Basin. Two minimum streamflows were inadvertently not considered with the agreement last year. It is necessary to go back to appropriately establish minimum streamflows.

Director Dreher presented HCR37 to approve an application to appropriate water for minimum streamflow on the North Fork of the Clearwater River above Dworshak Reservoir. This streamflow was ratified as part of the Nez Perce Agreement. The Secretary of the Interior can't certify funding for release as authorized under the Nez Perce Agreement without the minimum streamflows approved in HCR37 and H636. Director Dreher noted that fact sheets on the streamflows were submitted at the print hearings of February 9, 2006.

**MOTION/VOTE  
HCR37:**

A motion was made by Rep. Field to send HCR37 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Field will carry HCR37 on the floor.

**H636:**

Karl Dreher, Director, Idaho Department of Water Resources (IDWR), said H636 differs from HCR37 because it has a requirement for water to be present a certain percentage of time. This minimum streamflow is downstream of Dworshak Reservoir on the North Fork of the Clearwater River. As such, it is subject to operations of Dworshak Reservoir. Because of that, the quantity of water in this streamflow is often not there. In order to comply with the Nez Perce Agreement, the legislature must create the minimum streamflow outside the normal statutory provisions. Even though the quantity of water is not realistic in terms of what is actually there, because of the Dworshak operation, it is subordinate to all existing and future uses, and to the operation of Dworshak Reservoir. Like HCR37, H636 is needed for the Governor to certify that Idaho has met all obligations under the Nez Perce Agreement.

**QUESTIONS/COMMENTS:** Rep. Roberts asked how the minimum streamflow would be affected in years with low snowpack. Director Dreher said there will be no effect because it is fully subordinate to other uses.

Rep. Mitchell asked what impact there would be if federal money is not received for the Snake River Basin Adjudication. Director Dreher said there would be no effect other than failure on the part of the state to establish minimum streamflows. That would effect release of funding under the Nez Perce Agreement.

Rep. Jaquet asked if the legislation will release Bell Rapids mitigation, and if the legislature should be thinking how to implement it. Director Dreher said there is nothing more for the legislature to do, because the agreement makes that stipulation. Rep. Jaquet said she understood that grant programs might be established. She asked if the two affected counties would be paid directly. Director Dreher said funds were intended to off-set loss of revenue, from any source, to the counties affected by the Bell Rapids purchase.

Rep. Shepherd asked if, by setting streamflows, a judge would give them priority to existing water rights. Director Dreher said one important attribute of the Nez Perce Agreement to the State of Idaho is that it is more beneficial to have these rights effective under state law.

Rep. Raybould commented that \$2 million dollars will attribute to counties to compensate for the Bell Rapids purchase, but \$11 million dollars will be released for habitat renewal and other state programs. Those are the grant funds that Rep. Jaquet referred to.

**MOTION/VOTE  
H636:**

A motion was made by Rep. Raybould to send H636 to the floor with a DO PASS recommendation.

QUESTIONS/COMMENTS: Rep. Roberts asked how this minimum streamflow would affect the ability to add storage for future environmental concerns. Director Dreher said H636 and HCR37 are constructed as having subordinate positions to those rights. This is a water right established as part of the nez Perce Agreement at the request of the federal government. If the federal government wants to amend the Agreement to accommodate some future use, it will. There is an amendment provision (page 2, line 26).

The motion to send H636 to the floor with a DO PASS recommendation passed by voice vote. Rep. Wood voted NO for the record. Rep. Raybould will carry H636 on the floor.

**H546:**

Karl Dreher, Director, Idaho Department of Water Resources (IDWR), presented H546, enabling legislation to allow the Water Board to make loans from the revolving loan fund in excess of \$500,000. Section 42-1756 was first enacted in 1969 setting a maximum loan at \$100,000. There was an amendment in 1978 to increase the ceiling to \$500,000. H546 proposes to remove the ceiling entirely: 1) because the legislature asks the Water Board to make loans in excess of \$500,000; 2) to provide timely response to loan applicants. The Water Board makes loans involving public health and safety. To delay, which could occur if the legislature was not in session, could be detrimental to the applicant. Director Dreher said, any concerns about removing the limit should be off-set by remembering that the Water Board can't loan funds it doesn't have; and those funds were appropriate by the legislature in the first place. There are statutes authorizing the loan program; and the Water Board has its own rules and procedures.

**MOTION/VOTE  
H546:**

A motion was made by Rep. Wood to send H546 to the floor with a DO PASS recommendation.

**QUESTIONS/COMMENTS:** Rep. Roberts asked to know the current balance of available funds in the revolving loan fund. Director Dreher said the balance changes daily. He believed the unencumbered balance was approximately \$2 million dollars. \$1.2 million dollars has been committed to projects as part of the state's obligation under the Conservation Reserve Enhancement Program (CREP).

Rep. Roberts asked if additional funding to the revolving loan fund would be useful. Director Dreher said yes, there are more needs than can be met. The Water Board works closely with the Department of Environmental Quality (DEQ). Money comes from DEQ's revolving loan fund if the applicant qualifies. Many smaller communities can't meet those requirements. Those applicants come to the Water Board. Rep. Roberts asked what funding level would be reasonable for the fund this session. Director Dreher said he would give Rep. Roberts the report that addresses funding needs.

Rep. Mitchell asked what prevented the Water Board from loaning \$1.5 million by making three \$500,000 loans. Director Dreher said the Water Board is resistant to going beyond the intent of legislation. They would not make a large loan by dividing it into smaller units.

The motion to send H546 to the floor with a DO PASS recommendation passed by voice vote. Rep. Wood will carry H546 on the floor.

**H637:**

Karl Dreher, Director, Idaho Department of Water Resources (IDWR), presented H637 to amend Idaho Code Sections 67-5708B and 67-5711 to exempt certain public works projects for the Department of Water Resources (IDWR) and the Water Resource Board (WRB) from administration and review by the director of the Department of Administration (ADM). Other agencies are exempt from ADM oversight where projects are outside ADM's expertise and interest. IDWR and the WRB are not currently on the exemption list. Adding them to the exemption list will create an exemption from facilities planning and facilities construction provisions when construction relates to the agency's mission. It will not create an exemption from ADM oversight when construction involves office buildings.

**MOTION/VOTE  
H637:**

A motion was made by Rep. Barraclough to send H637 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Barraclough will carry H637 on the floor.

**HJM14:**

Rep. George Eskridge presented HJM14, a House Joint Memorial asking for repeal of the Federal Lands Recreation Enhancement Act (FLREA). He said failure to comply with the Act could result in substantial fines and even criminal penalties. It is clear that the Act intended for certain amenities to be in place before fees were required. Rep. Eskridge gave examples where fees were set where the required amenities were not place. He submitted Exhibit 1, which addresses the issue of fees and penalties on public lands; outlines FLREA background; discusses the implementation of "high impact recreation acres"; and gives examples of fees currently collected in violation of FLREA policy. Rep. Eskridge said FLREA imposes regressive fees placing an undue burden on people living

in rural areas. The memorial is not questioning appropriate fees.

Montana, Oregon, Colorado and Alaska have all passed resolutions demanding that the federal congress repeal FLREA. Specifically it opposes unwarranted and deliberate interpretations of land management agencies to impose fees and punishments where persons are unaware of them. HJM14 supports those western states, and expresses legislative opposition to FLREA.

Senator David Langhorst, Co-Sponsor of HJM14 said FLREA was inserted into a 3000-page omnibus bill. Hearings were never held. There was no vote in Congress. HJM14 opposes the gradual erosion of a long-standing social contract having to do with public lands. The Forest Service and BLM are underfunded. FLREA is a mechanism to use public fees to fund congressionally underfunded management agencies. Senator Langhorst said Idaho outfitters and guides (O&G) agree with the concerns expressed today; but since FLREA is the permitting entity for O&Gs, the industry cautions that repealing FLREA might result in a situation where there is no entity authorized to permit O&Gs.

**PUBLIC  
TESTIMONY:**

**Andy Brunnelle  
USDA FS Boise**

**Informational  
Testimony**

Andy Brunnelle, Boise Field Office, Intermountain Region, USDA Forest Service (USDA FS), gave informational testimony on HJM14. Mr. Brunnelle said FLREA was passed by Congress late in 2004. It limits fees to specific facilities, and mandates public involvement by creating Resource Advisory Committees. FLREA prohibits fees for general access—for example, parking, picnicking along trails, hunting and fishing. The vast majority of sites have no user fees. FLREA also allows fees, that previously accrued to the federal treasury, to accrue to the state. Mr. Brunnelle distributed Exhibit 2, providing summary information for each national forest in Idaho, including the financial impact of the program on each forest, on fee programs, and sites. He said most revenue comes from outfitter and guide fees. A letter to Jon Cantamessa, Chairman of the Public Lands Committee, Idaho Association of Counties, from William A Wood, Forest Supervisor, USDA FS, Salmon-Challis National Forest was distributed. (Exhibit 3) Mr. Brunnelle said no expansion of fees will occur until Resource Advisory Committees are in place.

**QUESTIONS/COMMENTS:** Rep. Raybould asked if the fees listed in Exhibit 2 were in place prior to FLREA. Mr. Brunnelle said the recreation fees were in place prior to FLREA. Revenue for recreational special uses is new. The source of that revenue is special use fees from outfitters and guides licensed to operate on national forest lands. The revenue was collected prior to FLREA, but went to the national treasury.

Rep. Jaquet asked about multi-forest passes. Mr. Brunnelle said at one time VIP Visit Idaho Permits were issued. The passes were discontinued because there was no market

**Susan Giannettino**

**Informational  
Testimony**

Susan Giannettino, Deputy Idaho State Director, Bureau of Land Management (BLM), distributed written testimony about how Idaho BLM uses FLREA fees. (Exhibit 4) She said BLM is one of five federal agencies affected by FLREA. In 2005, \$600,000, or 20%, of Idaho BLM's funding for recreational programs came from fee revenues. Without the funding, BLM's capability to operate and maintain recreation facilities and to provide quality visitor services would be severely limited. She emphasized that the Act requires public input through Resource Advisory

Committees.

QUESTIONS/COMMENTS: Rep. Wood asked for a list of people on the Resource Advisory Committees. Ms. Giannettino said the Committees haven't been established yet, but will be formed as procedures and protocols are finalized.

**Rich Vaughn**  
**Western Whitewater Association**  
**PRO**

Rich Vaughn, Board of Directors, Western Whitewater Association (WWA), testified in support of HJM14. He submitted written testimony. (Exhibit 5) Mr. Vaughn said FLREA became law by the action of one US Congressman who attached the Act to an Omnibus Bill. WWA embraces the concept that public lands are held in trust for the people, and mandatory fees limit access to those who can't afford the cost.

QUESTIONS/COMMENTS: Rep. Jaquet asked if charging fees for grazing, but not recreation, was acceptable to WWA. Mr. Vaughn said recreation fees were supposed to be related to facility amenities. He said Mr. Brunnelle's testimony did not give an accurate account. He said the Forest Service is aggressive in issuing citations. Rep. Jaquet asked him to distinguish between grazing fees and recreation fees. Mr. Vaughn said a different act applied to grazing fees.

**Nadine York**  
**No-Rat Coalition**  
**PRO**

Nadine York, No-Rat Coalition, testified in support of HJM14. (Exhibit 6) She said the No-Rat Coalition in northern Idaho opposes FLREA because it forces citizens to pay a fee to use lands they already pay taxes on. They protest the manner in which the Act came into being. She said the use of "enhancement fees" is a "clever trick" to hide taxes. The major portion of fees go toward administrative costs, with little left for enhancement. Ms. York objects to the manner in which the Act came into being.

QUESTIONS/COMMENTS: Rep. Jaquet said the public didn't know about VIP Visit Idaho Permits. The permits did not fail because there was no market, rather because there was no marketing—in her opinion. She would like to see the pass reinstated.

Rep. Sayler said the main issues seems to be: 1) the concept of user fees; 2) where the money is spent; and 3) aggressive enforcement. He asked Mr. Brunnelle to comment. Mr. Brunnelle said revenue was controlled by the national forest where it was collected. He said enforcement is always a controversial issue. The Forest Service tries to be as fair and uniform as possible.

Rep. Wood said there was an enforcement problem. She told of her constituent who was fined for plowing a road into his own house on the Challis National Forest. Mr. Brunnelle said he would look into that citation.

Rep. Jaquet asked if fees were used for administration. Mr. Brunnelle said a portion were used to cover administration of the program on the forest where the fees were collected. The legislature provides a CAP as to how much can be used for overall administration. He said he would provide Rep. Jaquet more information.

**Grant Simonds**  
**Idaho Outfitters & Guides Association**

Grant Simonds, Executive Director, Idaho Outfitters & Guides (O&G) Association, submitted written testimony. (Exhibit 7) He said O&G were "appalled" by the way FLREA came to be. However, outright repeal of FLREA would have unintended consequences to the O&G industry in that

**Informational  
Testimony**

the Act includes the permitting authority for O&Gs. With no permitting authority, the agencies might cease to permit, or repeal permits. Repeal would also mean that O&G would be assessed a road maintenance fee. All recreational users are now exempt from road maintenance fees. Mr. Simonds said the fiscal impact to the tourism industry would be considerable.

QUESTIONS/COMMENTS: Rep. Wood said it would be incumbent on Senators and Representatives to look out for the O&G industry, and to be sure a permitting process is in place.

Rep. Jaquet asked if language could be included to address O&G concerns. Mr. Simonds said he hadn't thought about it.

**Richard Alexander  
PRO**

Richard Alexander, representing himself, testified in favor of HJM14. He said he has been following the user fee issue since 2002, and has three objections: 1) the manner in which FLREA was passed; 2) the impact on local businesses; and 3) widespread non-compliance of the Forest Service regarding fees. He said one purpose of FLREA was to remove entrance fees to national forests. The Forest Service has gone around that mandate by creating a new fee class: High Impact Recreation Areas. FLREA makes no mention of High Impact Recreation Areas. Mr. Alexander said FLREA creates an incentive for the Forest Service to create amenities in order to create fees. He said agencies "are no longer stewards of the land, but are in business to profit from the land." He predicted recreational sites will be closed where fees can't be charged.

**CLOSE:**

Rep. Eskridge made closing remarks: the issue is not fees per se, but whether the fees charged are appropriate. Fees are being charged where they should not be because the required amenities are not in place. Land management agencies are "going beyond common sense." Because other western states have already passed resolutions, Idaho has an opportunity to offer support for changes to FLREA. Rep. Eskridge said the concerns of O&G need to be addressed.

QUESTIONS/COMMENTS: There was Committee discussion about how best to handle O&G concerns in a manner that also expresses opposition to FLREA.

**MOTION/VOTE  
HJM14:**

A motion was made by Rep. Barrett to send HJM14 to the floor with a DO PASS recommendation.

QUESTIONS/COMMENTS: Rep. Barrett said separate legislation can be passed if necessary to address other issues.

The motion to send HJM14 to the floor with a DO PASS recommendation passed by voice vote. Rep. Mitchell voted NO for the record. Rep. Eskridge will carry HJM14 on the floor.

**RS16102:**

Chairman Stevenson said leadership has authorized Resources and Conservation to sit as a privileged committee for the purpose of introducing RS16102 on February 21, 2006. (Exhibit 8)

Representative Bruce Newcomb, Speaker of the House, presented RS16102, legislation to amend Idaho Code Section 42-108 to require legislative approval of any permanent or temporary change in point of

diversion, period of use, or nature of use of any water right or combination of water rights with a diversion rate equal to or greater than two cfs or storage volume of 1450 acre-feet if use of such rights is in conjunction with the coal-fired generation of electricity other than integrated gasification combined cycle technology where coal is not burned but oxidized as a power source.

**MOTION:** A motion was made by Rep. Wood to recommend RS16102 be introduced for printing. The motion passed by voice vote.

**ADJOURN:** The meeting was adjourned at 4:27 p.m.

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Representative John A. Stevenson

Chairman

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Mona Spaulding

Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** February 23, 2006
- TIME:** 1:30 p.m. or upon adjournment
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Saylor, Jaquet, Mitchell
- ABSENT/EXCUSED:** Reps. Brackett, Bedke, Field and Wood
- GUESTS:** Rep. Jim Clark, District 3; Sharon Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG); Kent Kunz, Liaison, Office of the Governor; Dean Sangrey, Operations Division Administrator, Idaho Department of Parks & Recreation (IDPR); Dave Tuthill, Administrator, Water Management Division, Idaho Department of Water Resources (IDWR)
- See sign-in sheet for other guests.
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 2:19 p.m. The secretary took a silent roll call.
- APPROVE MINUTES:** A motion was made by Rep. Sayer to approve the minutes of February 21, 2006 as written. The motion passed by voice vote.
- February 21, 2006**
- H545:** Rep. Jim Clark, District 3, presented H545, legislation to authorize the initiation of general water rights adjudication for those portions of northern Idaho not included within the Snake River Basin. He submitted presentation notes (Exhibit 1) which summarized his talking points: background of the Rathdrum Prairie Ground Water Management Plan Advisory Committee; provisions of the bill; reasons for adjudicating at this time; and funding requirements.
- QUESTIONS/COMMENTS: None
- MOTION H545:** A motion was made by Rep. Eskridge to send H545 to the floor with a DO PASS recommendation.
- QUESTIONS/COMMENTS: Dave Tuthill, Administrator, Water Management Division, Idaho Department of Water Resources (IDWR), yielded for questions. Rep. Bell asked if IDWR could accept a slower implementation of the plan, starting with \$.23 million dollars. Mr. Tuthill said the department was willing to move at a slower rate if required. Rep. Bell asked if, after one year, IDWR could "gear up to the \$1.335 million dollars estimated as the requirement for FY 2007." Mr. Tuthill said "depending on the pleasure of the legislature, that could happen."

Rep. Barraclough said he has been hearing from constituents that the plan to adjudicate is premature. He asked when study results would be forthcoming. Mr. Tuthill said it is anticipated that the study will be completed in the 2007 calendar year. Historically, it has been seen "healthy" to have the technical study process proceed parallel to the adjudication process.

Rep. Eskridge asked if departmental expertise would be lost if adjudication proceeded at a slower pace. Mr. Tuthill said he thought most expertise would be maintained.

Rep. Andrus asked if a slower startup would jeopardize losing water rights based on other state decisions. Mr. Tuthill said it was originally proposed to move as quickly as feasible. There is no way to judge the ramifications of moving slower. Moving quickly is the best way to address equitable concerns.

Rep. Saylor spoke for the motion saying from Idaho's perspective it is better to proceed proactively before allocation inevitably begins.

**VOTE H545:** The motion to send H545 to the floor with a DO PASS recommendation passed by voice vote. Rep. Clark will carry H545 on the floor.

**H541:** Dean Sangrey, Operations Division Administrator, Idaho Department of Parks & Recreation (IDPR), presented H541, an amendment to correct IDPR rules affecting commissioned peace officers of the Idaho State police.

QUESTIONS/COMMENTS: None.

**MOTION:** A motion was made by Rep. Saylor to send H541 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Saylor will carry H541 on the floor.

**H638:** Dean Sangrey, Operations Division Administrator, Idaho Department of Parks & Recreation (IDPR), presented H638, legislation to correct various inconsistencies in statutory guidelines established for the Grant Advisory Committees whose members assist the Idaho Park and Recreation Board with grant application review and approval.

QUESTIONS/COMMENTS: Rep. Roberts asked for clarification of Idaho Code Section 59-509(b) and 59-509(f), having to do with compensation rates. Mr. Sangrey said the provision in (b) allows for members to serve without honorarium or compensation of any kind, but allows reimbursement for actual expenses: (f) allows members to receive \$25 per day and be reimbursed for actual expenses. H638 establishes consistency for committee member compensation among the advisory committees. Mr. Roberts asked for clarification about the usage of the \$25 per day compensation. Mr. Sangrey said it was paid to members conducting grant advisory activities, which generally occurs less than twelve days per year.

**MOTION/VOTE H638:** A motion was made by Rep. Roberts to send H638 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Roberts will carry H638 on the floor.

**H523:**

Sharon Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG), presented H523 allowing IDFG to implement a bonus point system for controlled hunt (CH) applicants. IDFG has been discussing the concept for some time. She said the system hasn't yet been identified. The system that is finally adopted will 1) approve drawing odds, and 2) be revenue neutral. H523 does not set fees. The Commission will initiate a fee bill when program parameters are finalized. H523 does authorize IDFG to impose a surcharge for this purpose. Ms. Kiefer reviewed the methods IDFG has used for public comment and input. She said the system, if developed, is planned for 2007 implementation.

QUESTIONS/COMMENTS: Rep. Barraclough asked for an overview of public testimony. Ms. Kiefer said the random survey returned high support for increasing drawing odds in controlled hunts. Response was variable regarding willingness to pay to implement the system. The Commission has directed staff to begin developing a rule-set creating a bonus point system.

Rep. Eskridge said he is concerned about the estimated \$550,000 annual fiscal requirement. The IDFG budget currently exceeds licensing revenue, and there will be another increase next year. Ms. Kiefer said since the original estimate, IDFG has reviewed bonus point systems in other states. The Department is moderating elements of the original proposal—as, for instance, in the marketing program. IDFG is currently forecasting a \$2-\$3 surcharge on controlled hunt applications fees, significantly less than the original estimate. Rep. Eskridge asked what the \$2-\$3 estimated surcharge represented in terms of a percentage increase, and what impact there would be to other programs. Ms. Kiefer said the fee only accrues to controlled hunt applications. She will have to make the calculations and will submit them to Rep. Eskridge.

Rep. Saylor said he has received constituent comment expressing concern that the bonus point system will eventually “morph,” allowing bonus point to be bought. He asked for comment. Ms. Kiefer said H523 doesn't define any bonus point system. It simply allows IDFG to proceed towards establishing a system.

**MOTION H523:**

A motion was made by Rep. Moyle to send H523 to the floor with a DO PASS recommendation.

QUESTIONS/COMMENTS: Rep. Barrett said she was not sure about her personal opinion, but she has received constituent comment in opposition to H523. She will vote no.

Rep. Moyle reminded the Committee that H523 simply starts the process. The legislature will have another opportunity for review.

**JIM NUNLEY  
Idaho Wildlife  
Federation**

**CON**

Jim Nunley, Idaho Wildlife Federation (IWF) testified in opposition to H523. He said the estimated requirement of \$550,000 to establish the system will not be as beneficial to hunters as most think. Drawing odds will only be increased slightly for high demand hunts—the most sought after hunts. “Slightly,” he said, was the key word. A surcharge is an extra layer of expense from everyone for the benefit of a few. He speaks in opposition for himself, and for IWF.

QUESTIONS/COMMENTS: Chairman Stevenson asked if IWF participated in IDFG Commission surveys. Mr. Nunley said any participation would have been as individuals, not as an organization.

**NATHAN HELM**  
**Executive Director**  
**Sportsmen for Fish**  
**& Wildlife**

Nathan Helm, Executive Director, Sportsmen for Fish & Wildlife (SFW), testified in support of H523. SFW, wanting to be certain it responded for sportsmen, did a survey. There was 61% support for establishing a system to increase opportunities for hunters applying in sequential years. Most of those surveyed did not want a \$5 increase. There was no opportunity for respondents to indicate whether they favored a \$2 increase.

**PRO**

QUESTIONS/COMMENTS: Rep. Barrett asked for clarification as to whether SFW supported or opposed H523. Mr. Helm said SFW supports the Commission's effort to move forward toward determining a bonus point system. SFW has not come out in support of a bonus point system, but supports the idea of increasing opportunities for sportsmen who did not draw in consecutive years of application.

Ms. Kiefer said IDFG staff was directed by the Commission in January 2006 to draft a rule-set to demonstrate "what a bonus point system would look like." That work is in progress. The legislature will review that system in January 2007. Rep. Mitchell asked the sponsor, Rep. Moyle, to confirm that any bonus point proposal will appear before the committee again. He said it will.

**VOTE H523:**

The vote on the motion to send H523 to the floor with a DO PASS recommendation passed by voice vote. Rep. Barrett voted NO for the record. Rep. Mitchell will carry H523 on the floor.

**H640:**

Representative Mike Moyle, District 14, presented H640, legislation to correct terminology and revise provisions relating to the transfer of moneys into the Animal Damage Control Fund.

QUESTIONS/COMMENTS: None.

**STAN BOYD**  
**Legislative Advisor**  
**Idaho Wool Growers,**  
**Assoc. Idaho Cattle**  
**Assoc.**

Stan Boyd, Idaho Woolgrowers Assoc., Idaho Cattle Assoc., testified in support of H640. He noted that line 13 inserted new language to accommodate S1171, passed last legislative session.

QUESTIONS/COMMENTS: None.

**PRO**

**MOTION/VOTE H640:**

A motion was made by Rep. Raybould to send H640 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Moyle will carry H640 on the floor.

**HCR38:**

Rep. George Saylor, District 4, presented HCR38, a resolution supporting the development of the Idaho Birding Trail. It acknowledges the economic contribution of birding to Idaho's economy, declares the trail to be the official state birding trail, and encourages the Department of Commerce and Labor to include it in its promotional literature. Wild About Idaho's Economy (Exhibit 2) summarizes birding's economic impact; indicates birding sites; and identifies four self-guiding driving

routes.

Rep. Saylor said no routes require access to private land. Guidebooks are being developed by IDFG Wildlife Division. IDFG anticipates introducing the state trail in time for international Migratory Bird Day in May, 2006. Birding statistics were summarized: There are 46,000,000 birdwatchers in the US; 18,000,000 of those travel away from home.

**MOTION HCR38:** A motion was made by Rep. Jaquet to send HCR38 to the floor with a DO PASS recommendation.

**QUESTIONS/COMMENTS:** Rep. Barrett said she doesn't see any specific economic boost at this time. Every time the legislature promotes one thing, it seems to take away from something else. She said she was "afraid of what it can lead to."

**VOTE H650:** The vote on the motion to send HCR38 to the floor with a DO PASS recommendation passed by voice vote. Rep. Barrett voted NO for the record. Rep. Saylor will carry H650 on the floor.

**ANNOUNCEMENTS:** Chairman Stevenson said the Committee would soon not have a quorum, because several members have other obligations. Rep. Bob Nonini is willing to reschedule H650. H650 will be placed on the Committee's agenda Monday, February 27, 2006.

**ADJOURN:** The meeting adjourned at 3:12 p.m.

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Representative John A. Stevenson

Chairman

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Mona Spaulding

Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** February 27, 2006
- TIME:** 1:30 p.m. or upon adjournment
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Saylor, Jaquet, Mitchell
- ABSENT/  
EXCUSED:** None
- GUESTS:** Barry Burnell, Administrator, Water Quality Division, Department of Environmental Quality (DEQ); Rep. Jim Clark, District 3; Karl Dreher, Director, Idaho Department of Water Resources (IDWR); Sharon Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG); Rep. Bob Nonini, District 5; Norm Semanko, Idaho Water Users Association (IWUA)
- CALL TO ORDER:** The meeting was called to order at 2:12 p.m. The secretary took a silent roll call. There were no minutes submitted for approval.
- H650:** Rep. Bob Nonini, District 5, presented H650 authorizing board(s) of county commissioners to form an aquifer protection district to protect the quality of underground water in counties that include a state-designated Sensitive Resource Aquifer. A statement from the Post Falls Area Chamber of Commerce in support of H650 was submitted for the record. (Exhibit 1) An editorial from The Spokesman-Review was submitted for the record. (Exhibit 2)
- Rep. Frank Henderson, District 5, Co-Sponsor, said Kootenai County commissioners agree that it is necessary to protect the quality of the aquifer. He said the fee proposed comes to \$6 per year, or \$.50 per month on every tax bill. He related a contamination anecdote relating to the Flying J Truck Stop as evidence of both need for protection and public support. There are more than 3,000 dry wells collecting storm water runoff. Presently, there are no funds to monitor dry wells; and no agency charged with oversight. There are requirements for small industries relating to contaminants when the business is licensed; but there is no budget for enforcement and oversight. Remediation for a serious contamination event will be very costly, and the cost will be borne by the state.
- Both sponsors were willing to consider Committee amendments.
- Committee members engaged in a lengthy question and answer period. Discussion is included where 1) it occurs for the first time, 2) it raises new points, 3) it represents the point of view of the Sponsor, those testifying

Pro or Con, Director Dreher or Administrator Barry Burnell, or 4) it results in Committee action.

The main points of the discussion:

- The legislation is intended for the Spokane Valley-Rathdrum Prairie Aquifer (Rathdrum-Prairie Aquifer), which is the only Sensitive Resource Aquifer in Idaho. It inserts a new section in Idaho Code concerned with the quality of water, and authorizes an aquifer protection district. Currently water districts in Idaho, and Idaho Code, are concerned with water quantity issues. Legislative Services (LSO) recommends inserting a new Code Section as opposed to amending existing Code.
- The legislation is promulgated by representatives of Kootenai County in order to institute fees to replace the money appropriated annually by the Joint Finance-Appropriations Committee (JFAC) from the general fund. The Legislature has indicated it would like a different funding mechanism, which should be advanced locally.
- There is not total support of H650 from Kootenai County. The concept is endorsed, but not its operational procedures. H650 is modeled after an ambulance district, which some find inappropriate. County commissioners are not unanimous in their endorsement of H650.
- There is a difference between a Sole-Source Aquifer and a Sensitive Resource Aquifer. The Rathdrum-Prairie Aquifer is both. It provides drinking water for approximately 500,000 people. It crosses jurisdictional boundaries, affecting approximately 11,000 acres.
- It is generally agreed that to prevent contamination is more desirable, in every way, than to clean up contamination.
- Although there are no other Sensitive Resource Aquifers in Idaho, there is a procedure identified to create more. H650 is intended to specifically address the Rathdrum-Prairie Aquifer but, under certain circumstances, could apply to other aquifers in the future.
- The procedure proposed to assess fees would result in implementation without a ballot vote. The proposed fees represent a "ceiling," and not the rate initially assessed. Some people equate assessed fees with taxation. H650 will create another assessment that will be sent with the property tax notice.
- If H650 is adopted and implemented, it will be 18 months, minimum, before funds are forthcoming. In the meantime, there will be no funding unless another one-time funding request is allowed by JFAC.

A SUMMARY OF QUESTIONS AND COMMENTS:

Barry Burnell, Administrator, Water Quality Division, Department of Environmental Quality (DEQ), confirmed that the Rathdrum-Prairie Aquifer

is the only Sensitive Resource Aquifer in Idaho. He said Sensitive Resource Aquifer should not be confused with Sole Source Aquifer, but didn't elaborate.

The difference between how water districts and ground water districts are formed was discussed; and whether there was an operational analogy to H650 that existed in Idaho. Karl Dreher, Director, Idaho Department of Water Resources (IDWR), said there was "not an exact match." A water district in southern Idaho for the purposes of administering water rights has no discretion. Once rights are decreed, the Director of IDWR has to create a water district or add rights to a water district. There is no participation or petitioning of any sort. A ground water district is more similar, but some users can "opt out." If someone opts out and the ground water district provides mitigation to divert out of priority, those non-member participants can receive a bill for their proportionate share. The fit is similar to H650, but not exact.

Committee members discussed amending H650 to allow for a ballot vote.

The Committee discussed amending H650 to include a petition representing a percentage of qualified voters, in lieu of a vote. 20% was suggested. As written, 53 people can implement the legislation which affects about 40,000 residents.

The Committee discussed limiting the legislation to only the Rathdrum-Prairie Aquifer.

Committee questions were directed at determining how funding from prior years was used; and how the requirement segued from about \$90,000 last year to the proposed \$350,000. A system is in place. The funding is needed to enable the system.

**NORM SEMANKO  
IWUA:**

**CON**

Norm Semanko, Idaho Water Users Association (IWUA), testified in opposition to H650. He said there IWUA did not oppose local regulation of the Rathdrum-Prairie Aquifer; local jurisdiction is preferred to regulation by Congress or the Environmental Protection Agency (EPA). IWUA is concerned about the type of aquifer protection H650 creates over other aquifers, because of rules that allow Sensitive Resource Aquifers to be created. He listed six criteria needed to create a Sensitive Resource Aquifer, including quality, vulnerability, irreplaceable source, degradation to the point of needing added protection, being hydrologically interconnected with surface water; and "other criteria . . ." Mr. Semanko's point is that it seems possible to create other Sensitive Resource Aquifers, since only one criteria need be met. He proposed amending H650 to specify only the Rathdrum-Prairie Aquifer.

#### A SUMMARY OF QUESTIONS AND COMMENTS:

The Committee discussed amendments, procedures, and time lines.

**REP. JIM CLARK  
District 3**

**CON**

Rep. Jim Clark, District 3, testified in opposition to H650. He showed a diagram illustrating what land was included. It includes the 3<sup>rd</sup>, 4<sup>th</sup>, part of the 5<sup>th</sup>, and part of the 2<sup>nd</sup> districts; and affects. He noted that no county commissioner was in attendance at the Committee today. Rep. Clark said H650 did not clearly state the fee to be assessed. He was concerned that a burden was being shifted from the business community to home owners. Rep. Clark reviewed the time line that would be put in

place. It will be 18 months before money comes to Kootenai County for quality protection.

A SUMMARY OF QUESTIONS AND COMMENTS:

Rep. Clark was asked if he wanted to continue with the status quo. He said he doesn't know how to solve the problem. There is a problem; but H650 needs more work.

Chairman Stevenson noted that money from the general fund was coming out of the Health and Welfare budget, not the Department of Water Resources.

The Committee continued to discuss amendment options. Rep. Barrett raised a question of legislating to a specific problem. Rep. Raybould said there was no constitutional problem to legislate for the Rathdrum-Prairie Aquifer because it has already been designated a Sensitive Resource Aquifer, and is the only one in the state. It is not a question of legislating for one aquifer out of others like it. Rep. Bedke asked for amendments to include a petition signed by a percentage of electors, and to allow for funding in the interim before funding was available to the county.

**MOTION H650:**

A motion was made by Rep. Jaquet to hold H650 for time certain until Wednesday, March 1, 2006, for the purpose of sponsor amendments.

A SUMMARY OF QUESTIONS AND COMMENTS:

Rep. Barraclough noted that DEQ designates Sensitive Resource Aquifers. There are three other Sole-Source Aquifers in Idaho. He made an anecdotal point that contaminants are difficult and expensive to clean up. He supports passing H650 in some form in order to prevent contamination.

Rep. Barrett said she preferred implementing H650 "by way of an election." Rep. Henderson said he did not oppose an election amendment. Mr. Semanko said amendments would be brought that made H650 more specific to the Rathdrum-Prairie Aquifer, and addressed other concerns.

**VOTE H650:**

The motion to hold H650 for time certain until Wednesday, March 1, 2006, for the purpose of sponsor amendments passed by voice vote.

**S1258:**

Sharon Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG), presented S1258 allowing certain state facilities to obtain a facility fishing permit. The permits are free and will have no fiscal impact.

**MOTION/VOTE S1258:**

A motion was made by Rep. Jaquet to send S1258 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Jaquet will carry S1258 on the floor.

**S1259:**

Karl Dreher, Director, Idaho Department of Water Resources (IDWR), presented S1259 amending Idaho Code Section 42-605 to change notification time requirements for water districts. The proposed changes reduce the time requirement prior to meetings. The changes will improve participation at annual meetings, and allow for special meetings to be held in a timely manner.

**MOTION/VOTE  
S1259:**

A motion was made by Rep. Wood to send S1259 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Wood will carry S1259 on the floor.

**IDWR Presentation:**

Chairman Stevenson requested that the IDWR Presentation be deferred. Karl Dreher, Director, Idaho Department of Water Resources (IDWR), and Committee members agreed. The presentation will be rescheduled.

**ADJOURN:**

The meeting was adjourned at 3:32 p.m.

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Representative John A. Stevenson

Chairman

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Mona Spaulding

Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE:** March 1, 2006

**TIME:** 1:30 p.m. or upon adjournment

**PLACE:** Room 412

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

**ABSENT/EXCUSED:** None.

**GUESTS:** Mark Benson, Potlatch Corporation, Barbara Jordan, Idaho Trial Lawyers Association (ITLA); Jack Lyman, Idaho Mining Association (IMA); Mike Nichols, Southern Idaho Timber Protective Association (SITPA), Clearwater-Potlatch Timber Protective Association (C-PTPA); Rep. Bob Nonini, District 5; Grant Simonds, Executive Director, Idaho Outfitters & Guides Association (IOGA); Howard Weeks, C-PTPA; Jane Wittmeyer, Intermountain Forest Association (IFA); Mark Woods, SITPA

See sign-in sheet for other guests.

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

**MINUTES:**

**February 23, 2006**  
**February 27, 2006**

A motion was made by Rep. Saylor to approve the minutes of February 23, 2006 as written. The motion passed by voice vote.

A motion was made by Rep. Saylor to approve the minutes of February 27, 2006 as written. The motion passed by voice vote.

**S1299:** Rep. Lawrence Denney, District 9, presented S1299, legislation to define the term "Nonprofit Timber Protective Association" (NTPA), and to provide specified restrictions relating to liability of NTPAs and their employees while acting within the scope of their employment while performing contracts with the state of Idaho, or any agency of the state of Idaho. He introduced two fire marshals: Howard Weeks and Mark Woods.

**HOWARD WEEKS:** Howard Weeks, Chief Fire Warden, Clearwater-Potlatch Timber Protective Association (C-PTPA), Orofino, testified in support of S1299. He gave a brief history of timber protective associations since first organized in 1905. Firefighters working for the protective associations are not covered by the state's liability insurance. The associations have always believed that they were insured when they performed their duties under state contracts, or contracts with state agencies. They do not fall under the aegis of state protection due to the nature and structure of their associations as non-profit corporations. Mr. Weeks submitted a letter from Harriet A Hensley, Deputy

**PRO**

Attorney General, Natural Resources Division, expressing an informal opinion by the AG that S1299 “bears a rational relationship to a legitimate legislative objective concerning the purposes and goals of the Idaho Forestry Act,” and a summary overview. (Exhibits 1 and 2)

QUESTIONS/COMMENTS: None.

**MARK WOODS:**  
**Southern Idaho**  
**Timber Protective**  
**Association**

**PRO**

Mark Woods, Chief Warden, Southern Idaho Timber Protective Association (SITPA), testified in support of S1299. He explained the relationship between the associations and the state, and how the associations function in their contract relationships. Although the associations are private non-profit corporations, they are often referred to as “quasi-governmental,” in that they are appointed and empowered to act for the state. The associations do maintain their own liability insurance when not performing under contract to the state. They are concerned with how to determine adequate insurance coverage. Expensive homes and improvements are increasingly being built away from urban population centers. It is not hard to imagine a situation where the value of damaged improvements will be more than existing insurance coverage; or that adequate insurance coverage will not be available. Employees are concerned that personal assets may be at risk. The associations have always believed they were political subdivisions of the state while, in reality, they are not. S1299 makes an insertion in the Idaho Forestry Act to provide the associations with the same coverage as state employees, but only when performing contracts with the state.

QUESTIONS/COMMENTS: Rep. Jaquet asked how the associations were insured on federal lands. Mr. Woods said they worked through a state agreement through the Idaho Department of Lands (IDL), which contracts with the federal government to exchange resources.

Rep. Jaquet asked if the associations had explored acquiring their own coverage. Mr. Woods said they have a \$10 million dollar policy for general liability and an umbrella policy for an additional \$5 million dollars. Losses could easily exceed coverage. It is difficult to establish how much coverage is adequate; and it is possible that adequate coverage will not be able to be obtained at some point.

**MIKE NICHOLS:**  
**SITPA/C-PTPA**

**PRO**

Mike Nichols, attorney, representing SITPA/C-PTPA, testified in support of S1299. The question as to whether or not the associations had liability insurance under the Idaho Forestry Act came to his attention last June when Mr. Weeks and Mr. Woods came to him with the question. He thought they did not have coverage, basing his opinion on the Idaho Tort Claims Act. He summarized his reasoning for the Committee. Responding to Rep. Jaquet's questions, Mr. Nichols said the associations, as private corporations, have unlimited liability when they perform on federal land under contract with IDL. When they perform as a “loaned servant” to the federal government, then the associations might be subject to the Federal Tort Claims Act. He emphasized that it is not possible to know what insurance will be available in the future. The nature of insurance claims is changing in rural areas.

QUESTIONS/COMMENTS: None.

**JANE WITTMAYER:**  
**Intermountain Forest Association**

Jane Wittmeyer, Intermountain Forest Association (IFA), spoke in support of S1299.

**PRO**

**BARBARA JORDAN:**  
**Idaho Trial Lawyers Association**

Barbara Jordan, Idaho Trial Lawyers Association (ITLA), testified in opposition to S1299. She said ITLA was not opposed to the intent of S1299, but the bill is crafted to “ask for more than is indicated.” She said the Idaho Tort Claims Act doesn’t give employees immunity from any action that would occur, as the associations have indicated. It provides a defense for the state and employees with a limit of \$500,000. ITLA tries to stop bills giving immunity to any class, because it always transfers responsibility to someone else who is typically unaware of the new burden. Transferring liability does not stop litigation. Ms. Jordan said it would be preferable to have the forest protective associations as state agencies.

**CON**

QUESTIONS/COMMENTS: Rep. Bedke asked for clarification that the ITLA was opposed to S1299 although it was her position that it encouraged lawsuits. Ms. Jordan said ITLA always seeks to have legislation drafted with precise language, as it is preferable to fighting for changes later.

**MARK BENSON:**  
**Potlatch Corporation**

Mark Benson, Director of Public Affairs, Potlatch Corporation, testified in support of S1299. He said Potlatch, Corp. came into existence about the same time as the forest protective associations. The company has relied on the associations. It isn’t reasonable for association employees under state contract not to be covered similarly to their state and federal counterparts, when they do the same jobs side-by-side.

**PRO**

QUESTIONS/COMMENTS: Rep. Jaquet asked who else fights fires on Potlatch property. Mr. Benson said the state is divided into “sections of authority.” Some Potlatch land lies in state protection, and some in the Clearwater-Potlatch Timber Protective Association (C-PTPA). Rep. Jaquet asked if there are also rural fire agencies. Mr. Benson said there are a few that mostly have structural fire responsibility. There are exceptions where the state has designated wildland fire responsibilities to rural agencies. If a rural fire department is involved, it is covered under the Idaho Tort Claims Act. Rep. Jaquet said she was trying to get a frame of reference. She asked who provides coverage for volunteers. Mr. Wood said most fire protection agencies maintain cooperative agreements to exchange people and equipment as needed, because of the emergency response nature. One agency (for example, BLM, USDA FS) is assigned primary jurisdiction for each fire. Once the lead agency calls for an assist, it is that agency’s responsibility to cover everyone. The state, not the associations, has control under the contract. Forest protective associations fall outside Idaho Tort Claim law, yet Idaho statute sets assessment rates for their membership. If an association is sued, the Land Board has to agree to any settlement.

**MOTION/VOTE S1299:**

A motion was made by Rep. Eskridge to send S1299 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Denney will carry S1299 on the floor.

**H650:**

Rep. Bob Nonini, District 5, presented H650, legislation previously heard before the Committee on February 27, 2006, and held Time Certain until March 1, 2006 for the purpose of drafting amendments. Rep. Nonini spoke to

the amendments, which clarifies the use of, creation of, and ability to borrow monies for an Aquifer Protection District; limits use only to the Rathdrum Prairie Aquifer; requires an election within the boundaries of the proposed district, and makes specifications. (Exhibit 3) He submitted a letter from the Kootenai County Board of Commissioners, indicating their support of H650 as amended. (Exhibit 4)

Rep. Frank Henderson, District 5, Co-Sponsor, expressed his appreciation to the Committee for their work in drafting amendments. He said H650 was “a better bill.”

**MOTION  
AMENDMENTS H650:**

A motion was made to accept amendments designated RS15967A2 by Rep. Eskridge, second by Rep. Stevenson.

**MOTION H650:**

A motion was made by Rep. Moyle to send H650 with Committee amendments attached to the amending order. The motion passed by voice vote. Rep. Nonini will carry H650 on the floor.

QUESTIONS/COMMENTS: Rep. Eskridge asked if all legislative members from affected districts now supported H650. Rep. Nonini said he hasn't talked to all members, but noted there was no opposition in the room. He indicated that he had briefed Rep. Jim Clark, District 3, who had previously opposed H650.

Rep. George Saylor, District 4 supported H650.

**PRIVILEGED  
COMMITTEE  
AUTHORIZATION:**

Chairman Stevenson submitted a letter from Rep. Bruce Newcomb, Speaker of the House of Representatives, designating Resources and Conservation a privileged committee for the purpose of introducing RS16166 and RS16183. (Exhibit 5)

**RS16166:**

Rep. John Stevenson, presented RS16166, a Concurrent Resolution rejecting the Idaho Department of Fish and Game pending rules governing importation, possession, release, sale or salvage of wildlife (IDAPA 13.01.10).

**MOTION/VOTE  
RS16166:**

A motion was made by Rep. Bedke to introduce RS16166 for printing and send directly to the second reading order. The motion passed by voice vote. Rep. Stevenson will carry the bill on the floor.

**RS16183:**

Rep. Mike Mitchell, presented RS16183, a House Joint Memorial addressing concerns of Idaho's outfitters and guides industry should the Federal Lands Recreation Enhancement Act be repealed.

QUESTIONS/COMMENTS: None.

**GRANT SIMONDS:  
Executive Director,  
Idaho Outfitters &  
Guides Association**

Grant Simonds, Executive Director, Idaho Outfitters & Guides Association, testified in support of RS16183.

**MOTION/VOTE  
RS16183:**

A motion was made by Rep. Wood to introduce RS16183 for printing and send directly to the second reading calendar. The motion passed by voice vote. Rep. Mitchell will carry the bill on the floor.

**JACK LYMAN:  
Idaho Mining Briefing**

Jack Lyman, Idaho Mining Association (IMA), submitted a written report, Idaho's Mining Industry at a Glance - 2000-2004 (Exhibit 6) Mineral production during the five-year period produced and processed minerals valued at \$4.2 billion dollars. That figure includes phosphate mining and processing, \$3 billion dollars; molybdenum and silver production, \$473 million dollars; sand and gravel, \$292 million dollars; and other minerals, \$440 million dollars. Workers in the industry earned \$882 million dollars in wages during the five-year period. The economic impact is state-wide, but particularly important in local areas. The industry generated \$62 million dollars in taxes, fees and royalties during the period—of which, about \$29 million dollars was in the form of property taxes. Mr. Lyman congratulated the legislature for establishing stable policies and statutes that create a framework for mining to flourish, as world markets allow.

QUESTIONS/COMMENTS: Rep. Barrett expressed appreciation for the presentation. She noted that mining is still an important Idaho industry.

**ANNOUNCEMENTS:**

There will be no Committee meeting Friday, March 3<sup>rd</sup>. The Senate Resources and Environment Committee has extended an invitation to their meeting in the Gold Room, 1:30 p.m., for a presentation concerning the increase in Idaho's pheasant population.

**ADJOURN:**

The meeting was adjourned at 2:35 p.m.

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Representative John A. Stevenson

Chairman

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Mona Spaulding

Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE:** March 7, 2006

**TIME:** 1:30 p.m. or upon adjournment

**PLACE:** Room 412

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

**ABSENT/  
EXCUSED:** Reps. Barrett, Bedke, Moyle, Roberts, Wood

**GUESTS:** Sharon Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG)  
  
See sign-in sheet for other guests.

**CALL TO  
ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:52 p.m. The secretary took a silent role call.

**MINUTES:  
March 1, 2006** A motion was made by Rep. Saylor to approve the minutes of March 1, 2006 as written. The motion passed by voice vote.

**S1385:** Rep. George Eskridge, District 1, presented S1385, legislation to provide the opportunity for all disabled persons to obtain a combination hunting and fishing license or a fishing license at a reduced fee. The conceptual change made in S1385 is to base the license on disability and not income. It clarifies that disability can be determined on several different factors but not solely upon SSI or income determinations, and adds a physician's determination of permanent disability to the list of factors possible for qualification. Currently disability for this purpose is based on disability income. Once a determination of permanent disability has been made with IDFG, the determination remains on file within the electronic filing system and the license holder is not required to prove disability each year.

Rep. Eskridge read a letter from Steven Imlay supporting S1385. (Exhibit 1) Mr. Imlay is a double amputee who documents the procedures a disabled person follows to qualify for a permit under current IDFG policy.

**QUESTIONS/COMMENTS:** Chairman Stevenson asked for clarification as to what would happen if a "permanent disability" was not permanent. Rep. Eskridge said a doctor could remove certification if appropriate.

Rep. Saylor asked who would be authorized to follow-up changes in disability determination. Rep. Eskridge said IDFG could adopt procedures in their rule-making process.

**SHARON  
KIEFER:  
Legislative  
Liaison IDFG**

Sharon Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG), testified in opposition to S1385. IDFG supports disabled sportsmen, but focuses on access enhancement and weapons assistance. Ms. Kiefer submitted written testimony (Exhibit 2), and a letter from Steven M. Huffaker, Director, IDFG, (Exhibit 3). S1385 changes the department's standardized policy which includes a financial means test. The legislation does not include a standardized definition of permanent disability.

**CON**

QUESTIONS/COMMENTS: None.

**MOTION/VOTE  
S1385:**

A motion was made by Rep. Mitchell to send S1385 to the floor with a DO PASS recommendation.

Discussion: Rep. Eskridge said procedures to qualify for disability could be established in IDFG rules. In the early 1990's, IDFG had a definition of permanent and total disability in their Administrative Rules.

The motion passed by voice vote. Rep. Eskridge will carry S1385 on the floor.

**S1391:**

Representative Wendy Jaquet, District 25, presented S1391, legislation providing a mechanism for the Idaho Department of Fish and Game (IDFG) to issue a big game permit or tag to a qualified 501 C(3) organization for the purpose of providing children who have life threatening medical conditions an opportunity to participate in a big game hunt in Idaho. IDFG will promulgate rules to qualified organizations.

**SHARON  
KIEFER:  
Legislative  
Liaison IDFG**

Sharon Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG), testified in support of S1391. The bill has a narrow scope that doesn't detract from the hunting opportunities of others, or require the Commission to define "life-threatening condition." It requires two exceptions from rules: 1) possible exemption from the hunter's education requirements; and 2) possible exemption for the age of the minor child. IDFG believes it can safely make accommodation; and can reconcile exceptions through the rule-making process.

**PRO**

QUESTIONS/COMMENTS: None.

**MOTION/VOTE  
S1391:**

A motion was made by Rep. Saylor to send S1391 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Jaquet will carry S1391 on the floor.

**ADJOURN:**

The meeting was adjourned at 2:11 p.m.

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Representative John A. Stevenson

Chairman

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Mona Spaulding

Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** March 9, 2006
- TIME:** 1:30 p.m. or upon adjournment
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Saylor, Jaquet, Mitchell
- ABSENT/EXCUSED:** Reps. Bedke, Moyle, Roberts, Shepherd(8), Wood
- GUESTS:** Jeff Allen, Policy Advisor, Office of Species Conservation (OSC); Jim Caswell, Administrator, OSC; Nate Fisher, Environmental Liaison, OSC; Steven Huffaker, Director, Idaho Department of Fish and Game (IDFG); Norm Semanko, Idaho Water Users Association (IWUA)
- See sign-in sheet for other guests.
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 2:43 p.m. The secretary took a silent roll call.
- MINUTES:**  
**March 7, 2006** A motion was made by Rep. Saylor to approve the minutes of March 7, 2006 as written. The motion passed by voice vote.
- Chairman Stevenson welcomed the group of students in attendance from Jefferson Montessori school.
- COMMITTEE BRIEFING:**  
**Office of Species Conservation** Jim Caswell, Administrator, Office of Species Conservation (OSC), gave a synopsis of the presentation and those who will be making the presentations. He submitted exhibits: Federally Appropriated Funds 2001-2006, (Exhibit 1); and a package comprised of a cover memorandum from Mr. Caswell to Senator Gary Schroeder and Rep. Bert Stevenson, together with a draft proposal, Rare and Declining species in Idaho: An assessment and Recommendation to the Idaho Legislature, (Exhibit 2).
- Mr. Caswell gave an update on several programs, including the Grizzly Bear Management Plan, slickspot peppergrass, snails, Sage Grouse, sturgeon, Yellowstone cutthroat, bull trout, ground squirrels, and the spotted frog. See Exhibit 2.
- OSC is administering the roadless effort in Idaho. 9.3 million acres of national forest lands are being considered for potential development. A small part of the total is expected to be altered by proposed logging, road building and other projects. Over the last 4-5 months, sixty meetings have been posted by counties around the state. Between now and the end of June, OSC will be developing recommendations.

QUESTIONS/COMMENTS: Rep. Field asked if the spotted frog was the frog located near Bruneau. Mr. Caswell said it was. There is an area of land where the spotted frogs are in an area intermingled with state and private land. IDFG and the landowner have negotiated an agreement to protect the frogs in the area, and continue to study the dynamics of habitat and populations. Cows are fenced out of critical areas, and are being watered offsite. IDFG paid IDL for the use of the land during the period of the study. All agree that spotted frogs are rare and vulnerable, and that little is known about them.

Mr. Caswell reviewed Exhibit 1. He said management responsibilities for the program have increased to a full-time position. OSC is making changes to its staff and work load assignments.

Mr. Caswell said OSC was charged with bringing a report to the legislature. This hasn't been done in the past for various reasons. There is now a draft report submitted for the Committee's recommendation. (Exhibit 2)

**Nate Fisher, Environmental Liaison, OSC**, presented Exhibit 2, section by section. There are 1191 known animal species in Idaho, both vertebrate and invertebrate. 229 species are identified as Species of Greatest Conservation Need, or "rare and declining species."

QUESTIONS/COMMENTS: Chairman Stevenson noted that the Leadership Committee charged with developing the Comprehensive Wildlife Conservation Strategy (CWCS) included over a dozen participants from state, local and federal government entities, the university system, and conservation groups. The Committee has worked on the project for the past 2-3 years.

Rep. Brackett asked why plants were not included in the CWCS. Mr. Fisher said part of the discussion OSC needs to have with the legislature is how to bring plants into the program. Mr. Caswell said IDFG has started to review plant species. The Recommendation Section, page 9, states: "rare and declining native plants should be added to the Strategy."

Rep. Jaquet asked about funding for contracts done to-date (Exhibit 1). Mr. Caswell said IDFG did the CWCS with federal funds and state non-game money. OSC contributed to the effort with state-appropriated funds. Nothing has been planned for further development. Rep. Jaquet asked if additional money was needed that wasn't "tied to license fees." Mr. Caswell said yes.

Chairman Stevenson asked if money from the grant was still available. Steven Huffaker, Director, IDFG, said the Congressional appropriation, which is matched by the Bluebird License Plate Fund, is still in place to develop a state-wide strategy.

Rep. Andrus asked who has gone into the field to make the determination for the animals listed in the report. Mr. Caswell said there has been scientific support, but also judgement calls. He said more work was needed for the state to have defensible positions.

Rep. Jaquet commented that it was good to be proactive. She asked why OSC was charged with the roadless task force, because it seems

not to be part of OSC's mission; and if strategic planning was underway to plan for the loss of Craig-Wyden funds. Mr. Caswell did not address the question relating to OSC being charged with the roadless task force. He said, informally, he has worked on the Craig-Wyden issue through the Western Governor's Association (WGA). Rep. Jaquet said she had read the resolution relating to leasing public lands to the State Land Board rather than selling public land as a monetary replacement for the Craig-Wyden funds (HJM21). She asked Mr. Caswell to review HJM21 prior to the phone call conference scheduled for March 10, 2006. He said he would.

Rep. Andrus said it would be difficult to defend the long list of vulnerable species. Mr. Caswell said the list would grow. Chairman Stevenson said an effort has been made to address the most vulnerable areas.

Chairman Stevenson referred Committee members to a letter each received last fall regarding the roadless areas. He asked if members had participated in the county's program. Counties are working with Mr. Caswell.

QUESTIONS/COMMENTS: None.

**Jeff Allen, Policy Advisor, Office of Species Conservation (OSC)**, gave a briefing on recent wolf management developments in Idaho, eastern Washington, Montana and Wyoming. Montana and Idaho have developed acceptable wolf management plans. The USDA Forest Service is not going forward with those plans pending an acceptable resolution of Wyoming's plan. The legislative opportunity for action in Wyoming is past for 2006. Wyoming intends to pursue a litigious strategy. The wolf has recovered biologically. What remains is a bureaucratic problem.

QUESTIONS/COMMENTS: Rep. Barraclough asked if Wyoming had faith that it would prevail in a lawsuit. Mr. Allen said the Governor of Wyoming hasn't left room for negotiation. Most of Wyoming's wolves are in a national park where the state has no control. Those on public lands are not where there is much grazing. Wyoming doesn't have as much public pressure to gain state management; and Wyoming is accustomed to federal management of their large predators. Idaho continues to work with and include Wyoming as it works through the issue.

**Steven Huffaker, Director, IDFG**, said IDFG was directed by the Commission in January to develop a final proposal on the Lolo Elk Management Zone to restore the elk population. Over 42,000 public comments on the proposal have been received—most from the email phone tree. At the Commission meeting of March 5-6, 2006, staff was given up to 30 days to incorporate those comments. The intent is to make the strongest biological case to remove 75% of wolves in the impact area.

QUESTIONS/COMMENTS: Rep. Jaquet said at a recent meeting in Grangeville, a Forest Service biologist indicated that when populations of wolves diminish, the natural effect is increased birthrates. Director Huffaker said that was correct. IDFG proposes to harvest a reproductive increment every year for 4 years until the prey species (elk) are back on their feet and can absorb predatory pressure.

**Jim Caswell, Administrator, OSC**, summarized the recommendation before the Committee. OSC recommends that the Idaho Legislature establish a Task Force to fully explore the issues surrounding rare and declining species.

Chairman Stevenson said the Committee would make a recommendation to OSC as requested.

**S1352:** **Norm Semanko, Idaho Water Users Association (IWUA)**, presented S1352 proposing to increase the maximum charge authorized for irrigation districts to handle checks returned for insufficient funds. Districts can now charge \$10, a fee put into place in 1983. S1352 raises that fee to \$25, which reflects 2006 costs.

QUESTIONS/COMMENTS: Rep. Mitchell asked if S1352 would affect the Lewiston Orchard District. Mr. Semanko said yes. Rep. Mitchell said it recently came to his attention that there was a 30-day grace period for nonpayment of water fees. He asked if this was standard, and legal. Mr. Semanko said it was legal, but not standard. Each district has its own policy. S1352 does not compel action.

**MOTION/VOTE S1352:** A motion was made by Rep. Field to send S1352 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Jaquet will carry S1352 on the floor.

**S1353:** **Norm Semanko, Idaho Water Users Association (IWUA)**, presented S1353, proposing to delegate comprehensive authority to the Idaho Department of Water Resources (IDWR) over the appropriation of waters of the state. S1353 reaffirms existing Code regarding the creation of a water right. It results from confusion last year in one municipality that purported to be able to prohibit diversion and create a new water right within its boundaries. Mr. Semanko said IDWR has had input in drafting the bill; but takes no official position.

QUESTIONS/COMMENTS: None.

**DENNIS TANIKUNI:** Dennis Tanikuni, Farm Bureau, testified in support of S1353 saying clarification was important.

**PRO**

**MOTION/VOTE S1353:** A motion was made by Rep. Field to send S1353 to the floor with a DO PASS recommendation.

QUESTIONS/COMMENTS: Rep. Mitchell asked if Idaho counties or cities had taken any position on S1353. Mr. Semanko said the cities were comfortable with the bill.

Rep. Eskridge asked Rep. Mitchell to yield as to whether S1353 involved the Lewiston Orchard Irrigation District. Rep. Mitchell said he didn't think so.

The motion to send S1353 to the floor with a DO PASS recommendation passed by voice vote. Rep. Field will carry the bill on the floor.

**ADJOURN:**

The meeting was adjourned at 3:55 p.m.

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Representative John A. Stevenson

Chairman

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Mona Spaulding

Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

<b>DATE</b>	March 13, 2006
<b>TIME</b>	1:30 p.m. or upon adjournment
<b>PLACE</b>	Room 412
<b>MEMBERS</b>	Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Saylor, Jaquet, Mitchell
<b>ABSENT/EXCUSED</b>	None.
<b>GUESTS</b>	<u>Jo Beeman</u> , Attorney, Water Resource Coalition; <u>Jeff Fereday</u> , Attorney, Idaho Ground Water Appropriators (IGWA); <u>Dick Rush</u> , Legislative Advisor, Idaho Association of Commerce & Industry (IACI); <u>Norm Semanko</u> , Idaho Water Users Association (IWUA); <u>Lois Van Hoover</u> , Valley County; <u>Rick Waitley</u> , Food producers of Idaho  See sign-in sheets for other guests.
<b>CALL TO ORDER</b>	A quorum being present, the meeting was called to order at 2:16 p.m.
<b>MINUTES March 9, 2006</b>	A motion was made by <u>Rep. Wood</u> to approve the minutes of March 9, 2006 as written. The motion passed by voice vote.
<b>REPORT Office of Species Conservation</b>	<u>Chairman Stevenson</u> asked for the Committee to take under consideration the report submitted by <u>Jim Caswell, Administrator, Office of Species Conservation</u> at the meeting of March 9, 2006.  A motion was made by <u>Rep. Field</u> to accept the OSC report, and the Administrator's request to recommend two Representatives to work with the proposed task force on rare and declining species. The motion passed by voice vote.  The gavel was passed to <u>Chairman Wood</u> to chair the remainder of the meeting.
<b>H736</b>	<u>Rep. John A. Stevenson, District 26</u> , presented H736, legislation amending existing law relating to ground water districts. Membership for nonirrigators is clarified, credit for contribution by a nonirrigator's mitigation plan toward the district's mitigation obligation is provided for; assessment review of nonmember participants by IDWR is allowed; and the equitable petition of exclusion of lands from a ground water district by a nonirrigator is provided for. <u>Rep. Stevenson</u> gave an overview of the issues that result in H736. The substance of the bill is on page 3. Concerns on these issues remained at the end of last session, most from uncertainty as to whether a district's mitigation obligation included credit for the nonirrigator's mitigation plan. That inclusion has been clarified in H736.

Amendment RS16108A1 is submitted to remove the term “or replacement water” where it appears in the bill, because the term is not used elsewhere in statute.

QUESTIONS/COMMENTS: None.

**JEFF FEREDAY**  
**Idaho Ground Water**  
**Appropriators**

**CON**

Jeff Fereday, Attorney, Idaho Ground Water Appropriators (IGWA), testified in opposition to H736 because it could be read as keeping the board of a district from having any oversight or engaging in any review over exclusions. There is a ground water district statute that already allows any member of a ground water district to come forward and petition the board of the district for an exclusion similar to those allowed by irrigation districts. In the case of the ground water district, current law considers whether the exclusion would impair the ground water district’s ability to carry out mitigation plans or bear its debt load, and whether it is in the best interest of the district. H736 undercuts the ability to make those assurances. The exclusion portion of the bill is the main concern. The Director of Water Resources has imposed a replacement water requirement on (Mr. Fereday’s clients). Mr. Fereday said removing the words “replacement water” from the bill isn’t a good idea.

QUESTIONS/COMMENTS: Chairman Wood asked if his concern was addressed at the bottom of page 4 (3), stating that costs incurred by the district in carrying out an exclusion proceeding shall be assessed as provided in section 42-5253. Mr. Fereday said it was not because the legislation would set aside those considerations currently made in a hearing, including the ability of a ground water district to repay obligations.

Rep. Raybould, said language at the top of page 4 specifically takes into account the obligations of a nonmember participant in the assessments and costs of a ground water district. Mr. Fereday said “actually the nonmember participant is a nonmember participant in a mitigation plan, and there are other provisions in statute that speak to that.” The problem is when there is an existing assessment, based in part on an existing assessment base. A petition for exclusion needs to be reviewed as to potentially impairing the districts ability to meet it’s existing obligations.

Rep. Raybould said there was language on page 3 to protect the district. Mr. Fereday said that assessment for mitigation may be significantly different and smaller than assessment for the general support of the district. He said H736 was not good policy. Policy for ground water districts should be similar to what irrigation districts now have.

**JO BEEMAN**  
**Water Resource**  
**Coalition**

**PRO**

Jo Beeman, Attorney, Water Resource Coalition, testified in support of H736. She said the major change last session was to add a 30-year bonding authority. There were unintended consequences. The opt-out option has existed, but was unintentionally changed. H736 returns to the 1995 statute for exclusions concerning ground water districts, which are different from irrigation districts. Everyone in an irrigation district irrigates. Ground water districts have irrigators, but also domestic, commercial, municipal, and industrial users. They don’t have a canal system in common. Some have wells. When they use water as irrigators they are members of a district.

QUESTIONS/COMMENTS: Chairman Wood asked who holds hearing when a nonirrigator petitions for exclusion. Ms. Beeman said the Board of Directors. The hearing is what's new—inserted last session for the first time, based on criteria that was also added then. Prior to last year, anyone could opt-out. Last year membership was made mandatory for irrigators. The opt-out option could be used based on the criteria mentioned by Mr. Fereday. Prior to the change last year, a petition was filed to request exclusion. Even if excluded, there was still the financial obligation that existed at the time of exclusion. That process has been the same since 1995. The hearing process was added last year.

Rep. Jaquet asked specifically about constituents in her district, Helen and Gary DeMoss. Ms. Beeman said H736 didn't affect them as much as H737. She does represent the DeMoss's. They are not currently within the boundaries of a ground water district. They would not be allowed any credit if they were to become a member within a ground water district.

**DICK RUSH**  
**Idaho Association**  
**of Commerce &**  
**Industry**

**PRO**

Dick Rush, Legislative Advisor, Idaho Association of Commerce & Industry (IACI), testified in support of H736. He said it was known at the end of last session that this issue would be revisited. He emphasized that it is not only the J.R. Simplot Co. that has an interest in the bill. The potato processing industry is highly regulated. It is different from irrigation farmers. The processors do pay mitigation costs.

QUESTIONS/COMMENTS: None.

**RICK WAITLEY**  
**Food Producers of**  
**Idaho**

**PRO**

Rick Waitley, Food Producers of Idaho (FPI), testified in support of H736. He said that the Farm Bureau is refraining from support at this time; and that IWUA is opposed to the bill until they meet Friday.

QUESTIONS/COMMENTS: None.

**NORM SEMANKO**  
**Idaho Water Users**  
**Association**

**PRO**

Norm Semanko, Idaho Water Users Association (IWUA), testified in support of H736. He said he supported the original well-thought out legislation that allowed: 1) ground water users to come together collectively to be represented in such things as the Snake river Basin Adjudication, and 2) ground water users to come together for purposes of being assessed as, for instance, in mitigation plans. IWUA supports H736 as well, but with the small suggested changes, which are: 1) To remove the term "replacement water" from the legislation. This is the only way to be clear that there is no intention to take sides on the issue ordered by the Director of IDWR. This doesn't affect the legal issue, or the way Director Dreher looks at the issue. It does allow for neutrality. The mitigation plan is in code, and has been for a long time. Replacement water has not. H736 is not the vehicle to take up the issue comprehensively. 2) To establish that the credit being provided is an assessment credit. Ground water districts and irrigation districts serve different purposes.

QUESTIONS/COMMENTS: Rep. Raybould said language in the bill on page 4, lines 13, 16 and 20 refer to "irrigation lands." The common term is "irrigated lands." He suggests making the language change when the bill is at the amending order. Rep. Stevenson said the language was

provided by the bill drafter. He will talk with Katharine Gerrity.

Mr. Fereday suggests the word “assessment,” page 3, line 39 be added in front of the word assessment to read “shall be entitled to assessment credit.” Chairman Wood said if assessment credits are necessary, that is covered in other parts of the bill. If there is a private mitigation plan, then the ground water district ought to get credit. She is opposed to the addition of that word at that place.

Rep. Bedke asked if Mr. Fereday supported H736 before the amendment. Mr. Fereday said he was in support of the statute, but not with the bill and certainly not with the amendments.

Rep. Stevenson suggested inserting on page 3, line 39-40 “entitled to an assessment,” and deleting the last two lines, which would no longer apply with that addition. He said he would clarify the language with Katharine Gerrity. Rep. Stevenson said nonirrigators can be members for mitigation only if they want to participate.

**MOTION/VOTE H736** A motion was made by Rep. Stevenson to accept the RS16108A1 amendment to H736, second by Rep. Moyle.

A motion was made by Rep. Raybould to send H736 to the amending order with amendments RS16108A1 attached, and to make changes in the bill to change the word “irrigation” to “irrigated.”

The motion passed by voice vote. Rep. Stevenson will carry H736 on the floor.

**H737** Rep. John A. Stevenson, District 26, presented H737 amending existing law as to when holders of certain ground water rights shall be deemed nonmember participants solely for mitigation purposes in a ground water district pursuant to the provisions of section 42-5259, and to provide for reasonable notice and opportunity to join the district; and to provide the director of the Idaho Department of Water Resources appropriate remedy against such ground water right if the holder elects not to join a ground water district and does not have an approved mitigation alternative. Amendment RS16109A1 is submitted to remove the term “or replacement water” where it appears in the bill, because the term is not used elsewhere in statute.

QUESTIONS/COMMENTS: None.

**JEFF FEREDAY**  
**Idaho Ground Water**  
**Appropriators**

Jeff Fereday, Attorney, Idaho Ground Water Appropriators (IGWA), testified in opposition to H737 because it changes the purpose of H848 which required nonmembers to participate for mitigation purposes. It leaves the opt-out process undefined, and the ground water district with uncertainty as to their assessment base.

**CON**

QUESTIONS/COMMENTS: None.

**JO BEEMAN**  
**Water Resource**  
**Coalition**

Jo Beeman, Attorney, Water Resource Coalition, testified in support of H737. She said what H848 did in 2004--and H737 does not change--is ensure that those who use groundwater, or affect or injure senior users, can't be “free riders.” H848 mandated users into the district without a chance to vote. H737 returns appropriate due process and notice.

**PRO**

QUESTIONS/COMMENTS: None.

**DICK RUSH**  
**Idaho Association**  
**of Commerce &**  
**Industry**

Dick Rush, Legislative Advisor, Idaho Association of Commerce & Industry (IACI), testified in support of H737 as a due process correction.

QUESTIONS/COMMENTS: None.

**PRO**

**RICK WAITLEY**  
**Food Producers of**  
**Idaho**

Rick Waitley, Food producers of Idaho, testified in support of H737. He said that the Farm Bureau is refraining from support at this time; and that IWUA is opposed to the bill until they meet Friday.

**PRO**

QUESTIONS/COMMENTS: None.

**NORM SEMANKO**  
**Idaho Water Users**  
**Association**

Norm Semanko, Idaho Water Users Association (IWUA), testified in support of H737. To clarify Mr. Waitley's statements, he said IWUA did consider H737 last Friday, and supports the bill with amendments removing the words "replacement water." The term "replacement water" is not defined in code and is a matter of contention.

**PRO**

QUESTIONS/COMMENTS: None.

**MOTION/VOTE H737**

A motion was made by Rep. Stevenson to accept the amendment RS16109A1 to H737, second by Rep. Raybould.

A motion was made by Rep. Moyle to send H737 to the amending order with amendments RS16109A1 attached. The motion passed by voice vote. Rep. Stevenson will carry H737 on the floor.

**HJM21**

Rep. Paul Shepherd, District 8, presented HJM21, a memorial requesting to transfer management of the national forest system lands within Idaho to the State of Idaho, to be managed for the benefit of the rural counties and schools.

**LOIS VAN HOOVER**  
**Valley County**

Lois Van Hoover, Valley County Board of Commissioners, testified in support of HJM21. It provides a long-term funding solution if the Craig-Wyden money is lost. It is likely that Craig-Wyden funds will be authorized only one more time. The memorial doesn't propose to sell lands. It proposes to pass administration of the roaded front to the state of Idaho under federal oversight, and to pass profits to rural counties and schools. Public land is protected and access retained.

**PRO**

QUESTIONS/COMMENTS: Rep. Raybould called attention to the fiscal note which states there will be no fiscal impact to the general fund. He asked who would undertake administration, and how it would be funded. Ms. Van Hoover referred to page 2, line 48-49, which holds Idaho harmless from the costs of administration. She said when funds come back to the counties through the Resource Advisory Committee, or some other form, they can help fund direct administration.

Rep. Raybould asked what agency of the state would administer the forest lands. Ms. Van Hoover said it would be logical for the Idaho Department of Lands to undertake administration under the State Forest Practices Act. Rep. Raybould said nothing is said about reimbursing the state for the cost of administration. Ms. Van Hoover said the memorial is

a broad outline.

Rep. Jaquet said she believed this concept was a recommendation of the Federal State Lands Task Force several years ago. She asked if “we are repeating ourselves.” Ms. Van Hoover said she wasn’t aware of the recommendation.

Rep. Jaquet said the memorial doesn’t address concerns about overlapping the authorities of the Idaho Department of Lands, the federal government, and the endowment. There is nothing about preserving the state’s return for school endowment addressed in the memorial. Ms. Van Hoover said the land in question is not administered as the endowment lands are. Federally administrated land proceeds are addressed in Title 57, Idaho Code, already in state law.

Rep. Jaquet asked if the proposal was to lease federal forest lands to the Idaho Department of Lands, with the revenue accruing to the counties. Ms. Van Hoover said that was not correct. The memorial proposes a transfer of management as has happened in other places, for instance at the City of Rocks National Reserve on Lake Cascade. Ms. Van Hoover gave an overview of events leading up to the Craig-Wyden bill and the problem that exists if the funding is lost.

Rep. Barrett said she believed the state could manage better than the federal government. The memorial makes sense, and clarifies what she believes the Federal State Lands Task Force intended. The memorial identifies long-term, sustainable revenue, as well as a source of products for the nation.

#### **MOTION HJM21**

A motion was made by Rep. Barrett to send HJM21 to the floor with a DO PASS recommendation.

QUESTIONS/COMMENTS: Rep. Bedke said he was a member of the Federal State Lands Task Force, appointed by Governor Batt. He fully supports the concept. He said the state is now involved in a school facilities lawsuit, largely due to loss of the forest service money. There was a system in place based on a commitment from the federal government. The state manages about two millions acres of endowment land. From that there are revenues as high as \$55 million dollars a year. If the state had management of additional federal land, increased revenue is likely. There will be issues to resolve, but the idea is good.

Rep. Eskridge supports the memorial. Funding for schools has been lost, and the state-wide economy has been effected with loss of economic benefits provided by the forest products industry. Waste associated with the fuel load in national forests also creates problems in terms of forest preservation and environmental impacts, especially in northern Idaho. Many jobs have gone from those that were high-paid forest-based, to those that are the McDonald type.

#### **VOTE HJM21**

The motion to send HJM21 to the floor with a DO PASS recommendation passed by voice vote. Rep. Shepherd will carry the memorial on the floor.

COMMENTS: Rep. Mitchell asked if anyone ever had received feedback from a memorial. Rep. Barrett said Congressman Mike Simpson said that they are kept on file, referred to, and worked towards.

**ADJOURN**

The meeting was adjourned at 3:33 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE** March 15, 2006

**TIME** 1:30 p.m. or upon adjournment

**PLACE** Room 412

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

**ABSENT/  
EXCUSED** None

**GUESTS** Dan Adamson, Candidate for Idaho Governor; Vince Alberdi, Manager, Twin Falls Canal Co; C. Tom Arkoosh, Attorney, Surface Water Coalition; Tim Deeg, President, Idaho Ground Water Appropriators, Inc. (IGWA); Jeffrey C. Fereday, Attorney, IGWA; Don Hale, Committee of Nine, Water District 1; Steven Howser, General Manager, Aberdeen-Springfield Canal Co.; Randy MacMillan, Vice President, Clear Springs Foods; Jim Miller, Vice President, Idaho Power Company; Jeff Raybould, Chairman, Fremont-Madison Irrigation District; Jerry Rigby, Attorney, Water Resource Board, Committee of Nine; Ray W. Rigby, Attorney, Upper Valley Water Users, Committee of Nine; Dale Rockwood, Progressive Irrigation District, Committee of Nine; Dick Rush, Idaho Association of Commerce & Industry (IACI); Norm Semanko, Executive Director, Idaho Water Users Assoc. (IWUA); Dan Shoemaker, Chairman of the Board, Twin Falls Canal Co; Dennis Tanikuni, Farm Bureau; Lynn Tominaga, Executive Director, IGWA; Jim Tucker, Attorney, Idaho Power Company

Please see sign-in sheet for other guests.

**CALL TO ORDER** Chairman Stevenson called the meeting to order at 2:22 p.m. The secretary took a silent roll call. There were no minutes to approve.

**H800** Rep. Bruce Newcomb, District 27, Speaker of the House of Representatives, presented H800, legislation to facilitate diversion of flood flows expected in the spring of 2006 in the upper Snake River Basin into existing canal structures for the purpose of recharging the Eastern Snake Plain Aquifer. H800 makes recharge a primary use of water. He submitted an excerpt from The Senate Journal, Statement of Legislative Intent S1008, dated February 1, 1985 (Exhibit 1); Attorney General Opinion 06-2, dated 3/9/06 (Exhibit 2)

**SPEAKER BRUCE  
NEWCOMB**  
**Opening Remarks**

Speaker Newcomb said H800 does not take water rights, as some have stated. He said the argument was a “veiled threat” of a Kelo case. Speaker Newcomb said he has fought for property rights and the people who have them.

H800 is a policy change. It repeals a 1994 law that changed recharge

from a primary to a secondary use. The repeal allows for a policy change in the management of trust waters that Idaho owns pursuant to the Swan Falls Agreement ratified in 1984. The Swan Falls Agreement was negotiated by the Idaho Power Company, and the then Governor and Attorney General, and ratified by the legislature. As part of that agreement, Idaho Power Company agreed to subordinate its hydropower water rights “to subsequent beneficial upstream uses upon approval of such uses by the state in accordance with state law” subject to maintenance of a 3,900 c.f.s. average daily flow in summer, and a 5,600 c.f.s. average daily flow in winter as measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls Dam. The Swan Falls Agreement did not impose any limitations on the type of beneficial uses to which the subordination applied.

Ray Rigby is the person who conceptualized holding water in trust. He will speak to the concept and its intent.

Speaker Newcomb quoted from The Senate Journal (Exhibit 1, page 59, column 2):

“To accomplish the balancing of these potentially competing interests, this section establishes a trust in which title to certain specified water rights will be held. The trust pertains to water rights for power purposes which are in excess of minimum stream flows established by state action. . . . To the extent of the established minimum flows and any rights recognized by contract, such water rights for power purposes remain unsubordinated to all uses. . . . Any portion of such water rights above the established minimum flows will be held in trust by the State of Idaho, by and through the Governor of the State of Idaho. This trust will hold these water rights for the benefit of the power user so long as they are not appropriated as provided by law by future upstream beneficial users. The trust also operates, however, for the use and benefit of the people of the State of Idaho, to assure that water is made available for appropriation by future upstream users who satisfy the criteria of Idaho law for reallocation of the water rights held in the trust. . . . As applied to the agreement between Idaho Power company, The Governor and the Attorney General, this trust arrangement results in the State of Idaho possessing legal title to all water rights previously claimed by Idaho Power Company above the agreed minimum stream flows and Idaho Power Company holds equitable title to those water rights subject to the trust.”

Speaker Newcomb said Idaho Power Company agreed to the minimum stream flows. Water is spilled out of the upper Snake River over Milner Dam, “free gratis to Idaho Power Company all the time.” It is part of the agreement for the State to balance use in favor of rate-payers. Last year, the State acquired water at Bell Rapids. That water all goes through the Hells Canyon complex for Idaho Power Company’s benefit without charge. Idaho Power Company’s opposition to H800 is about who is going to control the water.

QUESTIONS: There were no questions.

**REP. DELL  
RAYBOULD  
Opening Remarks**

Rep. Dell Raybould, District 34, Co-Sponsor, gave the history of events leading up to H800. For the past two years, there has been an Interim Committee on Natural Resources working on water problems in the southern part of Idaho. Rep. Raybould and Senator Don Burtenshaw, Co-chairman of the Interim Committee, were directed to address specific issues pertaining to recharge of the Eastern Snake Plain Aquifer. The work has progressed and culminates in the decision that a recharge plan is needed. Two years ago, the model developed by the University of Idaho and Idaho Department of Water Resources was updated. It showed that in order to stabilize the aquifer, at least 200,000 acre-feet of water is needed each year to recharge the aquifer. About 100,000 acre-feet is accomplished by the USDA in the Conservation Reserve Enhancement Program (CREP). Rep. Raybould said not taking water out of the aquifer is the same as putting it in.

Considerably more water than 100,000 acre-feet is needed to stabilize the aquifer. Problems go back two years ago to water delivery calls made in water districts 120 and 130. The call included thirteen cities in southern Idaho that would have had water rights in jeopardy because of spring flows coming out of the aquifer. The Interim Committee's decision is that recharge programs are needed. The best and fastest way to proceed is to get water out of the river when there are high flows, and to fill the canal system in the upper valley, especially around Twin Falls.

The 1994 statute made recharge a beneficial use for the state, but had another clause subordinating recharge to water for investor-owned utilities. That clause breaches the Swan Falls Agreement that established Idaho Power Company's water rights, and places a cloud over the state's water in excess of the company's minimum rights at the Murphy gauge just below Swan Falls Dam. It was decided that an Attorney General's opinion was needed before taking action to rescind the 1994 language. That has been done. (Exhibit 2) The opinion states that the state does have authority to allocate water and change allocations for the beneficial use of the people of Idaho. Page 3 provides an overview of the Swan Falls Agreement. Quoting from that citation:

“The parties resolved this litigation by agreeing that a portion of Idaho Power's hydropower water rights would be held in trust by the State of Idaho and that hydropower use of the trust water would be subordinated to subsequent beneficial upstream uses approved by the State in accordance with State law.”

In the subordination provision of the Swan Falls Agreement, the parties recognized the agreement as “a plan best adapted to develop, conserve, and utilize the water resources of the region in the public interest.” H800 does not jeopardize Idaho Power Company's rights as granted to them by agreement. It protects them, and they are not being contested. Idaho Power Company is not the sole beneficiary of the trust. Future appropriators may seek appropriation of trust waters in conformance with State law. The Senate Testimony at that time includes a dialogue between Senator John Peavey and Tom Nelson, Attorney, Idaho Power Company stating that the State was free to do

as it liked with water above Idaho Power Company's minimum water rights. The only thing they can't do is change the contractual nature of the water right at Murphy gauge. The Attorney General's statement concludes that the terms of the Swan Falls Agreement:

“ . . . conclusively demonstrate the parties' intent that the hydropower water rights held in trust by the State would be subordinated to all beneficial upstream uses approved in accordance with State law, including aquifer recharge.”

Rep. Raybould said water is going down the river now, and aquifer recharge should have started a month or so ago.

QUESTIONS/COMMENTS: Rep. Barraclough noted there was an error in the statement of purpose in paragraph 2, line 5: April 1 to March 31 should read April 1 to October 31. Rep. Raybould acknowledged the error.

Rep. Barraclough explained where the minimum stream flows of 3,900 c.f.s. and 5,600 c.f.s. came from.

Rep. Roberts asked how H800 would affect the 200,000 acre-feet estimated to be needed for aquifer recharge.. Rep. Raybould said it would depend on several factors including the weather and the harshness of the winter. He said it isn't known how much recharge is possible just with the canal system.

Rep. Roberts asked if there was a way to tell what is happening this year, given the snowpack and precipitation. Rep. Raybould said he hasn't seen any figures yet. They will be published this summer.

Rep. Andrus asked what the c.f.s. is now at Murphy gauge. Rep. Raybould said yesterday the flow past the Murphy station was 9,950 c.f.s.

**RAY W. RIGBY**  
**Upper Valley Water**  
**Users**

**Committee of Nine**

**PRO**

Ray W. Rigby, Attorney, Upper Valley Water Users, Committee of Nine, testified in support of H800. Mr. Rigby submitted supporting documentation for the record: Statement of Ray W. Rigby before the House of Representatives Committee on House Bill 800, re: Swan Falls Agreement (Exhibit 3); Swan Falls Statement by Robert R. Lee, dated August 20, 1983 (Exhibit 4); Official Stenographers' Report before the Federal Power Commission (Exhibit 5); Memorandum to James E. Bruce, from Thomas G. Nelson, dated June 22, 1976 (Exhibit 6); Idaho Supreme Court Report, Vol. 82, No. 95, Supreme Court Opinions No. 13794 (Exhibit 7); News Release from the Office of the Governor, dated January 10, 1984 (Exhibit 8); The (Swan Falls) Agreement, an unsigned copy (Exhibit 9); The Idaho Statesman, article dated 10/26/84 (Exhibit 10); Idaho State Journal, article dated 10/26/84 (Exhibit 11); Swan Falls and Minimum Stream Flows in Idaho, by Ray W. Rigby (Exhibit 12).

Mr. Rigby is a former Senator, and one of the people who worked to put the Swan Falls Agreement together, as well as a water attorney for fifty-six years. He said the testimony he submits "tells the story": At the time preceding the Swan Falls Agreement, Idaho Power Company was short of power. Ratepayers went to court. The power company had let people use water when they shouldn't have done so. Idaho

Power Company sued about 7,500 people seeking to regain water rights. The Governor appointed a task force to find a solution. Mr. Rigby chaired the Governor's Task Force on Swan Falls.

The court case ultimately went to the Supreme Court, where it was found that the water rights in question had not been subordinated to any power plants except for the three in Hells Canyon. Subordination may have been intended, but Idaho Power Company didn't do it. Swan Falls, therefore, is not subordinate to any water rights. The Supreme Court also found that Idaho Power Company may have lost 600 c.f.s. due to non-use. Mr. Rigby emphasized that this finding of loss is important. The decision was returned to the District Court. Instead of returning to court, Idaho Power Company agreed it would subordinate water rights to the State. The central issue was to decide who would have title and use until the water was allocated by the Idaho Department of Water Resources, pursuant to law. An impasse developed that was resolved when Mr. Rigby conceived the idea of a trust for water rights. All parties agreed, resulting in the Swan Falls Agreement. Legal title to the water rights reside with the State. The State has the power to allocate the water. There is now a need to put water into the aquifer. Recharge isn't a new concept. Idaho Code documents recharge projects such as St. Anthony.

Mr. Rigby read from the statement by Robert R. Lee, the first Director of the Idaho State Water Board, (Exhibit 4, page 1, paragraph 2):

“There was also a clear understanding at the time that there was a ‘defacto’ subordination of all upstream power rights on the small dams owned by Idaho Power Company. Otherwise, there was no need to insist on the subordination clauses for the Hells Canyon Dams since the lack of subordination of the power rights upstream at Swan Falls and the other Idaho Power Company dams would require the water to be released anyway. The ‘defacto’ subordination was wholly endorsed by the Idaho Power Company, and they actively promoted irrigation development above Swan Falls Dam.”

Mr. Rigby read from the Official Stenographers' Report before the Federal Power Commission (Exhibit 5), beginning on page 2, bottom, quoting Mr. Roach, Idaho Power Company:

“Well, the waters of the Snake, of course, are used primarily to first provide for the so-called consumptive needs of the area and then to supply the hydroelectric power which furnishes the electric service to the people of the area which I have described here.”

Quoting Mr. Roach again from (Exhibit 5), beginning on page 4, paragraph 4:

“Well, our company for a period of 87 years or more has had a very firm and fixed policy of complete coordination of the use of the Snake River waters for the development of hydroelectric power with the needs of that water for irrigation and has followed the policy of always placing the use of that water for irrigation in a prior position to the use of the water for hydroelectric development.

As far back formally as 1947, in our hearing, our initial hearing, before the Oregon Hydroelectric Commission, that policy was stated and made a formal part of our application to the Oregon Hydroelectric Commission, and currently all of our State permits in the State of Idaho carry in them a specific provision which preserves for irrigation not only now but at all times in the future a prior claim on the water with the claim for hydroelectric energy being secondary to that of the irrigator or the farmer.”

Mr. Rigby said the Swan Falls Agreement made provision for both the power company and agriculture to survive. He said he was surprised when the legislature passed legislation in 1994. Passing H800 reinstates it.

QUESTIONS:

Rep. Barraclough read (Exhibit 15), page 1, end of paragraph 2: “Aquifer recharge is an unproven process whereby Snake River water would be diverted into the southern Idaho desert in the hope of partially replacing water removed by ground water irrigation pumping.” He then gave instances where recharge had beneficial effects, including Mud Lake and INEL. Rep. Barraclough said the quote above is a wrong opinion. He asked Mr. Rigby to comment. Mr. Rigby said there is no doubt that recharge works; and it isn’t new. It is a use of water set by the State a long time ago; and it is a use that Idaho Power Company rights are subordinate to.

**JAMES TUCKER**  
**Idaho Power**  
**Company**

**CON**

James Tucker, Attorney, Idaho Power Company, testified in opposition to H800. He said Idaho Power Company is forced to protect their water rights. The Swan Falls Agreement is a contract between parties. Contract law looks to the intent of the parties at the time of the contract. Idaho Power Company is not stepping away from the Swan Falls Agreement. They disagree with the Attorney General’s opinion that Idaho Power Company subordinated its water rights to “all uses, forever.” It is the company’s opinion that there was no agreement to subordinate water to aquifer recharge. Aquifer recharge was discussed, but as a future management tool. The 1994 legislation was not a mistake. The legislation came out of committee recommended by the Idaho Water Users Association and approved by the Idaho Department of Water Resources. It recognized and ratified the Swan Falls Agreement with respect to making Idaho Power Company’s water rights senior to aquifer recharge because of the effect “unbridled” recharge might have on hydropower rates.

Mr. Tucker said aquifer recharge is a complex issue. Idaho Power Company is forced to put its vested rights “on the books,” because the issue may return the State and the company to the same position they were in prior to the Swan Falls Agreement. Idaho Power Company wanted to work through the aquifer recharge issue by engaging in the pilot project this year.

QUESTIONS: Rep. Wood said she was “intrigued by the idea of using recharge as a pilot program.” Recharge has been done in the upper valley for years. She asked where the idea came from. Mr. Tucker said he didn’t know where the idea came from. He said it is clear from

statutes that recharge has limited applicability to irrigation districts, and then to an aquifer recharge district. Other entities can't get a permit. The "broad brush approach" was first used in 1994. That was the first time people acquired permits for that purpose.

Rep. Bedke said recharge is within the context of the original agreement. He said future use was addressed in the Swan Falls Agreement in the context it is now being used. He asked if it is not a legislative prerogative to act in behalf of the State since the increments over the stated minimums at Murphy gauge are held in trust by the State. Mr. Tucker said the dispute is to what Idaho Power Company subordinated rights. Idaho Power Company still holds water rights, and the right to use them "up to its full right."

Rep. Barraclough said the Swan Falls Agreement apportioned 150 c.f.s. for domestic, commercial, municipal and industrial purposes, leaving 450 c.f.s. to fulfill irrigation development. He asked for a response. Mr. Tucker said aquifer recharge was not contemplated as a beneficial use at that time. Idaho Power Company did not subordinate to aquifer recharge. That is the dispute.

Rep. Jaquet noted that there is water going through Milner Dam and Bell Rapids that creates energy for Idaho Power Company that is in addition to their water rights, and that is not charged to the company. She asked how the pilot program that has been referred to would answer questions regarding the aquifer recharge issue. Mr. Tucker said Rep. Jaquet's comments speak to the issue: The Swan Falls Agreement gives Idaho Power Company rights, it does not take them away. There are rights to use water to the extent it can be used going through the company's facilities. If water is in the river, Idaho Power Company has the right to use it. With regard to the Governor's pilot program: If water is being used for an aquifer recharge project, Idaho Power Company is looking for adverse effects to rate-payers. In that context, Idaho Power Company could "true up" impacts after the fact.

Rep. Roberts asked if Mr. Tucker saw the legislature as having the ability to appropriate water held in trust in order to recharge the aquifer; and if recharge was prohibited in Idaho law by the Swan Falls Agreement. Mr. Tucker said it is Idaho Power Company's position that the legislature or the State does not have the right to reallocate trust water for purposes of aquifer recharge. Rep. Roberts said if a law is passed to prohibit something specifically it is prohibited; if not, it is permitted. Mr. Tucker said contract law looks to the intention of the parties when they entered into the contract. When the parties referred to beneficial uses by Idaho law, the Idaho law they referred to was a series of criteria put into place for allocation of the Swan Falls trust water. Beneficial uses had a precise meaning at that time that did not include aquifer recharge. Rep. Roberts asked if aquifer recharge was prohibited within the Swan Falls Agreement. Mr. Tucker said it was not precisely prohibited; but if the history of the agreement was considered together with the supporting documents, it is clear that aquifer recharge was not contemplated.

Rep. Barraclough said he was co-chair of the Aquifer Recharge Subcommittee in 1993 that focused on aquifer recharge. Aquifer recharge is not the "mystery" Idaho Power Company suggests, based

on recent news articles. 90% of the recharge water comes back to the river for Idaho Power Company's use. The company wants to get paid now, and then use the water when it returns to the river. Mr. Tucker said he was not saying that a portion of the water doesn't return to the river, or that the evidence is unscientific. With respect to the Eastern Snake River Plain Aquifer agreement, the evidence of water returning to the river is based on a series of models that may or may not be accurate, because they are still in the development stages. In context of discussion with the Governor's office, certain models were run that look accurate, and are a reasonable estimate. Idaho Power Company is working to "true up" the estimates after the fact.

Rep. Jaquet said a press release dated March 14<sup>th</sup> says the aquifer recharge process is unproven; but Mr. Tucker just said it does work. She asked why there was a mixed message. Mr. Tucker said it is his understanding, but not the position of Idaho Power Company, that aquifer recharge is unproven. In the context of the Snake River Plain Aquifer it is unproven as to its benefit.

Rep. Barrett said she wanted to be sure that Idaho Power Company isn't taking this position to argue for fish flush. Mr. Tucker said he was not representing any entity except Idaho Power Company, and they were not trying to move water downstream for fish.

**JIM MILLER**  
**Idaho Power**  
**Company**

**CON**

Jim Miller, Vice President Power Supply, Idaho Power Company, testified in opposition to H800, saying it is his responsibility to have resources to meet all load demands, all the time, for 470,000 customers. The purpose of his testimony is to talk about the impact H800 will have on Idaho Power Company. His concerns are: 1) Cost: Idaho Power Company is predominantly hydroelectric generation based, resulting in some of the lowest cost energy in the U.S. If that is lost, it will need to be replaced from a higher cost source, resulting in higher electric bills. 2) Reliability: An Integrated Resource Plan is developed every year that looks forward at least ten years. In that plan resources and projected loads are identified as to what types and how much new generation will be needed. For the past 22 years, Idaho Power Company has had assurances in the form of senior water rights regarding the amount of hydro generation that could be counted on. H800 removes those assurances. Mr. Miller submitted written testimony (Exhibit 13).

QUESTIONS: Rep. Bedke said he assumed Idaho Power Company was instrumental in bringing the 1994 legislative changes. He asked what was not working for Idaho Power Company between the 1984 Swan Falls Agreement and 1994, when they asked for changes to Idaho Code. Mr. Miller yielded to Mr. Tucker, who said he didn't know if Idaho Power Company lobbied in 1994, but prior to that time there was a provision making aquifer recharge secondary to all hydroelectric power water rights. He said he doubted that Idaho Power Company took the lead in 1994, because recharge was subordinated to all hydro water rights.

Rep. Wood asked if the statement beginning on line 23 of H800 protected Idaho Power Company's water rights: "The rights acquired pursuant to any permit and license obtained as herein authorized shall be secondary to all prior perfected water rights." Mr. Miller said Idaho

Power Company's water right at Swan Falls is more than the minimums stated in H800. The legislation takes away all the other water that typically is on top of the minimums. H800 protects a worse case, but not the water used to meet customer loads. To reduce water rights to the minimum has a huge impact on today's production. Rep. Wood asked if H800 said that Idaho Power Company's perfected water right is protected. Mr. Miller said it is protected to 3,900 c.f.s. and 5,600 c.f.s. minimum levels, but there is more that is not now subordinated to aquifer recharge.

Rep. Roberts said this is the time of year that recharge takes place. He asked if Idaho Power Company is selling outside of Idaho now. Mr. Miller said yes. Rep. Roberts asked how much. Mr. Miller said "maybe 400 average megawatts on a daily basis." He explained what resources the company was using now, and what was typical in years without as much water. Rep. Roberts asked if Idaho Power Company was using all the water in the river now for power generation. Mr. Miller said they are spilling in Hells Canyon primarily for flood control. Rep. Roberts asked why it was not appropriate to recharge if water is spilling. Mr. Miller said water spilling in the Canyon was not available up on the desert.

Rep. Bedke asked if "hard numbers" were available to definitively show what water is being used at each station, and if water is available for recharge at each station. Mr. Miller said they weren't available, but could be provided. Any water diverted from the river now would take away from water that could be used for generation. He said Idaho Power Company is not at capacity except at Shoshone Falls. The difference above hydro-capacity was considered for the Governor's pilot program. To the extent that the water is not being used, and there is no cost to customers, it could be used for recharge.

Rep. Jaquet asked about sideboards, and asked if his rate-payers and her constituents weren't the same people. The constituents were being hurt now by calls on water. Mr. Miller said he didn't understand the question. Rep. Jaquet said Idaho Power Company was presenting a case to maintain low costs for rate-payers. She said those people are now "in a world of hurt paying into mitigation plans." Thirteen cities are involved in the water calls. Mr. Miller said people were being hurt by aquifer reduction, but Idaho Power Company shouldn't be responsible for fixing the problem. It's possible that the aquifer is over-appropriated. There should be reduced pumping. Recharge will occur if water isn't pumped out. He said it was a matter of who was responsible to pay for the damage.

Rep. Eskridge asked how Idaho Power Company would replace lost generation capacity. Mr. Miller said energy could be purchased, assuming there was a willing seller and enough transmission capacity to import energy. It would have to be replaced at a high cost. Rep. Eskridge asked for a dollar estimate based on spot prices for the highest cost the company would incur. Mr. Miller said costs are based on one-year prices, not spot prices. It can be assumed that future energy costs will continue to rise, and that costs will rise with the market. The typical average now for a new resources is around \$50; for new wind, \$60; for new coal, \$55-\$60. Those figures may be low going forward.

Rep. Roberts asked how many power generation facilities were between American Falls and Thousand Springs. Mr. Miller said Milner, Thousand Springs, Shoshone Falls, and the upper and lower Salmon Falls.

**TIM DEEG**  
**Idaho Ground Water**  
**Appropriators, Inc.**

**PRO**

Tim Deeg, President, Idaho Ground Water Appropriators, Inc., testified in support of H800. He said there are two issues: 1) storage, and 2) the Swan Falls Agreement and water rights. Regarding storage: There is a 4.1 million acre-feet reservoir system, including American Falls, the Palisades, Henry's Lake, and others. Mr. Deeg said we think about that system, but we don't think about the other system which is the aquifer. The aquifer is estimated to contain about 500 million acre-feet of water. It can be used in times of shortages, and it is a mistake not to take care of it. He said about 1 million acre-feet less water is being used on the plain than ever was before, roughly the size of the Palisades Reservoir. Water users are not getting full water rights. Mr. Deeg said the question to ask is when to put water into the aquifer, and then to ask if that is being done during the normal process of filling reservoirs.

With regard to water rights as related to the Swan Falls Agreement, Mr. Deeg said he believed H800 did not impair Idaho Power Company in any way. What the present statute does is to cast a cloud in terms of ownership and use. It is important for Idaho Power Company to know that controlling recharge water provides a mechanism for a defacto water right that enlarges their water right at the springs, and promotes a healthy eastern Snake Plain storage system. Subordination is in statute.

QUESTIONS: None.

**DENNIS TANIKUNI**  
**Farm Bureau**

**PRO**

Dennis Tanikuni, Assistant Director of Public Affairs, Farm Bureau, testified in support of H800. He said the Attorney General's opinion and the legislative record indicate that the State has legal title above minimum flows, and trust management. No water rights are being taken. The State is free to change policy, and can determine how water will be used to the benefit of the State of Idaho. To that end, it can determine that recharge is a beneficial use.

QUESTIONS/COMMENTS: None.

**JERRY RIGBY**  
**Water Resource**  
**Board, Chair**  
**Committee of Nine**

**PRO**

Jerry Rigby, Attorney, Committee of Nine, and Water Resource Board Chairman, testified in support of H800, saying it is clear that the Swan Falls Agreement created a trust providing for Idaho to make and change policy decision. What occurred in 1994 was a policy decision that the State can change, because it is the owner. It is not right for Idaho Power Company to say that recharge was not contemplated as a beneficial use in 1994, because there were recharge projects in fact, and in statute; and the language is clear. It was the reason for Swan Falls in the first place. Mr. Rigby said there is a crisis in Idaho. One way to address the problem, not the only way, is through recharge. That opportunity is at hand and should be used. Recharge is a beneficial use that has occurred for decades, and does not hurt Idaho Power Company. They should not continue to have the ability to stop this recharge.

QUESTIONS: Rep. Bedke asked if there was agreement that there is 450 c.f.s. of trust water at Murphy gauge now, could the calculation be made at each measuring point back to St. Anthony to determine a finite water right, and that it is trust water. Mr. Rigby said he was a lawyer, not a hydrologist, but he would hope there would be a way. He said he assumed the point was that the trust was established, and the parties should “live and die by the trust.”

**DON HALE**  
**Water District 1**  
**Committee of Nine**  
  
**PRO**

Don Hale, Committee of Nine, Water District 1, testified in support of H800, saying the State’s inability to recharge the water that is presently available is frustrating. Not being a lawyer, he can’t speak to rights, but he speaks to the fact that there is a tremendous need for recharge. The ability for development to continue depends on the ability to utilize water supplies. Water has to come from somewhere. Without recharge, it will “come on the backs of agriculture.” Agriculture is the largest economic driver. It is frustrating that every recharge plan runs into restraints. This year there is enough water for recharge. During the Committee of Nine meeting, the Bureau of Reclamation said it would spill in February. Mr. Hale said his first response was to ask “why, the reservoirs aren’t full”; and his second response was, “why not do recharge.” Any water recharged above Blackfoot returns to the river. Something needs to be done for the aquifer when the occasion arises.

QUESTIONS: None.

**STEVEN HOWSER**  
**Aberdeen-**  
**Springfield Canal**  
**Co.**  
  
**PRO**

Steven Howser, General Manager, Aberdeen-Springfield Canal Co., testified in support of H800. He gave an overview of the canal company from its conversion to a sprinkler system in the 1950s to present. In a system of this scale, a substantial amount of water returns to the ground annually. In the last five years of drought, conservation measures have become progressively more stringent. Mr. Howser itemized ways that water conservation is contributing to the aquifer problem. He said there is a difference of from 75,000-80,000 acre-feet less water showing up in springs and drains that is directly attributable to conservation. Mr. Howser said the 100,000 acre-feet shortage said to be needed to replenish the aquifer could be recaptured in a few weeks, if Aberdeen together with the smaller canal companies filled their canals. The diverted water would return to the springs and drains within a few weeks.

QUESTIONS/COMMENTS: None.

**C. TOM ARKOOSH**  
**Surface Water**  
**Coalition**  
  
**CON**

C. Tom Arkoosh, Attorney, Surface Water Coalition, testified in opposition to H800. He objects because of the priority doctrine, and because the contract is unclear. He said the priority doctrine causes “a rift among water users.” Recharge needs to occur immediately, and the magnitude of the problem is greater than that represented by Rep. Raybould. The Straw Man proposal estimated that 600,000-900,000 acre-feet was needed to replenish the aquifer. H800 alters a law passed in 1994, resulting from an Interim Committee study where the priority of power v. recharge was addressed, and is included in the minutes. H800 comes without much study or consideration. There is danger in launching “Swan Falls Two.” Mr. Arkoosh said the coalition would like the problem solved, but doesn’t think H800 is going to do it.

In fact, it will be counterproductive because the Governor has a program this year to recharge the North Side Canal Company the maximum amount possible for the maximum time—that is, from March 15<sup>th</sup> until April 1<sup>st</sup>, when irrigation season begins. Mr. Arkoosh opposes not continuing with the Governor's pilot project.

QUESTIONS: Rep. Raybould read from the Idaho Session Laws, Chapter 366 (Exhibit 14) to establish that ground water recharge has been a recognized beneficial use since at least 1978, when a new section was added to Code that was applicable to the cities of Rexburg and St. Anthony, and declared ground water recharge an appropriate purpose. He said the 1978 date needs to be recognized if an argument was being made for priority dates, because it precedes the Swan Falls Agreement. Rep. Raybould asked Mr. Arkoosh to comment in terms of priority systems. Mr. Arkoosh said the permit resulting from the 1978 legislation was for one site, and recharge was “done with your own water.”

**LYNN TOMINAGA**  
**Idaho Ground Water**  
**Appropriators**

**PRO**

Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA), testified in support of H800, saying he agreed with Speaker Newcomb, Mr. Rigby and Mr. Deeg. Mr. Tominaga was in the Senate in 1984 for the Swan Falls Agreement. What would happen if the State lowered stream flow below 3,900 c.f.s. was asked at that time. The answer was that the State could not, because there was a contractual agreement. Mr. Tominaga was also involved in the Interim Committee. The State had been recharging the aquifer for over 100 years, but recharge hadn't been recognized as a beneficial use. It didn't make sense, and that was one of the issues. Idaho Power Company became concerned about hydropower, and threatened to stop recognizing recharge as a beneficial use unless language was inserted in the Swan Falls Agreement. It was felt to be better to recognize recharge. The participants knew there would eventually be a change; for flood control, it was thought. In IGWA's opinion, H800 is about flood control water that can be used for recharge. The legislature needs to have the ability to make this policy change for the future growth and prosperity of the State.

QUESTIONS: None.

**JEFF RAYBOULD**  
**Fremont-Madison**  
**Irrigation District**

**PRO**

Jeff Raybould, Chairman, Board member, Fremont-Madison Irrigation District, testified in support of H800, saying recharge has been occurring for over 100 years. Although some say it is an unproven concept, experts will say that's how the water got into the aquifer. There has been recharge on the Egin Bench since about 1885. The question is how much recharge can take place. Since the 1994 enactment, the legislature has been interested in recharge, with over \$1 million dollars appropriated in 1995. Since 2000, very little water has been available for recharge. When it is available, water needs to be in canals to keep shallow domestic wells from going dry. By late February or early March, shallow well problems begin to occur. It is important to repeal the 1994 language making recharge a secondary water right.

QUESTIONS: None

**RANDY MacMILLAN**  
**Clear Springs**  
**Foods**

**NO POSITION**

Randy MacMillan, Ph.D., Vice President, Research and Environmental Affairs, Clear Springs Foods (CSF), testified without taking a position on H800. Dr. MacMillan is a fish pathologist and ichthyiotherapist. He said Clear Spring Foods is a vertically-integrated food company, and the world's largest producer of rainbow trout. Dr. MacMillan said CSF does support aquifer recharge as one important tool among others to resolve the current water crisis; but, to the extent H800 takes away a water right, CSF is opposed to H800. Spring flows have declined from decreed and realized water rights. On average CSF loses \$15.4 million dollars annually to ground water pumping by junior right holders. CSF believes it is essential to protect water rights according to priority. The position CSF takes is that a program must be developed to stabilize the aquifer to a greater level than it is currently. It is incumbent on junior ground water pumpers to fully mitigate. Efforts to circumvent that responsibility damages water rights and the future economic development of Idaho. There continues to be disagreement about what the Swan Falls Agreement says. CSF wasn't a party to that agreement. As an ichthyiotherapist, Dr. MacMillan looks for a "break line." He doesn't see one.

QUESTIONS: None.

**VINCE ALBERDI**  
**Twin Falls Canal**  
**Co.**

**CON**

Vince Alberdi, Manager, Twin Falls Canal Co. (TFCC), testified in opposition to H800. He said there seems to be continued erosion and depletion of the aquifer. He asked why the Murphy gauge was being used for measurement, and not something else—such as the reservoirs. The bulk of TFCC's water right is natural flow from runoff and springs feeding the American Falls Reservoir, which is fed by the aquifer. At TFCC's position on the ditch, water levels in the aquifer are very important. It has been found that it takes many years to recharge. Mr. Alberdi said H800 "is not the silver bullet that you think." Depletions continue because there has been a long drought. There needs to be a tool that provides for more than special cyclical opportunities. TFCC agrees that there will not be a flood if there is recharge. Beyond that there are points of disagreement: H800 "tinkers with water rights, which is not a good way to run a government. It's hard to support a bill that affects someone's water right."

Irrigation begins soon. The Governor has a recharge pilot project that will not happen if H800 continues. The real question is who is going to pay for recharge, the stockholders of Idaho Power Company or the people who caused depletion to the aquifer—who are the ground water pumpers. Mr. Alberdi said water rights are the foundation of the economy. Other means, such as the Governor's pilot program, need to be considered to help with the aquifer problem. TFCC submitted written testimony. (Exhibit 15)

QUESTIONS: Rep. Barraclough asked if the TFCC had water available now for recharge. Mr. Alberdi said not now. If Twin Falls diverted a large amount, it would "explode, because you can't put more water in than the delivery system can take."

Rep. Barraclough asked if there was capacity at some times during the season when TFCC could recharge. Mr. Alberdi said no, but maybe didn't understand the question. Rep. Barraclough asked if there are periods when TFCC is at less than capacity of the canal

during irrigation season. Mr. Alberdi said when operations are at the upper level of the canal, there is a vulnerability to canal breaks. It puts a risk on the Board and the project users.

Rep. Roberts said Mr. Alberdi had made a statement coming in to the meeting that H800 would disrupt the first in time/first in right concept. He asked how H800 would take his water right. Mr. Alberdi said “tinkering with water rights” sets a precedent. Rep. Roberts asked to be shown where that was being done. Mr. Alberdi said legislation in 1994 established Idaho Power Company’s water right. Now, 12 years later, the legislature is changing the water right. That is a taking. Rep. Roberts said the water right was established at 3,900 c.f.s. and 5,600 c.f.s. based on seasonal use. He asked how that was being changed. Mr. Alberdi said he respected his opinion. He asked what “would preclude the legislature from altering our rights.”

**JEFFREY FEREDAY**  
**Idaho Ground Water**  
**Appropriators**

Jeffrey C. Fereday, Attorney, Idaho Ground Water Appropriators (IGWA), rose in support of H800. He said he had nothing new to add.

**PRO**

**DAN SHOEMAKER**  
**Twin Falls Canal**  
**Co.**

Dan Shoemaker, Chairman of the Board, Twin Falls Canal Co. (TFCC), testified in opposition to H800. In addition to Mr. Alberdi’s testimony, he wants to emphasize that TFCC supports the Governor’s pilot project as a consensus-based approach to recharge that respects existing water rights. H800 is based on interpretations of the Swan Falls Agreement. TFCC opposes expensive litigation, and anything that will prevent recharge in 2006. The Governor’s program can and will accomplish recharge this year, without litigation.

**CON**

QUESTION: Chairman Stevenson said he has now heard several references to the Governor’s pilot project. He asked what precedent was set for recharge in the future. Mr. Shoemaker said that precedent as it exists is to pay for the use of someone else’s property. Chairman Stevenson asked if the water belonged to the State or Idaho Power Company, in his opinion. Mr. Shoemaker said he was not convinced the water belonged to the State.

**DALE ROCKWOOD**  
**Progressive**  
**Irrigation District**

Dale Rockwood, Progressive Irrigation District, Water District 1, Committee of Nine, testified in support of H800, saying the opportunity for recharge doesn’t come often. He said “the reservoirs are going to fill and spill, and it’s sad to send it to the ocean.” There is an opportunity between April 1 and the early part of May where water can run in canals without any expense to the State. Mr. Rockwood said it would be missing an opportunity not to do so.

**PRO**

Questions: None.

**DAN ADAMSON**  
**Candidate for**  
**Governor**

Dan Adamson, Candidate for Idaho Governor, testified in support of H800. He said the crux of the problem is to determine who is entitled to the water. He said he sees the matter different from the proponents today: Idaho Power Company didn’t give up any water right under the Swan Falls Agreement. Their water right is in trust to the State, and could be subordinated if the State chose. He said the issue isn’t about subordination, or rate-payers; it is about money. Idaho Power

**PRO**

Company wants to know what the State will pay.

QUESTIONS: None.

**GEORGE LEMMON**

**Informational  
Testimony**

George Lemmon, Hagerman, Idaho, submitted a statement for the record. (Exhibit 14)

**QUESTIONS AND  
COMMENTS**

QUESTIONS/COMMENTS: Rep. Roberts asked how Idaho Power Company made their calculations, and is the company concerned with the entire amount of water going to recharge, or just a portion of it. Mr. Miller said their calculations represented the worst case. He realized the assumptions were unrealistic and couldn't happen. Rep. Roberts asked if Idaho Power Company assumed water going to recharge would not reenter the system. Mr. Miller said yes. Rep. Roberts asked if other calculations could be provided, not representing a worst case. Mr. Miller said no, there were too many possibilities. The Governor's pilot program would provide an opportunity to assess losses at each individual point using various models; to assume how and where water would come back into the system, in what amounts and over what time frame; and to assess the penalty or cost to customers. That was the purpose of the pilot program. The calculations provided today assume all recharge was consumptively used.

Rep. Roberts said he was trying to conclude if Idaho Power Company's calculations are based on 3,900 c.f.s. or 5,600 c.f.s. It's obvious that more water goes down the river at some times of the year, and the capacity for recharge is limited to the canal system which can't take the entire Snake River. Mr. Miller said the assumption was that over time there might be new methods for diversion as, for instance, injecting water into the aquifer.

Rep. Bedke asked how much revenue an acre-foot of water generated for Idaho Power Company at the head of the system at St. Anthony, and at the end of the system at Hells Canyon; and what rules-of-thumb are used for calculations. Mr. Miller said 1000 c.f.s. per day is 2,000 acre-feet, based on today's cost. Chairman Stevenson asked for the calculation not to be done in the committee meeting. Mr. Miller said he would provide the committee with a "cheat sheet."

Rep. Barraclough said studies have been done for over 100 years showing flow paths for water. He said Idaho Power Company is misleading when they say they don't know where the water goes. It is well established that approximately 95% comes back to the river. He asked for an explanation. Mr. Miller said until there was an ability to make measurements, it would not be known.

**SPEAKER BRUCE  
NEWCOMB  
Closing Remarks**

Rep. Bruce Newcomb, District 27, Speaker of the House of Representatives, said H800 was a policy change, not a water right change or taking. Recharge was identified as a beneficial use in 1978. It isn't the case that recharge was not seen as a beneficial use prior to the Swan Falls Agreement. The 1994 legislation removed the language. Years where recharge can be effective only occur every decade or so. Speaker Newcomb said water flows over Milner Dam and Bell Rapids contribute to Idaho Power Company. The State has

never required the company to pay for it.

QUESTIONS: None.

**REP. DELL  
RAYBOULD  
Closing Remarks**

Rep. Dell Raybould, District 34, Co-Sponsor, said three points needed explanation: 1) There is a press release from Idaho Power Company quoting president/CEO LaMont Keen as saying, "Because Idaho Power primarily relies on hydroelectric generation to meet its customers' electric energy needs, reducing Snake River flows will impact both the costs and reliability of the energy we supply." (Exhibit 15) Rep. Raybould said H800 does not ask for reduced flows. It does ask for language to be removed from statute so the State can manage its water resource to the best use. When there is water going to the ocean, it can go to the aquifer. 2) People have stated that recharge was not mentioned as a beneficial use in the Swan Falls Agreement, but it was because there was a recognition, in statute, for "beneficial uses upstream." 3) The Director of Water Resources said at least 200,000 acre-feet was needed to stabilize the aquifer. It will take more than that to make up for years when there isn't recharge. The State needs to be prepared to use water in years when it is available.

Rep. Raybould gave the amount of water that has gone past Milner Dam and the Hells Canyon project since February 1<sup>st</sup>. Idaho Power Company has had that water available for use without charge. Meanwhile, there has been water available for aquifer recharge that Idaho Power Company is not using, but is not releasing for the State to use for aquifer recharge. There is a crisis in eastern Idaho that is affecting ground water rights and surface water rights alike. A long-term, proactive solution is needed.

H800 does not change the Swan Falls Agreement. It was proper to seek an interpretation of the Swan Falls contract. That has been done. (Exhibit 2) H800 reverses the 1994 language that proposed to take away State water rights.

**MOTION H800**

A motion was made by Rep. Roberts to send H800 to the floor with a DO PASS recommendation, and with instructions to make a technical change to the Statement of Purpose.

QUESTIONS/COMMENTS: Rep. Mitchell asked if H800 became law and was challenged, would the State be restricted from doing anything about recharge while waiting for the courts to make a decision; and since the recharge is needed now, is there anything to stop it. There was Committee discussion, including: Rep. Andrus said he understood water for hydropower production to be subordinate, regardless of historical date or priority use. He asked why there was no one in the room from the Idaho Department of Water Resources (IDWR). Chairman Stevenson said IDWR was not represented because there are cases before the courts that could be contaminated by their testimony. Rep. Raybould said the Constitution sets up priorities for water use: 1) domestic, 2) mining 3) agriculture. But the State does recognize the doctrine of prior appropriation. If a subsequent priority after agriculture has a senior priority date, it would come before agriculture. If domestic water is curtailed, there is a right of eminent domain. Agriculture doesn't have the right of eminent domain.

Rep. Roberts debating in favor of the motion, said he didn't live in the affected area of the State. He made several points: 1) The Idaho legislature does have the right to make decisions for water held in its trust without threatening the first in time/first in right doctrine. There are no rights being jeopardized. 2) Nothing in the Swan Falls Agreement prevents recharge with water held in trust by the State. If it is not expressly prevented, then it is allowed. 3) The crux of the issue is that additional storage is needed for recharge and power generation. H800 doesn't do that. He recommended a new project. 4) It doesn't make sense not to use water that is needed, and is going to the ocean.

Rep. Barrett said the legislation approved in 1994 was well-received at the time. To approve H800 after one long hearing is "like playing football on a field laced with land mines." She wants time to think it over.

**VOTE H800**

The motion to send H800 to the floor with a DO PASS recommendation, and with instructions to make a technical change to the Statement of Purpose passed by voice vote. Reps. Barrett and Mitchell voting NO for the record. Speaker Newcomb will carry the bill on the floor.

**H792**

Chairman Stevenson, with Speaker Newcomb's consent, said H792 will not be heard at this time.

**ADJOURN**

The meeting was adjourned at 6:04 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

**DATE** March 21, 2006

**TIME** 1:30 p.m. or upon adjournment

**PLACE** Room 412

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

**ABSENT/EXCUSED** Reps. Bedke, Denney, Moyle and Roberts

**GUESTS** Karl Dreher, Director, Idaho Department of Water Resources (IDWR);  
Senator Brad Little, District 11  
  
See sign-in sheet for other guests.

**CALL TO ORDER** Chairman Stevenson called the meeting to order at 3:21 p.m.

**MINUTES**  
**March 13, 2006** A motion was made by Rep. Wood to approve the minutes of March 13, 2006 as written. The motion passed by voice vote.

**KARL DREHER**  
**Idaho Department**  
**of Water**  
**Resources** Karl Dreher, Director, Idaho Department of Water Resources (IDWR), appeared before the Committee for the purpose of presenting a departmental briefing. He submitted a handout depicting current water and staffing information. (Exhibit 1)  
  
Director Dreher said this is a good water year, but not the banner year some believe. Exhibit 1, page 1 shows the Lewis Lake Divide SNOTEL for Water year 2006<sup>1</sup>. As of yesterday, the mountain snow water equivalent is somewhat above average when compared to a 30-year average. Part of the reaction to the precipitation this year is that there has been so little for the past six years.  
  
Director Dreher said last year there were a series of delivery calls made. In response, there were requests for reconsideration and a number of legal actions filed. Of the five legal actions, one was withdrawn, one dismissed, one affirmed and there are two pending before Judge Wood. With regard to Clear Lakes Trout Company, Inc. V. Clear Springs Foods, Inc., the department has filed a motion to reconsider dismissing action. It had been filed and denied previously, but the issue Judge Wood raised in his last order has been addressed. The second case concerns constitutionality of rule, claiming that there is not a proper mechanism for distribution of water according to the Prior Appropriation Doctrine. The case carries over from the previous Director of IDWR.

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1. SNOW TELemetry - An automated network of snowpack data collection sites operated by the Natural Resources Conservation Service collected in the U.S. since 1935.

The issues in all the suits and delivery calls concern the Doctrine of Prior Appropriation. Although the Doctrine has been used for over a hundred years, there are differences in interpretation. The problems exist not only in Idaho, but have developed or are developing across the west. They stem from the fact that the Prior Appropriation Doctrine is a common law doctrine that was implemented prior to the establishment of state governments in the west. Although it was first applied to surface water rights for California mining claims, ground water is now being forced into the Prior Appropriation Doctrine model. The framers of the doctrine didn't have ground water in mind or acknowledge ground water, in fact or as a concept.

In Idaho, water rights are not subject to administration in full compliance with Prior Appropriation laws until a court has adjudicated the rights. Idaho did not begin to adjudicate ground water rights until the Snake River Basin Adjudication in 1987. There is a long history of administering surface water rights, but only since the Snake River Basin Adjudication have ground water rights been decreed and put into water districts for administrative purposes according to the Prior Appropriation Doctrine.

Administering ground water rights is not simple because withdrawing ground water from a source hydraulically connected to a surface water source doesn't have the same effect on the source. Surface water depletion to the river occurs right then. When ground water is diverted, depletion doesn't begin to be expressed for years, or even decades. In addition, depletions don't occur just at one point, but at numerous points on the river where they are hydraulically connected. The primary tool available for the conjunctively managed surface and ground water resources is the Eastern Snake River Plain groundwater model developed by the Idaho Water Research Institute. The outcomes of current lawsuits will set the legal precedent for future management of surface and groundwater in the state, and likely in other western states. The issue is immensely important to the state because there are significant economic consequences. Although it is playing out on the Eastern Snake River Plain, it will eventually be more broad-based. Conflicts in the Treasure Valley are inevitable.

Director Dreher said there were facts missing from the current debate about aquifer recharge. On the Eastern Snake River Plain, from 1900-1950 according to the U.S. Geological Survey, ground water rose from 60-100 feet due to the application of surface water for irrigation. The major decline in the aquifer system is not ground water development, although it is a part. The decline is substantially due to efficiencies in the surface water system, and a reduction in the incidental recharge that used to occur.

Another part of the debate that is forgotten is that, in Idaho, there is a Constitutional provision that the right to appropriate unappropriated water shall never be denied. The entire system revolves around maximum utilization of resources, as part of the Prior Appropriation Doctrine—and this does not mean just for consumptive resources. Junior rights are allowed until senior holders need water.

For the past ten years, the goal for IDWR has been to complete claims investigations by the end of 2005. It is anticipated they will be

completed by July, 2006. When they are completed, claimants will have the right to object to recommendations. Litigation will continue for two or three years after claims investigations are completed. IDWR has a staffing plan that includes moving people from adjudication to other areas where backlogs exist; and to administer the new decrees. The 2007 budget allows for beginning the conversion process from Snake River Basin Adjudication to water management. The budget is different from the original Governor's recommendation. That recommendation did not take into account that IDWR's current budget must include expenses incurred for Deputy Attorney General services two years earlier.

Director Dreher explained the serious problem that exists at IDWR to recruit and retain qualified staff. The department lags from 30%-50% behind market, where other state agencies are typically 11% behind market salaries. He recounted two instances where staff was lost to the private sector. Director Dreher said he asked the Department of Administration to work with IDWR Human Resources to do a position-by-position comparison. Exhibit 1, pages 3-4 indicates that of the larger State agencies, IDWR is furthest behind market salaries. The Joint Finance-Appropriations Committee funded \$118,000 to begin to address the IDWR salary problem; but the cost to bring IDWR to market is over \$2 million dollars. It will take time and commitment to correct salary inequities. They are needed to maintain a workforce that can do the work that's expected.

QUESTIONS/COMMENTS: Chairman Stevenson asked if there was now a moratorium on water transfers in the eastern office. Director Dreher said there was not a moratorium, per se. He has instructed regional offices to give priority to claims investigations. Other work is put aside unless an urgent need can be verified. If there is no urgent need, there may be a delay of up to six months. Chairman Stevenson asked if applications for transfers were being accepted. Director Dreher said they were being accepted, but not being processed.

Rep. Wood asked how a permit could have been obtained for a new well at the bird refuge at Camas when there is a moratorium in the upper Snake River valley. Director Dreher said he didn't have specific information, but six years of drought have caused ground water levels to decline from 30 feet up to 60 feet on the eastern plain. If the ground water is below the well, a new well will have to be constructed. There is a moratorium on new water rights, not on new wells. There are exceptions to the moratorium as well. Exceptions can be made where there is an over-riding public interest, and where mitigation can be provided to compensate for ground water depletion one-for-one. Rep. Wood asked the Director to look into the well at Camas. He said he would.

Rep. Barrett said all the agencies wanted more money. Since the State government is not a private-market-based system, employees are not going to be paid at market. People do change jobs. Director Dreher said most people in public service choose a career for reasons other than salary. He is not expecting salaries to match those in the private sector. However, looking at other agencies, most are about 11% below market. IDWR is 30%-50% below market. That is a problem. The State should not ask people to work for 50% less than the private sector. If

there is no money to increase salaries, services need to be prioritized and reduced, fewer people hired, and salaries paid commensurately.

Rep. Mitchell asked if there was an adequate pool of employees to draw from if the money was there. Director Dreher said there are “interesting challenges” in engineering and information technology. There is a pool, but demand is larger than the pool; and the private sector is able to pay up to 50% more.

Rep. Raybould asked to be recorded as being appreciative of Director Dreher’s efforts for the past years, during times that have been extremely difficult. He complemented the Director, and asked him to complement his staff. The adjudication issues in his district have been able to be solved by IDWR staff. IDWR has a herculean job to do with limited resources. It will take a “real effort on the part of the State of Idaho to solve the problems in the next few years.”

Chairman Stevenson thanked the Director for his services. There have been other opportunities available to Director Dreher, which he has not taken. He has stayed on at IDWR to face difficult issues that would have been more difficult had it not been for his experience and professionalism.

Rep. Wood agreed with the Chairman. She asked what could be expected to address the northern Idaho adjudication issue. Director Dreher said there is legislation before JFAC tomorrow morning to appropriate money for the first year of adjudication, and for eleven new FTEs. The scope in the north is much smaller, there is a trained court in place, and experienced people—all of which will make undertaking adjudication in the north more efficient. H545 identifies phases. A phase will only be undertaken if the legislature is ready, and there is money to appropriate to it.

Rep. Field and Rep. Mitchell asked the Chairman to formally express the Committee’s appreciation to Director Dreher by way of a letter from him. Chairman Stevenson, adhering to the desire of the Committee, will prepare a document.

## **SJM120**

Senator Brad Little, District 11, presented SJM120, a memorial asking Congress not to sell surplus federal lands, but to cede them to the State of Idaho, to be managed for the benefit of public access and education.

**QUESTIONS/COMMENTS:** Rep. Barrett said ceding surplus lands is a good idea. As a policy, most people think the federal government shouldn’t be selling land in Idaho. She asked if the memorial meant that no federal land should be sold. Senator Little said the memorial language was “significant sale of federal lands.” That term is still open to interpretation.

## **MOTION SJM120**

A motion was made by Rep. Eskridge to send SJM120 to the floor with a DO PASS recommendation.

**QUESTIONS/COMMENTS:** Rep. Saylor asked for clarification as to the promise referred to on line 23: “cede (surplus lands) to the state through a public comment process as promised.” Senator Little said all sales went through the National Environmental Policy Act (NEPA)

process. This language insinuates that surplus land sales are not exempt from that process.

Rep. Barrett spoke in support of SJM120. She said the federal government has discouraged production in rural Idaho. Before timber industries were forced into decline, rural schools did well. The subsidy payments that schools now receive are not equivalent, and the Multiple Use Act has become a “tool to inhibit by being virtually ignored.”

Rep. Raybould spoke in support of SJM120. Over the year the State has been seen to manage forest lands and natural resources to the benefit of the state more than has the federal government—more to the benefit of the people of the state, the economy, and the land being managed.

Rep. Jaquet spoke in support of SJM120. People are emotional about federal public lands.

Rep. Shepherd spoke in support of SJM120, expressing agreement with Rep. Raybould's comments.

Rep. Sayler spoke in support of SJM120. He said the widely used English Point National Recreation Trail is a 360 acre site on Hayden Lake that has been included on a list of possible federal holdings for sale. There is “a need to say stop.”

Rep. Mitchell spoke in support of SJM120. He concluded that he had little hope that it would happen, and that there is never a response made by the federal government to the memorials.

Rep. Jaquet said she had received Congressional response.

#### **VOTE SJM120**

The motion to send SJM120 to the floor with a DO PASS recommendation passed by voice vote. Rep. Eskridge will carry the memorial on the floor.

#### **ANNOUNCEMENTS**

Chairman Stevenson said it had been brought to his attention that there had been times when Committee members had been cut short. He apologized, saying he would be more sensitive in the future; but asked members to be cognizant of time.

The Committee will meet Thursday to consider one Senate bill. There will also be two Committee briefings.

#### **ADJOURN**

The meeting was adjourned at 4:24 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary

## MINUTES

### HOUSE RESOURCES & CONSERVATION COMMITTEE

<b>DATE</b>	March 23, 2006
<b>TIME</b>	1:30 p.m. or upon adjournment
<b>PLACE</b>	Room 412
<b>MEMBERS</b>	Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Saylor, Jaquet, Mitchell
<b>ABSENT/EXCUSED</b>	Reps. Bedke, Barrett, Denney and Moyle
<b>GUESTS</b>	<p><u>Judi Danielson</u>, Council Member, Northwest Power and Conservation Council; <u>Sharon W. Kiefer</u>, Legislative Liaison, Idaho Department of Fish and Game (IDFG); <u>Senator David Langhorst</u>, District 16; <u>Jim Unsworth</u>, Chief, Bureau of Wildlife, IDFG</p> <p>See sign-in sheet for additional guests.</p>
<b>CALL TO ORDER</b>	The meeting was called to order at 3:27 p.m. The secretary took a silent roll call.
<b>MINUTES</b> <b>March 21, 2006</b>	A motion was made by <u>Rep. Saylor</u> to approve the minutes of March 21, 2006 as written. The motion passed by voice vote.
<b>JUDI DANIELSON NW Power &amp; Conservation Council</b> <b>Committee Briefing</b>	<p><u>Judi Danielson</u>, Council Member, Northwest Power and Conservation Council (NWPCC), appeared before the Committee for the purpose of giving the Committee an overview of NWPCC and its activities. She submitted a packet of information. (<u>Exhibit 1</u>) NWPCC was created by Congress through the 1980 Pacific Northwest Electric Power Planning and Conservation Act to give citizens of Idaho, Montana, Oregon and Washington a stronger voice in determining the future of key resources common to all four states—namely, the electricity generated at, and fish and wildlife affected by, the Columbia River Basin hydropower dams. NWPCC helps the Pacific Northwest make critical decisions that balance the multiple uses of the Columbia River and its tributaries.</p> <p>NWPCC develops a regional power plan to assure the Northwest an adequate, efficient, economical and reliable power supply. It develops a fish and wildlife program as part of the power plan to protect, mitigate and enhance fish and wildlife affected by hydroelectric development in the Columbia River Basin, and make annual funding recommendations to the Bonneville Power Administration for projects to implement in the program. NWPCC provides for broad public participation in these processes and informs the public about regional issues.</p> <p><u>Ms. Danielson</u> reviewed the information submitted in <u>Exhibit 1</u>:</p>

- A Power Point Presentation: Northwest Power and Conservation Council
- Pocket Guide: Fast Facts About the Columbia River Basin
- The Columbia River Basin Field Guide
- Meeting the Needs of People: Restoring our Natural Heritage
- A Guide to Major Hydropower Dams of the Columbia River Basin
- Northwest Electricity Surplus Continues in 2006, Council Reports
- Columbia River Basin Fish and Wildlife Program: Twenty Years of Progress
- Key Events in Columbia River History
- Another Opinion on the role of Hatcheries in Pacific Salmon Management
- Pacific Decadal Oscillation (PDO)
- Hungry Sea Lions and Voracious Seals
- Predators Have a BIG Impact on Salmon Survival
- Another Pesky Predator: The Double Crested Cormorant

QUESTIONS/COMMENTS: Rep. Eskridge asked if it was correct that \$7.5 billion dollars has been spent for mitigation. Ms. Danielson said since approximately \$7.6 billion dollars has been spent since passage of the 1980 Power Planning and Conservation Act. Rep. Eskridge said there has been as much spent for fish as for the hydro system, which cost \$7.5 billion dollars.

Rep. Field asked if the tern habitat was a man-made island. Ms. Danielson said yes. Terns have been relocated where they aren't feeding on the youngest of the smolts.

Rep. Jaquet noted that the fifth Northwest Power Conservation Plan was just completed. The plan calls for one 400 megawatt coal plant. She asked if there was some research the Council has done that the Committee is not aware of. Ms. Danielson said there may be. She will ask Jim Kempton, Chair, Power Committee, NWPCC, to provide information to the Committee.

Rep. Raybould asked if the Power Planning Council had anything to do with the transmission system in the Pacific Northwest, and if there was planning for power lines in the grid. Ms. Danielson said transmission issues are in the power plan for the first time. Mr. Kempton would be the person to speak to the issue. Rep. Jaquet asked for more information to be provided to the Committee, including the recent action of the Washington State Legislature calling for additional storage for power production on the Columbia system. Ms. Danielson said Washington State is the largest consumer of Bonneville power. The legislation concerns tribes requesting permits at different times for hydropower operation. Only 30% of the hydropower is captured on the Columbia. To put that number in perspective, 115% is captured on the Missouri. She will have Mr. Kempton provide information to the Committee.

**SHARON KIEFER  
Idaho Department of  
Fish & Game**

**Committee Briefing**

Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish and Game, appeared before the Committee for the purpose of giving the Committee an overview Idaho's Department of Fish and Game. She submitted a packet of information. (Exhibit 2) She introduced Jim Unsworth, Chief, Bureau of Wildlife, who is available to answer questions. Ms. Kiefer gave an overview of programs currently in progress at IDFG and the status of current issues, including: the status of elk and deer in Idaho; Chinook and steelhead runsize at the uppermost Snake River Dam; Idaho recreational harvest of Chinook and steelhead; the Lolo elk management zone; the Mule Deer Initiative; the ACCESS YES! Program; the endangered and threatened fish in Idaho waters; and new signs used as communication tools in the field.

QUESTIONS/COMMENTS: Rep. Barraclough asked for more information about sockeye salmon. Ms. Kiefer said the sockeye salmon were brought into the genetic rescue program last year. Six adult fish completed the anadromous life cycle. Additionally, from 200 to 400 fish were produced in the captive program. Coho salmon, declared extinct in Idaho in 1986, are being reintroduced as part of the initiative led by the Nez Perce Tribe. Stock from the lower Columbia is being used, and a hatchery program is underway

Ms. Kiefer gave an up-date on current Commission activity:

- The staff is working to complete a rules-set proposal, including cost. The goal is to have public input back for Commission consideration at the May-June meeting.
- A subcommittee has been formed to consider expanding motorized vehicle legislation.
- The current lease will expire soon, and may not be renewed. If it is renewed, it will be at market rates. A proposal will be considered for a new IDFG building at the April Board Meeting. The Fish and Wildlife Foundation, through a lease purchase agreement, would undertake the project. If the building project moves forward, it will follow standard State procedures.

QUESTIONS/COMMENTS: Chairman Stevenson commended Ms. Kiefer for her work with the Committee and the Legislature this year.

Rep. Sayler told the Committee that IDFG has found a Peregrine Falcon in downtown Boise.

**S1386**

Senator David Langhorst, District 16, presented S1386. The legislation extends the statute of limitations from two to five years for Fish and Game violations involving the unlawful purchase, possession or use of any resident licenses, tag or permit by a non-resident.

QUESTIONS/COMMENTS: Rep. Wood asked why two years was not long enough to obtain forensic evidence. Senator Langhorst gave examples illustrating that violators frequently had

violations going back longer than two years. Penalties for old violations couldn't be assessed. Rep. Wood asked if apprehending the person wasn't more important than assessing penalties. Senator Langhorst said one reason for laws is to provide deterrents. It is also the nature of these investigations that considerable time is needed to build a case.

Rep. Raybould said the law allows two years to file a complaint. It does not require the case to be prosecuted in two years. He asked why five years was needed to file. Senator Langhorst said he would yield the question to the Department

Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG), asked to submit her formal testimony before answering questions. She submitted (Exhibit 3), a statement dated March 23, 2006 to the Committee. The Commission supports S1386 which extends the statute of limitations for "wrong-class" resident license use and the unlawful take of big game animals, caribou or grizzly bears. In both cases, the statute of limitations would be increased to five years. To increase the statute of limitations will assist the Department with its efforts to deter those who literally steal from legitimate sportsmen and wildlife programs. During a "wrong-class" license investigation, Conservation Officers often uncover a history of a non-resident buying a resident hunting/fishing license that dates back several years. Many times the statute of limitations has passed before investigating officers uncover the purchase of the "wrong-class" license. It takes time to establish a relationship of trust that is needed for undercover work.

**QUESTIONS/COMMENTS:** Rep. Raybould said the IRS can audit three years retroactively. If they determine there has been fraud committed, they can then go "back forever." He would prefer to see that approach taken by IDFG. Ms. Kiefer said it is important to remember that two years only represents two hunting seasons.

Chairman Stevenson reminded the Committee that S1386 concerns misdemeanors, not felonies.

Rep. Roberts noted there is not an emergency clause in the bill. If passed it will go into effect on July 1, 2006. He asked if there would be an implementation problem for cases that were filed under the two-year rule. Ms. Kiefer said she expected existing cases to continue under the old rule. Those after July 1, 2006 would be enforced under the new legislation. Rep. Roberts said that answered his question. It is important because courts might question the viability of prosecuting cases already under review. Senator Langhorst said an emergency clause was not thought to be needed. Rep. Roberts asked that it be included in the record that cases with complaints filed prior to July 1, 2005 would not look back five years, but only two. Senator Langhorst concurred.

#### **MOTION/VOTE S1386**

A motion was made by Rep. Roberts to send S1386 as amended to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Wood voted NO for the record. Rep. Roberts will carry S1386 on the floor.

**LETTER**  
**Karl Dreher, Director**  
**Idaho Department of**  
**Water Resources**

A draft of the letter of commendation for Karl Dreher, Director, Idaho Department of Water Resources was accepted by the Committee. It will be signed by the Chairman, including the words "on behalf of the Committee" on the signature line.

**ANNOUNCEMENTS**

Chairman Stevenson said he is not aware of more legislation coming to Committee. There will be no further meetings unless called at his discretion. He anticipates the Committee will sine die Wednesday, March 29, 2006.

**ADJOURN**

The meeting was adjourned at 4:45 p.m.

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Representative John A. Stevenson  
Chairman

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Mona Spaulding  
Secretary