

Senate Resources & Environment Committee

Minutes
2006



MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 11, 2006

TIME: 1:30 p.m.

PLACE: Gold Room - Joint Meeting with House Resources & Conservation

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Burtenshaw, Williams, Brandt, Little

MEMBERS ABSENT/ EXCUSED: Senators Cameron, Stennett, Langhorst

CALL TO ORDER: **Representative Stevenson**, Chairman of the House Resources & Conservation Committee, chaired the Joint meeting, calling it to order at 1:30 p.m.

He welcomed the audience (approximately 60), and Joint Committee members. Johanna Roberts, House page, and Dana Nelson, Senate page, were introduced.

INTRODUCTIONS: **Chairman Stevenson** then introduced **Cameron Wheeler, Chairman of the Fish and Game Commission**, who in turn introduced the Commission members. They are:

Tony McDermott, Panhandle Region;
Dr. Wayne Wright, Magic Valley Region;
Alex Irby, Clearwater Region;
John Watts, Southwest Region;
Gary Power, Salmon Region; and
Marcus Gibbs, Southeast Region and outgoing Chairman.

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

Mr. Wheeler stated that they are prepared to review the 10(j) rule and to brief the committee on the State Wolf Management Plan. He said the Commission will give its best to follow through with what the 10(j) rule allows them to do and they will go as fast and as capable as they can to get the maximum authority of the 10(j).

Committee members were given a packet which included: a nine page letter, signed by the Governors of Idaho and Montana, to the Secretary of the Department of the Interior, Gale Norton; a map of Idaho showing the 2005 wolf activity; a Memorandum of Agreement between the Department

of the Interior and the State of Idaho, signed by Ms. Norton and the Governor; a draft of "Effects of Wolf Predation on North Central Idaho Elk Populations"; and the final rule concerning the gray wolf (*Canis lupus*), 50 CFR Part 17.

PRESENTATIONS:

Mr. Wheeler said there would be two slide presentations - the first will be by James Caswell, followed by Jim Unsworth.

The following information was contained in the slides of the first presentation and **Mr. Caswell** reviewed it for the committee.

WOLF TIMELINE

- 1995 & 1996—35 wolves are released in central Idaho.
- 2000—Idaho receives first of five annual federal appropriations to date to fund wolf management and to compensate for depredations.
- 2002—Legislature approves Idaho Wolf conservation and Management Plan.
 - Tri-State regions marks 3rd year of 30+ breeding pairs, eligible for delisting
- 2003—Legislature passes HB294 to allow IDF&G to implement the state wolf plan and work with OSC.
- 2004—U.S. Fish & Wildlife Service (USF&WS) accepts Idaho and Montana's wolf management plans, rejects Wyoming's.
 - USF&WS releases draft 10(j) rule
 - IDF&G Commission votes to classify the gray as a big game animal
- 2005—The amended 10(j) rule goes into effect.
 - Legislature approves HB132 and HB133 to amend existing law to provide that all methods of take shall be authorized for the management of wolves in accordance with existing laws
 - Governor Kempthorne signs MOA with the Nez Perce Tribe outlining wolf oversight roles
 - Governors of Idaho and Montana propose alternative delisting scenarios to Secretary Norton
- 2006—Governor Kempthorne signs MOA with Secretary Norton designating Idaho responsible for day-to-day wolf management

DELISTING CRITERIA

The Endangered Species Act (ESA) prescribes five criteria to be considered in the listing, delisting and reclassification of a species.

Those criteria are:

- 1) The present or threatened destruction, modification, or curtailment of the species' habitat or range;
- 2) Overutilization for commercial, recreational, scientific, or educational purposes;
- 3) Disease or predation;
- 4) The inadequacy of existing regulatory mechanisms;
- 5) Other natural or man-made factors affecting the species' continued existence.

Chairman Stevenson thanked Mr. Caswell for his report.

The Chairman asked **Steven Huffaker, Director of IDFG**, to comment on some wolf issues before the next slide presentation.

Mr. Huffaker said his comments pertain to two articles that have been in the newspapers recently. He said he received notification from the US Fish and Wildlife Service that they published the 10(a)(i)(A) rule in the Federal Registry yesterday and it will be available for public comment for 30 days. After that, the Wildlife Service will make a decision. The proposal is to make Idaho the designated agent of the US Fish and Wildlife Service for the management of gray wolves north of I-90. This should ensure seamless management statewide.

The other issue is that the US Forest Service has decided that it can't make a decision regarding the request to land helicopters in the Frank Church Wilderness area to radio monitor wolves. Mr. Huffaker said they had requested to do the monitoring while they were doing the big game counts. He said it fit the criteria for the categorical exclusion to the Forest Service rule, but some groups started talking about suing them, and apparently they succumbed to the threat. With not being able to land helicopters in the wilderness area, the staff is now putting together a proposal and budget to send employees in on horseback to radio monitor wolves. Mr. Huffaker stressed that information was needed on the wolves in the wilderness and they would get it, one way or another.

Mr. Unsworth's presentation was titled "Effects of Wolf Predation on North Central Idaho Elk Populations". The following information was contained on the slides which he reviewed for the committee.

The four objectives were:

- Wolf status in Idaho
- USFWS 10(j) Rule
- Department Proposal
- Summary

Wolf Status - 35 were released in 1995/96. There are currently 61 packs; 36 breeding pairs; and 513 - 621 wolves.

USFWS 10(j) Rule - New rule in February 2005. "Take in response to wild ungulate impacts. If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question."

Unacceptable Impact - "State or Tribally-determined decline in a wild ungulate population or herd, primarily caused by wolf predation, so that the population or herd is not meeting established State or Tribal management goals."

Science-based Document

1) Information Requirements:

- ungulate populations below management objectives
- data on impact of wolves on ungulates
- why wolf removal is warranted
- level and duration of wolf removal
- how ungulates will be monitored

2) Other Ungulate Conservation Measures

3) Peer and Public Review

- 4) USFWS determines if the document is scientifically based and if actions will impact recovery.

Elk Population Status

- 29 Elk Population Management Zones
- 3 Elk Populations below goals
 - Lolo (Units 10, 12)
 - Selway (Units 16A, 17, 19, 20)
 - Brownlee (Units 31)

Lolo Zone Elk Population

Current status of cow elk is 3,113. Minimum goal is 6,100.
 Current status of bull elk is 841. Minimum goal is 1,300.

Impact of Wolves

- Lolo Zone Elk Data
 - 186 radio-collared newborn calf elk since 1997
 - Survival June-August = 0-83%
 - Most mortality caused by black bears and mountain lions
 - 140 radio-collared bow elk since 2002
 - Cow survival key to population growth
 - Annual survival = 75-89%
 - 32% of deaths caused by wolves
- Computer Modeling
 - Wolf kill rates and prey selection data from other areas
 - 47-69 wolves
 - Predicts continued population declines

Why Wolf Removal is Warranted

- Elk population unlikely to meet State goals without changes in cow elk survival
- Wolf predation is a significant cause of mortality for cow elk

Other Conservation Measures

- Clearwater Elk Initiative
- Senator Crapo's Elk Collaborative
- Caps placed on hunter numbers
- Eliminated rifle cow elk hunting
- Increased black bear and mountain lion harvest

Proposal

- Department's preference is to allow regulated harvest of wolves by hunters
- Reduce wolves in the Lolo Zone by 75% (up to 43 wolves)

Wildlife Services

- Maintain wolf population at 25-40% for 5 years
- Monitor wolf and elk populations

Public & Peer Review

- External Peer Review
- Public Input Opportunity
 - Web-based survey
 - Public meetings in Lewiston and Boise

Summary

- Wolves exceed recovery goals
 - Harvestable surplus
- Wolf predation on cow elk is at an unacceptable level in the Lolo Zone
- All other factors are being addressed
- Proposed management action will not impact wolf recovery

COMMITTEE DISCUSSION:

Following the presentation, time was allowed for questions. Following are a few of the questions asked:

How will the wolves be controlled?

The answer was by aerial gunning and trapping.

Have the objectives for the elk population changed since 1995 (since the introduction of wolves)?

The answer was that the elk population objectives have not changed.

How will the wolves be delisted if they are not counted?

The answer was the numbers are pretty well known except for in the wilderness area.

What percent of the wolf population have radio collars?

The reply was about 15 percent.

What is the cost per collar, per wolf?

The cost is \$1,000 to \$2,000 per collar.

How many active, beeping collars are there now?

There are approximately 68-70 functioning collars on wolves.

How long do the batteries last in the radio collars?

Typically, the batteries last two to three years; some last as long as five years.

Federal Funds are available for wolf management. What is the cost to the State for elk management?

The cost is close to \$2 million for deer and elk management.

Last year, a memorial was passed on sporting dogs. Has anything been done as a result of that?

The reply was that the 10(j) rule is very clear about it and it has not changed. (The government reimburses owners of working dogs that have been killed by wolves, but not sporting dogs.)

If a lawsuit is filed, what is the downside risk if enough wolves are not collared to substantiate the numbers?
The answer was that they feel enough data has been obtained. Between the Department and the Nez Perce Tribe, data has been collected that should prove sufficient in court.

Chairman Stevenson thanked Mr. Wheeler and the Commissioners for their work and their presence here today. He also commended Mr. Caswell, Mr. Unsworth, and Mr. Huffaker for their contribution to the meeting.

**ANNOUNCE-
MENT:**

There will be Joint meetings again on January 23, 25, and 27.

**ADJOURN-
MENT:**

The Chairman adjourned the meeting at 2:50 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 13, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: none

CALL TO ORDER AND WELCOME: **Chairman Schroeder** called the meeting to order at 1:30 p.m. He welcomed the audience of 22 who are in attendance for the confirmation hearing of **Anthony McDermott** to the Idaho Fish and Game Commission. His term commenced October 12, 2005 and will expire June 30, 2009.

SPEAKER: The Chairman welcomed Mr. McDermott and asked him to tell the committee about himself, then questions would follow.

Mr. McDermott said he was born and educated in Montana. He started fishing when he was about six years of age and when he was old enough to hunt, he pursued that sport. After high school, he attended college and held various jobs. Six days after his marriage, he was drafted. Mr. McDermott attended Officers Candidate School (OCS), flight school, jump school, and ranger school, then was sent to Viet Nam as a pilot. After a tour of duty, he returned to the US and was a flight instructor for three years, then returned to Viet Nam for another tour of duty. While in the military, he returned to college and obtained a degree in business from the University of Montana. Following his schooling, he served various assignments for the Army. Mr. McDermott's military career was from 1966 to 1993. He is now a land developer, after being involved as a real estate agent/broker.

As a hunter and fisherman all his life, Mr. McDermott said he decided to "throw his hat in the ring" when Ms. Hadley's appointment expired on the Commission. He said he is excited about being a Fish and Game Commissioner for North Idaho and pledged to do his best to represent that area.

QUESTIONS FROM THE COMMITTEE: Chairman Schroeder said he would entertain questions from the committee to Mr. McDermott.

Listed are some of the questions asked. (The questions and answers have been condensed.)

QUESTION: What do you perceive to be the issue of greatest concern?

RESPONSE: Wolves. I base that on where I've been.

QUESTION: Has the Fish and Game Commission taken a position on the proposal to sell public lands as proposed by Congress?

RESPONSE: The Fish and Game Commission has not talked about it, but I am personally opposed to it.

QUESTION: How do you feel about predator control?

RESPONSE: I am in favor of predator control.

QUESTION: What is your stand on preference points?

RESPONSE: My personal opinion is that I do not like them.

QUESTION: Do you support the Department's policy on Chronic Wasting Disease (CWD)?

RESPONSE: Yes. CWD is a major threat.

QUESTION: The wolves are chasing the elk and the elk are mixing with cattle. What can we do about the spread of disease?

RESPONSE: We need to control the wolves.

QUESTION: How do you feel about the transfer of land or exchanges of land for public access?

RESPONSE: I am in favor of access.

{Chairman Schroeder asked Director Huffaker if there is a source of funds used for purchasing access rights. The Director said that \$2.00 is set aside on every hunting license sold and it goes into a fund to purchase land, acquire access, or enhance habitat.}

QUESTION: Pheasants use to be plentiful in the Mud Lake area and now there aren't very many there. The habitat seems to be there. Are you in favor of stocking those areas heavier?

RESPONSE: Yes and it is an area of concern and it is critical.

{Chairman Schroeder asked Director Huffaker if Fish and Game controlled the water situation and is there an adequate water supply throughout the entire year. Director Huffaker replied that they do not control the water and water is a limiting factor. It was the opinion of one committee member that due to the growth of foliage, burning it off would be helpful.}

QUESTION: Would you be in favor of reinstating the pheasant farm?

RESPONSE: Yes.

QUESTION: What is your position on landowner permits and the availability of the sale of them?

RESPONSE: I do not have a position at this time. It is a complex subject.

QUESTION: What is your opinion of your role and the Commission's role relating to public policy issues?

RESPONSE: I feel the Commission should not be out in front making decisions. It should be done carefully and it should benefit the people of Idaho.

QUESTION: What are your feelings on salmon recovery and how do you feel about dam breaching?

RESPONSE: I do not have a public opinion. I do fish for steelhead and salmon and they are important. The breaching of dams is not a decision that should be made by the Fish and Game Commission.

QUESTION: How do you feel about the importation of white tail deer?

RESPONSE: I am opposed to it.

QUESTION: Where do you draw the line on importation between two legs and wings versus four legs?

RESPONSE: My concern is CWD and hunting behind fences (which I don't consider hunting).

QUESTION: How do we diagnose if an animal has CWD?

RESPONSE: It takes a veterinarian or biologist to do that.

That concluded the questions for Mr. McDermott. The Chairman said that testimony would be taken at this time.

TESTIMONY: Testifying was **Marv Hagedorn**, representing Concerned Sportsmen of Idaho and the Clearwater Elk Recovery Team from Northern Idaho. He read letters from both groups supporting the appointment of Tony McDermott to the Fish and Game Commission.

TESTIMONY: **Senator Shaun Keough** testified in favor of supporting Mr. McDermott. She finds him to be open-minded, very analytical, listens to what people have to say and is involved in the community.

TESTIMONY: **Representative Eskridge** also testified in favor of the appointment of Mr. McDermott. He said that he, too, found Mr. McDermott to be open-minded and to listen to both sides of a controversy.

Senator Broadsword had been in the audience and was planning to testify on Mr. McDermott's behalf, but was called away.

ANNOUNCEMENTS: Chairman Schroeder said that voting on this Gubernatorial appointment will be held Monday, January 16. He also announced that on Monday's agenda will be two RS's, so it should not be a long meeting.

The Rules have been assigned to subcommittees and they are to report their findings to Vice Chairman Pearce, who will report to the Chairman. If it is deemed necessary, full committee hearings will be scheduled as needed.

The assignments are as follows:

DEPARTMENT OF FISH AND GAME

Senator Brandt, Chairman

Senator Little

Senator Langhorst

OUTFITTERS AND GUIDES LICENSING BOARD

DEPARTMENT OF PARKS AND RECREATION

Senator Burtenshaw, Chairman

Senator Brandt

Senator Langhorst

DEPARTMENT OF WATER RESOURCES

Senator Burtenshaw, Chairman

Senator Cameron

Senator Stennett

DEPARTMENT OF ENVIRONMENTAL QUALITY

DEPARTMENT OF LANDS

Senator Pearce, Chairman

Senator Williams

Senator Stennett

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 2:30 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 16, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

BRIEFING: The Chairman asked **Norm Semanko, Executive Director for the Idaho Water Users Association, Inc.**, to brief the committee regarding a court order dismissal concerning water rights (instream flow claims).

Mr. Semanko said the dismissal is in regards to the Shoshone-Bannock Tribe's 56 filed objections. On November 7, 2005 the Sho-Ban Tribe filed a notice to withdraw the objections. The hearing for the withdrawal notice was December 20,2005 and was dismissed with prejudice on January 5, 2006.

GUBERNATORIAL APPOINTMENT: **Senator Little** made the motion that the Gubernatorial appointment of Anthony McDermott be sent to the floor with a do pass recommendation. **Senator Brandt** seconded the motion. A voice vote indicated that it was unanimous.

The Chairman said, with the committee's approval, **Senator Keough and Senator Broadsword** would be the floor sponsors of Mr. McDermott.

RS15400 **Ms. Sharon Kiefer, Legislative Liaison for the Idaho Department of Fish and Game**, presented RS15400.

She said that currently, each individual resident of the State Hospital North, State Hospital South, the Idaho State School and Hospital, and the State Veterans Home must obtain a permit in order to fish. This legislation simplifies the process by allowing the Department of Fish and Game to issue a fishing permit to the facility. There will be no fiscal impact on revenues and the workload should be reduced by the decrease in the number of permits issued.

MOTION TO PRINT: **Senator Williams** said he thought this RS was a good idea and made the motion to have RS15400 printed. **Senator Burtenshaw** seconded the motion. A voice vote indicated that it was unanimous.

RS15431

Mr. Karl Dreher, Director of the Department of Water Resources,
presented RS 15431.

This purpose of this RS is to change the time required to send notice of annual water district meetings from thirty days to twenty-one days and for special meetings from thirty days to fourteen days. He said people tend to forget when notices are sent in advance from 30 to 60 days.

**MOTION TO
PRINT:**

Senator Little made the motion to have RS15431 printed. The motion was seconded by **Senator Stennett**. A voice vote indicated that it was unanimous.

ADJOURN:

Chairman Schroeder adjourned the meeting at 1:40 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 18, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: Senators Cameron and Burtenshaw

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

ANNOUNCEMENT:

He announced to the committee that **Director Huffaker** of the Idaho Department of Fish and Game (IDFG) had responded to his inquiry regarding the harvest of bucks and bulls by people who purchase a left-over non-resident tag as a second tag. A copy of that correspondence is in each committee member's folder and is also inserted into the minutes.

Dear Senator Schroeder:

This is in response to your inquiry regarding the harvest of bucks and bulls by people who purchase a left-over non-resident tag as a second tag. Let me begin by pointing out the fact that the sale of a 10% quota of big game tags at approximately ten times the price paid by residents is an effort to hold down the costs of big game hunting for residents while still adequately funding big game management.

In 2004, residents bought 253 elk tags and 535 deer tags from the non-resident quota. Since the program began in 2002, residents have purchased from 1.2% to 1.9% of the non-resident elk tags and 3.2% to 4.5% of the non-resident deer tags. A person can purchase only one "extra" tag from the non-resident pool, so nobody can legally harvest more than two bucks or bulls.

Without spending an inordinate amount of time and sportsmen dollars searching individual harvest records, I can't give you precise comparisons of success. Assume that the "average" purchaser of a second tag harvested, on average, the same way the general tag purchaser did. In general seasons, the hunters who reported spending at least one day in the field had approximately a 24% success rate on elk and about 40% success on deer. Using those numbers and assumptions, residents hunting on a non-resident second tag probably harvested 61 elk, of which 42 were bulls, and

214 deer, of which 175 were bucks.

If you or your constituents would like more specific information, we will be happy to provide it. The 2005 harvest summary will be done in late February, and the results by zone and big game unit will be posted and published as soon as they are verified.

Sincerely,
Steven M. Huffaker
Director

RS15671

Senator Langhorst presented RS15671. This legislation will amend Section 36-711, Idaho Code, to prohibit the importation of domestic Cervidae into Idaho. Senator Langhorst provided two handouts for the committee - "Northeast Looks To Limit CWD Inroads" and a chart of the states listing information regarding cervid imports, game farms, high fence hunting, captive testing, wild testing, etc.

Senator Langhorst said what this bill doesn't do is ban game farms. What it does do is to prevent chronic wasting disease (CWD). Thirty-four states have banned or severely restricted the importation of domestic cervids. He asked for a vote to print the RS.

Chairman Schroeder said there are several members of the **Idaho Elk Breeders Association** in attendance. They will be represented by **Clint Evans**, a member of the Board of Directors for the Association. Mr. Evans is from Garden Valley and is an elk rancher.

Mr. Evans said the elk that he raises are used for several different purposes. One is for the meat, which is low in cholesterol, low in fat, and high in protein. Currently, over two million pounds of venison is imported from New Zealand. Mr. Evans said the venison could be raised here, rather than importing it. Another reason elk are raised is for the harvest of velvet antlers, which is a medical product. Other reasons are for breeding stock and for trophies. He has raised elk the past 15 years and conducts testing periodically. Mr. Evans feels the domestic Cervidae are, by far, the healthiest animals around. The Department of Agriculture has rules and regulations regarding what has to be done before they are brought into Idaho. The animals must be in a CWD monitoring program for at least five years before admitted into Idaho and have two brucellosis tests. They must also come from an accredited tuberculosis (TB) herd or be tested for that. Mr. Evans said because of the good health of these animals, the threat of bringing a disease into the state is minimal.

In Wyoming, Colorado, and Utah, CWD is in the wild populations. There is documentation that it has been there since 1964.

Mr. Evans said this legislation would limit the movement of elk between the states and take away free trade. He also said domestic elk are considered livestock by state statute and recommended that this RS not be printed.

A question was asked as to the movement of elk in and out of the state of Idaho. The reply was that there was not a lot of movement of elk. What is done is to bring in genetics to produce animals for meat and trophies and they are all tested for disease.

When asked what states the elk come from, the reply was that in Idaho, there is a 100th Meridian rule. That means that no elk can be brought in from east of the 100th Meridian, which goes through the center of the United States (starting in North Dakota and continuing straight south). The reason for this rule is because there is a meningeal worm living in the east, so any trading of elk is done only in the western area. In Oregon, there are good genetics.

There was an inquiry if wild elk are mixed with domestic elk and the reply was no.

Chairman Schroeder asked **John Chatburn**, who is with the **Department of Agriculture**, if Idaho allows the importation of Cervidae from states known to have found CWD in their wild or domestic herds. Mr. Chatburn replied that Idaho's regulations do not allow the importation of domestic Cervidae from a CWD endemic region. An example of an endemic region is Northern Utah, corner of Colorado, and part of Wyoming.

Clarification was asked regarding testing for CWD. **Mr. Evans** said there is no live test for CWD, so testing is done when an animal dies or is slaughtered and herds are monitored for five years. The normal incubation period for CWD is 36 months. Many of the herds are now seven years into the CWD monitoring program.

Vice Chairman Pearce asked **Mr. Chatburn** if only domestic herds had CWD in an endemic area or if wild herds had CWD also. Mr. Chatburn replied that there were outbreaks in both herds.

Senator Stennett inquired as to states that have a ban on imports - can they export? **Mr. Chatburn** stated that he didn't know.

Genetics was talked about and **Mr. Evans** said the breeders prefer to bring the genetics in with a live animal, but semen has been brought in; however, that is very expensive.

MOTION TO PRINT:

Senator Stennett made the motion to print RS15671. It was seconded by **Senator Little**.

Senator Brandt stated that he was voting in favor of printing the RS as a courtesy to the sponsoring committee member and to give both sides the opportunity to address the committee in a full hearing.

The motion passed with the majority voting aye. **Senator Pearce** asked to be recorded as voting nay.

SPEAKER:

Chairman Schroeder then introduced **Mr. Karl Dreher, Director of the Department of Water Resources**, who will present his annual report.

Mr. Dreher said he would start his talk by briefing the committee on the

Snake River Basin Adjudication. It was initiated in 1987 and by 1995, some issues had been resolved. After spending millions of dollars from the General Fund, not a single water right had been adjudicated. For the past ten years, the department has been working to reverse that course and have been successful. Their goal was to complete the department's claims investigation by the end of calendar year 2005. However, they are six months behind but hope to complete it by June, 2006. There were 160,000 claims filed. The legal efforts by the attorneys will continue for another two or three years.

Mr. Dreher said another issue is the drought. 2005 was a drought year, but it had some unusual characteristics. The current drought sequence that we are in began in 2001. On the upper Snake River Basin above Milner, this drought is the worst on record. This is worse than the 1930's drought. Reservoirs were not in place in the 1930's as they are now. The reservoirs have significant benefits to industrial, agriculture, domestic and commercial interests in the Snake River Basin. A map was distributed showing the mountain snow water equivalent as of January 18, 2005. The Idaho Panhandle Region and the Clearwater Basin are near normal, but south of there it is much better. It is looking better, but the drought is not over. Mr. Dreher said one good water year does not erase five years of drought and there is significant soil moisture deficit in some parts of Idaho.

Between the success of the Snake River Basin Adjudication and the drought, those two factors resulted in some significant water distribution issues across the Upper Snake River Basin. Idaho does not provide for administration of water rights in a water district. They are not provided for until the rights are decreed by a court; however, there are some exceptions. In the Snake River Basin, there have been tens of thousands of water rights issued to divert and use ground water that have not been subject to the same kind of administration that surface water rights have. More than 120,000 have received partial decrees. Once rights are decreed, those rights must be put into a water district (by creation or existing ones) so that they are subject to administration. Ground water development on the Eastern Snake Plain has been significant.

In the 1950's when ground water levels peaked in the Eastern Snake Plain, sprinkler irrigation was just beginning to occur. Today, as much as two-thirds of the agricultural land that used to be flood irrigated is now irrigated by sprinklers. In some places of the Upper Snake, surface water was diverted at the rate of 20 acre feet to irrigate crops that consumed maybe three to four acre feet. Ground water levels across the Plain, based upon United States Geological Survey data, was 60 - 100 feet. Spring discharge increased the Thousand Springs area average from 4200 cubic feet per second to 6800 cubic feet per second. At that point in time, there was unappropriated water. The state issued permits to appropriate water that became licensed water rights, both to divert water from the springs in the Thousand Springs area and to divert water from ground water. It has been said that the state allowed over-appropriation of the resource. Mr. Dreher said this was done prior to him becoming the director and he feels it was more of a lack of understanding than over-appropriation. Today, a million acre feet less of surface water is diverted,

yet just as many acres of land is irrigated. The million acre feet used to go into the aquifer. It doesn't anymore, so conflict is inevitable.

Newly formed water districts, now subject to administration, issued calls from the distribution of ground water and surface water users across the Plain. These calls were made in significant numbers during 2005. Calls were made by seven canal companies and irrigation districts, plus six holders of rights to springs. Mr. Dreher said in response to those calls, he issued a large number of orders. As a result of that, there were petitions for hearings and five lawsuits. Of the five lawsuits, one was withdrawn; one was dismissed; and one was affirmed.

In reviewing the Department's response, it was found that it had not promulgated Rules to govern the distribution of water - between ground water and hydraulically connected surface water. The Rules were then promulgated by the previous director, formally adopted and confirmed by the Legislature (1994), and have remained in effect since. One of the lawsuits is challenging the constitutionality of those Rules. The other lawsuit stems from an earlier distribution of surface water between two fish hatcheries in the Thousand Springs area. The order issued in that matter required redistribution of water from Clear Lakes to Clear Springs. Clear Lakes has filed a number of actions and it continues to be an issue. Mr. Dreher said to put all this in general context, without describing any particular issues, what is at stake is how ground water is going to be administered pursuant to the laws that Idaho has implemented or adopted.

He went on to say that in the 1800's, people didn't understand ground water. They couldn't see it, didn't know where it came from, and didn't know where it went. There was very little use of ground water anywhere in the United States at that time. Some one hundred years or so later, western states are grappling with what to do with ground water. The issue we have is the well-established system of law, based upon the distribution of surface water, that has now become an integral part of the real property rights involved. Now, ground water has to be superimposed. Some states have chosen to treat ground water separately. Since 1950, Idaho has chosen to recognize that ground water is hydraulically connected to surface water to various degrees and various extent. In 1951, the Idaho Legislature passed the Idaho Ground Water Act, which in part states that the prior appropriation system of laws applies to ground water. Mr. Dreher is now trying to determine what it means and applying that law, coupled with other statutes, properly promulgated rules, case law and elements of common law to make sense of all this. There are many that strongly disagree with what he has done.

The last item to be discussed by Mr. Dreher was the fiscal year 2007 budget as recommended by Governor Kempthorne.

DISCUSSION: Following Mr. Dreher's report, there was a brief discussion regarding some of the issues.

ADJOURNMENT: **Chairman Schroeder** thanked Mr. Dreher for his report, then adjourned the meeting at 2:55 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 20, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Brandt, Little, Stennett, Langhorst

**ABSENT/
EXCUSED:** Senators Burtenshaw, Williams

**CALL TO
ORDER:** **Senator Schroeder** called the meeting to order at 1:30 p.m.

SPEAKER: **Dean Sangrey, Operations Division Administrator, Idaho Parks and Recreation**, presented an annual report for the Department of Parks and Recreation. He introduced Dave Ricks, **Administrator of Management Services, Idaho Department of Parks and Recreation**.

Dean Sangrey reported that operations are going well. He said visitation is holding steady for the most part, though weather and fuel prices have contributed to a slight decline.

Senator Schroeder asked about a newly-implemented reservation system.

Dean Sangrey answered that the new reservation system helps in the summer months, when campgrounds and other facilities are at maximum capacity. The system went live on Monday, January 16. It is available via telephone through a call center as well as online. The system received 29,000 calls within the first three hours.

Senator Schroeder asked who is running the call center.

Dean Sangrey said the Department has contracted with a company called Camis, Inc., headquartered outside of Toronto, Canada, which provides similar services for the state of Washington.

Senator Schroeder asked whether the company was collecting money for the Department as well.

Dean Sangrey said, "Indirectly," through the online reservation system. The company plans to open a call center in the continental United States

and has chosen Boise as the location. The Boise center will open in two to three weeks.

Senator Schroeder asked how many bidders the Department had.

Dean Sangrey said two or three, including Camis.

Dean Sangrey continued by describing some on-going enhancements around the state, such as a new campground loop at Farregut, 62 new RV campsites at Ponderosa to open by July 1, and 73 miles of paved trails between Coeur d'Alene and Plummer.

Senator Schroeder asked if users of the trail system have to own the \$25 sticker.

Dean Sangrey said there is no charge. In addition, campsites at Bruneau Sand Dunes have been improved to better accommodate modern recreational interests.

Senator Schroeder asked whether a sticker would be required for a trail-user in Plummer who parks in a State Park.

Dean Sangrey said a sticker would be required.

Senator Schroeder asked, "What if they just parked alongside the road?"

Dean Sangrey answered that no fee would be charged and, in fact, the majority of trail-users access the trails from outside the park.

Dean Sangrey continued by describing landscaping improvements at Lucky Peak and sewer/water infrastructure improvements throughout Heyburn State Park.

Senator Schroeder asked whether the relations with the Coeur d'Alene Tribe near Heyburn were friendly.

Dean Sangrey said the relationship is a challenge at times and explained the management agreement process used to solve these issues.

Dean Sangrey announced enhancements at Bear Lake with a new roadway around the north end of the lake. Also, Harriman State Park is a good example of a multi-season operation. He said registration numbers, like for ATVs, continue to rise in both in- and out-of-state users.

Senator Stennett asked about the status of the Lost River Loop Trail.

Dean Sangrey said it has not been tabled and the issues against constructing the trail are being addressed. The Department's attention has been diverted from focusing on the Lost River Loop to acquiring Bay

Horse. Bay Horse would have 125-150 miles of trail opportunities from old Forest Service and mining roads. Two mining companies currently own the land and this year is the second of a two-year land-acquisition option with the companies. The Department is also focusing on smaller loops more centrally located in Arco, Mackay, and Challis for which there is considerable community support. Legislation passed last year and has now been implemented, authorizing cooperative oversight with the Department of Transportation to identify possible crossing locations over Highway 93.

Senator Stennett said rancher opposition may need to be addressed.

Dean Sangrey said the proposed trails are to be built in the place of already-existing roads and trails.

Senator Stennett pointed out there is no way to identify what is private property and there is fear that public-trail users could abuse private lands.

Dean Sangrey said the Department is “painfully aware” of this danger. New personnel will soon join the staff who may provide insight in dealing with these issues. He said discussions are being held with all stakeholders involved.

Senator Schroeder said a hearing will be held on ATVs as a way to bring vitality to rural communities which have suffered as a result of the decline in the logging industry. A trail has been proposed from Elk City as far north as Kellogg, but the route of the trail has yet to be decided. Parks could be a good agency to join in this decision. The number of ATVs is increasing and if riders have no place to ride, they will go wherever they want, he said.

Dean Sangrey said the Department looks forward to the meeting. More discussion on Senator Stennett’s question and about ATV issues ensued.

Senator Langhorst asked about the success of last year’s legislation mandating that minors wear helmets when riding ATVs.

Dean Sangrey said the Department does not yet know, but it is in the process of developing an educational program on the topic.

Senator Stennett asked about how the Department keeps track of ATV registration.

Dean Sangrey answered ATV registration is required by statute and is similar to boat registration which must be renewed in the fall. After being registered, the vehicle is identified by serial number and registration sticker number. If the ATV is used solely on the owner’s property, it is excluded from the registration requirement and is not tracked.

Senator Stennett asked how the Department keeps track of ATVs used

on private versus public lands.

Dean Sangrey said it is very difficult. It is almost on the honor of the user.

Senator Stennett asked how many ATVs are registered.

Dean Sangrey answered 66,160 in 2005.

Senator Schroeder mentioned that if an ATV on public land is not registered and is picked up by an officer, a citation is given. He asked how much a citation is.

Dean Sangrey said the fine starts at about \$48-52. The Forest Service has the legal authority to cite on Forest Service land and the same goes for Bureau of Land Management (BLM).

Dean Sangrey continued by explaining the extensive process of recreational grants. These grants go toward RV recreation, waterways improvements, trails programs, Park and Ski programs, etc. The grant application period closes on the last Friday of January. There are approximately 58,000 acres in Idaho's park system. New additions to the system include the Coeur d'Alene trails and Castle Rock by the City of Rocks in 2004 which added 500 structures and about 1,400 miles of road.

Senator Schroeder said some people want parks to be as fiscally independent as possible and others don't want them to compete with the private sector. He asked how the Department addresses each concern.

Dean Sangrey said currently about 77% of the funding for parks comes from a dedicated fund and the rest from the state's General Fund and grants. The Department continually addresses complaints about the sensitive issue of competition with the private sector by being as open and cooperative as possible. He used Hells Gate State Park as an example.

Senator Schroeder asked whether raising the fees causes fewer people to use the facilities, causing a decrease in revenue.

Dean Sangrey said the Department's fee proposal would come before the committee later in the session. He said he believes, yes, the Department could reach that threshold. However, that threshold is a distance away.

Senator Schroeder described his travels around Idaho to get a picture of the water issues affecting the southern half of the state. He thanked Mr. Sangrey for the presentation and made announcements for next week's schedule.

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 23, 2006

TIME: 1:30 p.m.

PLACE: Gold Room

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the Joint meeting with the House Resources and Conservation to order at 1:30 p.m. He welcomed the audience of approximately 50 people.

ANNOUNCEMENTS: He announced that in addition to today's meeting, there will be Joint meetings on Wednesday, January 25 and Friday, January 27. Subjects that will be covered during the week are: the point system; Access Yes; presentations by interested groups; and testimony from the public. The Chairman stated that the reason for these meetings is due to the proposals to provide increased access in the future and the increase of awareness that private folks have discovered that access is worth money. The question is, "What does the State want to do to retain access?"

He also announced that following the Joint meeting, the Senate Committee will remain to conduct some committee business.

Chairman Schroeder then invited **Representative Stevenson, Chairman of the House Committee**, to say a few words.

Representative Stevenson said he appreciated the Fish and Game people being here today, as well as all the people that have interests in these hearings. He looks forward to what will be said.

INTRODUCTIONS: Chairman Schroeder introduced **Mr. Steve Huffaker, Director of the Idaho Department of Fish and Game (IDFG)**, who will make some introductions and coordinate the presentation.

Mr. Huffaker introduced **Cameron Wheeler, Chairman of the Idaho Fish and Game Commission; Dr. Wayne Wright, Commissioner** and who will present a brief overview of policy issues; **Marcus Gibbs, Commissioner; John Watts, Commissioner;** and **Brad Compton, State Big Game Manager for IDFG** who will present technical information.

REMARKS: **Mr. Huffaker** said he is pleased to be able to bring this information to the Joint committee because access for hunting and fishing in Idaho is a

“really big deal”. Two-thirds of Idaho is not private land, but the third that is - is all the good stuff. He said they would also talk about controlled hunts. Putting it into perspective, Idaho has about 250,000 big game hunters. Statewide, there are approximately 30,000 permits for controlled hunts. Two-thirds of those controlled hunts are for cows and antlerless deer. The buck and bull permits are a smaller percentage, but only a few hundred are for trophy hunts and big antler hunts which attract a lot of attention.

Mr. Huffaker provided the committee members with two handouts - The Death of Hunting (which is on file in the Resources Office) and a briefing statement by Brad Compton (which is inserted in the minutes on pages 3 and 4).

SPEAKER:

Dr. Wright gave a brief biography for the benefit of the committee members who do not know him. Following that, he addressed two issues, controlled hunts and access.

Controlled Hunts: The Commission has looked at this long and hard. They have had input from lots of people and sportsmen’s groups. Earlier this month, the Commission asked staff to implement a bonus point system. The reason for doing that was a result of a survey with 70% of the public in favor of it. Another survey regarding the rewarding of perseverance indicated 60% were in favor of a point system. There was a cost factor involved and it was determined that it could be done for \$2.00 per application for a controlled hunt.

Access: There is no question that access is a problem today. Twenty years ago in this country, there were 50 million people that called themselves hunters and fishermen. Today, there are only 38 million that call themselves hunters and fishermen. Idaho is blessed because we have more public land than private land. However, we are beginning to see early indications of declining numbers of hunters and fishermen in Idaho. The reasons are myriad. Idaho does have pivotal private lands - roads, habitat, water are, in many places, controlled by private lands. Unless we have access to that land, things will become more and more difficult. There is a demographic generational reason. A number of years ago, people would ask for permission from the landowner to hunt and were trustworthy to close gates and not shoot the livestock. Today, that trust has disappeared, plus there are many absentee landowners. Attitudes have changed. In addition, there are economic reasons. Ranchers and farmers are looking for ways to improve their economic status and one way to do that is to lease their property. There are no easy answers to this problem in our state. There are two things that have been instituted and are working. One is the Landowner Appreciation Program (LAP). We need to show more appreciation for all that our landowners do for the state of Idaho and for Fish and Game. If we can’t do that, we can’t expect access. This program has been looked at in detail by the advisory committee and encourages its use. This program issues tags to landowners that can be transferred to whomever they wish. The other program that has been successful is Access Yes. It is a win-win for everyone. The way it works is if a landowner with over 640 acres

wishes to participate in making their land available for Access Yes, they are reimbursed monetarily. There is a problem with this and the problem is that it is a \$5 Million dollar program with a \$440,000 budget. This month, the Commission recommended to proceed with an exploration of the Magic Valley area, Region 4, to determine if there is merit in putting together a pilot program a year from now. Magic Valley has its own unique problem. They have the highest percentage of LAP tags and Access Yes programs. There are some problem units, but those can be solved. Dr. Wright had high praise for the staff in Magic Valley. One of the things that have been considered for that area is combining Access Yes and the LAP program. Currently, 10 to 15 percent of the tags in a controlled hunt are being offered. The Commission will be looking at more creative ways to increase the revenue for Access Yes. They are also considering the monitoring of certain areas during the hunting season.

Dr. Wright's closing remarks included a quote from a proverb which was: "There is wisdom in the counsel of many". His hope is that they (the Commission) can come up with a system that will reward landowners and preserve access to make the state better for future generations.

**BRIEFING
STATEMENT &
SLIDE PRE-
SENTATION:**

Brad Compton, State Big Game Manager for IDFG, gave a slide presentation. (A copy of the slide presentation will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library.)

Following is the briefing statement provided by Mr. Compton in relation to the slide presentation.

Subject: Landowner Big Game Tags

Background:

In 1989 the legislature established the Fish & Game Advisory Committee consisting of 6 sportsmen appointed by the Director of Fish & Game and 6 landowners appointed by the Director of Dept. of Agriculture. The committee's role is to provide advice and recommendations on landowner/sportsmen issues and act as a liaison between agencies, landowners, sportsmen, and the legislature. The committee has been intimately involved in the development and management of landowner programs in Idaho.

In 1992 the Department implemented a Landowner Preference Program to recognize landowners who provided significant wildlife habitat and allowed public access. In 1999 the program was renamed the Landowner Appreciation Program (LAP). The program provides a separate controlled hunt drawing for enrolled landowners for elk, deer, and pronghorn in hunts without general hunting opportunity. Permit levels are set at an additional 10— 25% of the regular controlled hunt levels. Enrolled landowners with at least 640 acres of suitable habitat within the controlled hunt area are eligible for 1 permit for each species using theft property. Landowners with >5,000 acres are eligible for 2 permits for each species. The drawing is conducted using a "bonus" system where landowners receive an extra chance for every 640 acres enrolled. LAP applicants are not restricted to waiting periods and single-species application requirements as in other controlled hunts.

Prior to 1999, landowner permits could only be used by immediate family members. Currently LAP permits are transferable to anybody, but state law prohibits the direct sale. However, landowners are entitled to manage access to their property including charging an "access fee." Prior to 2001, landowners had to provide "reasonable" access to be eligible for the program. A definition for "reasonable" was never established and the reasonable access requirement was removed in 2001.

Current Status:

Landowner enrollment in LAP continues to increase annually. Currently, nearly 800 landowners are applying for 3,000 permits. However, several hunts (particularly antlered deer, antlered elk, and pronghorn) are oversubscribed. Increasing demand by landowners for available permits has raised concern among some landowners over the equitable distribution of permits. Additionally, the Department, Commission, and Advisory Committee are evaluating other issues including: 1) small landowner recognition and eligibility, 2) equitable treatment of large landowners (>10,000 acres), 3) corporate land issues, 4) hunting and fishing access to private land, and 5) maintaining suitable wildlife habitat on private land.

The issue of landowners "selling" LAP permits is extremely contentious. Some landowners have questioned the prohibition against direct sale of tags given other avenues for receiving compensation. While most sportsmen recognize a landowner's right to manage access, they are opposed to the direct sale of permits. Many sportsmen are concerned with private land hunting and fishing opportunities becoming restricted to wealthy hunters or outfitters.

IDFG Position:

While the majority (67%) of Idaho is in public ownership, private lands constitute important habitat for small game, waterfowl, and wintering big game. Additionally, private lands offer substantial hunting and fishing opportunity. The primary goals for the Commission, Department, and Advisory Committee are to protect/improve wildlife habitat on private land and maintain recreational opportunities. Over the next year we will evaluate various incentives to achieve these goals.

Key Dates:

None.

Key Publics:

Sportsmen, landowners, elected officials, rural communities (economics), corporate industries, conservation groups

Following is information from the slide presentation.

Landowner/Sportsman Program

Established in 1984

Fish & Game Advisory Committee created in 1989

3 Components

Access Yes

Landowner Appreciation Program

Depredation Prevention/Compensation

Goal: to improve relationships among Idaho's landowners, sportsmen,

and the Department.

A Changing Idaho

Land Ownership

70% Non Private (36,917,077 acres)

30% Private (16,041,002 acres)

Impacts

Loss of Access

2002 Idaho Citizens Survey

How important is it to you that the Department encourage private landowners to allow access for fishing and hunting?

Very important - 50%

Somewhat important - 25%

Somewhat unimportant - 4%

How is the Department doing to encourage private landowners to allow access for fishing and hunting?

Poor - 25%

Fair - 30%

Not Sure - 20%

Good - 19%

Excellent - 5%

Access Yes!

Fish & Game Advisory Committee

Evaluated other state programs

4 years in development

Implemented in 2003

Landowner Compensation

\$, habitat or access developments

Competitive Bidding Process

Landowner determines conditions of access

Sportsmen Evaluate Bids

Sportsmen Review Committees

5 sportsmen in each region

Ranking Criteria

Quality of hunting/fishing opportunity

Total acres

Regional needs

Cost

Access to public land

Previous habitat improvement projects

Funding

General license

Depredation account

Super Hunt applications

FY06 budget of \$450,000

Super Hunts

Controlled hunt for:
12 elk tags
12 deer tags
12 pronghorn tags
4 moose tags
Valid in any open hunt
Generate \$140,000 - \$165,000 annually

Program History

2003	30 landowners	108,040 private acres	240,569 public acres	
				\$116,202
2004	66 landowners	222,127 private acres	261,150 public acres	
				\$265,259
2005	87 landowners	347,338 private acres	430,690 public acres	
				\$436,307

Average cost/acre in 2005 = \$1.26

Eight slides of maps

Future of Access Yes!

Goal #1 - to provide hunting & fishing access to 1,000,000 acres of private land.

Goal #2 - to provide access through private ground to 1,000,000 acres of public land for hunting and fishing.

Landowner Appreciation Program (LAP)

Separate controlled hunt drawing process for qualifying landowners established in 1992.

“To recognize Idaho’s private landowners for supporting wildlife, maintaining wildlife habitat, contribution to Idaho’s hunting heritage, and to encourage positive landowner-sportsman relations.”

Offered for deer, elk, and pronghorn where no general hunting opportunity exists.

An additional 10% of regular Controlled Hunt permits.

Landowners providing significant habitat
699 registered
2,070,246 acres (13% of all private land)

Minimum of 640 acres
640 - 4,999 acres (1 permit each species)
5,000+ acres (2 permits each species)

Landowner applicants given exceptions for:
1 year waiting periods for antlered deer & elk hunts
Applications for moose, bighorn sheep, mountain goat

Changes Over Time

Landowners able to transfer tags outside the immediate family (1999)

Leftover tags made available (1999)

“Reasonable Access” stipulation dropped (2001)

Ten slides (eight slides comparing permits issued and harvest; two slides regarding LAP hunts and demand)

Future Opportunities

Additional incentives to increase private land access
Incentives for maintaining/improving habitat on private land
 Small landowners
 Very large landowners
Corporate lands

Controlled Hunt Drawing System

Background
Improving Odds
Commission Sideboards
Public Input
Idaho Bonus Point System

Background

Idaho’s Random Draw System
 Each year nearly 130,000 people apply for 30,000 tags
 “Lucky” hunters draw more often than “unlucky” hunters
 Commission has intensively researched drawing systems for 15 years
 11 of 13 western states have a point system

Improving Odds

No system can guarantee a tag

Reduce Applicants

 Longer waiting periods
 Limit applications
 Higher fees

Point Systems

 Improve chances for unsuccessful applicants
 Preference systems
 Bonus point systems

Preference Points

 Earn points
 Permits allocated to only top point holders
 Predictable system
 Most impact on new hunters

Bonus Points

 Earn points
 Points increase number of chances
 Random drawing
 Somewhat predictable
 New hunters have chance of drawing

Commission Sideboards

Must maintain opportunity for new hunters
System must be revenue neutral

Public Input

1,600 surveys mailed to random selection of controlled hunt applicants
1,043 (65%) responses
918 (88%) residents
125 (12%) nonresidents

Web-Based Survey
2,724 (86%) residents
373 (12%) nonresidents

Satisfaction with current system is mixed
42% satisfied, 36% dissatisfied, 21% neutral

Unsuccessful applicants should receive increased chances
70% agree, 17% disagree, 12% neutral

Bonus Point system is acceptable
61% acceptable, 25% unacceptable, 14% neutral

Increasing application fees to \$11.25 generally unacceptable
35% acceptable, 58% unacceptable, 9% neutral

Split support/opposition for single-species applications
41% acceptable, 45% unacceptable, 14% neutral

Increasing wait period to 5 years generally unacceptable
28% acceptable, 60% unacceptable, 12% neutral

Idaho Bonus Point System

Nevada style system
Proposal to increase application cost \$2
Details to be developed with public input
Implement in April, 2007
2006 drawing results would apply

Example

Year	Chance of Drawing	
	Random (old Idaho)	Bonus Points (NV)
1	12%	4%
2	12%	7%
3	12%	10%
4	12%	18%
5	12%	29%
6	12%	50%

That concluded the slide presentation by Mr. Compton.

QUESTIONS FROM COMMITTEE MEMBERS:

Chairman Schroeder asked if there would be licenses/tags that landowners can sell, for whatever price they can get for them, that allow the person to hunt on public land as well as private land?

Mr. Huffaker said that is the status quo. The landowner can't sell the tag per se, but can sell access to their property as a consideration for who

they assign the tag to and is good anywhere in the unit.

Representative Fields inquired about small parcels of land that benefit wildlife.

Mr. Huffaker said the system doesn't always fit the needs of the people and they are struggling with that issue as to how to make it work better.

Senator Cameron inquired about the odds of the bonus point system going down in two to three years.

Mr. Huffaker said that information was accurate.

Senator Cameron then asked if in the survey were the participants informed they would be paying a higher fee and would have less odds in two to three years. Also, would they then still be in favor of implementing a bonus point system.

Mr. Huffaker said they tried to be as realistic as possible in the survey - what people felt about individual issues. The survey was driven by the volume of requests that the staff and commissioners have received from people who have indicated they want a change.

Senator Williams said there seems to be a growing number of "well-healed" people that seem to want to tie up hunting areas. He asked if this program would get us a step ahead of that situation.

Mr. Huffaker said the handout provided to committee members today, The Death of Hunting, does a good job of laying out the kinds of issues that they are dealing with. He stated that they can't compete with the "big money guys", but doing something, rather than nothing, is a start.

Representative Raybould inquired as to what could be done about hunter-caused vandalism. He asked Mr. Huffaker if he would be in favor of legislation that would impose high fines and/or prison sentences.

Mr. Huffaker said they would be in favor of penalties. He added that a small minority of people cause a large majority of problems and they need to be dealt with. Self-policing is going to be an important part of the solution.

Senator Langhorst asked for clarification regarding tags and landowners. It was established that a landowner can sell access through his property and transfer a tag to a hunter, even if that hunter never hunts on that property, and instead hunts on public land only.

Mr. Huffaker said the tag is good for the landowner's property and public property in a specific big game unit.

Senator Langhorst also asked for clarification from Dr. Wright regarding the Advisory Committee's recommendations.

Dr. Wright said that the Advisory Committee recommended that they keep the LAP program unchanged and to find a way to transfer tags to the smaller landowners.

Senator Little asked Dr. Wright about liability for the landowners.

Dr. Wright said that Kansas has a successful access program and one of

the reasons is that the state provides liability. He would like to see something like that in Idaho.

Representative Bedke asked for the number of LAP tags that are not used by the landowner who qualified for the tags.

Mr. Huffaker said he would research that request.

Representative Wood asked if landowner tags are allowed in depredation hunts.

Mr. Huffaker said the depredation hunts are a separate process. A landowner may use his tag that way, but it does not affect the LAP program.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the Joint meeting at 2:50 p.m.

**CALL TO
ORDER:**

Chairman Schroeder immediately called the Senate Resources and Environment Committee meeting to order.

MOTION:

Senator Pearce made the motion for approval of the minutes of January 11. **Senator Cameron** seconded the motion. A voice vote indicated it was unanimous.

MOTION:

Senator Williams made the motion for approval of the minutes of January 13 and 16. **Senator Brandt** seconded the motion. A voice vote indicated it was unanimous.

RS15733

Senator Little presented RS15733. This legislation would give the two timber protective associations the same protection of liability as the Idaho firefighters.

MOTION:

Senator Cameron made the motion to send RS15733 to print. **Senator Williams** seconded the motion. A voice vote indicated it was unanimous.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 2:55 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 25, 2006

TIME: 1:30 p.m.

PLACE: Gold Room

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: Senator Cameron

CALL TO ORDER: **Chairman Schroeder** call the Joint meeting with the House Resources and Conservation to order at 1:30 p.m. He welcomed the audience of approximately 60 people.

ANNOUNCEMENT: The Chairman announced there is a change in the order of presentations. Dr. Kent Marlor will be speaking first, due to travel and time commitments, then will be followed by Mark Benson of the Potlatch Corporation.

SPEAKER: **Chairman Schroeder** welcomed **Dr. Marlor, Chairman of the Idaho Fish and Game Advisory Committee.**

Inserted into the minutes is a copy of Dr. Marlor's remarks.

TO: Gary J. Schroeder, Chairman, Senate Resources and Environment John A. Stevenson, Chairman, House Resources and Conservation

FROM:

Dr. J. Kent Manor, Chairman, Idaho Fish and Game Advisory Committee

SUBJECT:

Fish and Game Advisory Committee Recommendations

- The Committee recommends the adoption of the following Landowner Appreciation Program Mission Statement: *"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."*
- The Committee recommends Landowner Appreciation Program be left fundamentally unchanged.
- At this time, the Committee recommends that providing authorization for landowners to sell tags is unnecessary and other incentives should be considered first.

- The Committee recommends the development of a “Legacy Lands Program” designed to accommodate very large corporate and industrial lands with the purpose of optimizing corporate economic viability while preserving and providing managed public access. Funding requirements necessitate monies from other public sources in addition to sportsmen dollars.
- The Committee recommends the creation of a “Large-acreage Landowner Access Exchange Program.”
- The Committee recommends the creation of a “Small-acreage Landowner Program.”
- The Committee recommends the Commission direct Legal staff to research potential rules concerning corporate enrollment as they relate to Landowner Appreciation Program. Consideration should be given to options relative to equitable eligibility requirements.

SPEAKER: Speaking next was **Mr. Mark Benson, representing the Potlatch Corporation**. He had a slide presentation for the committee. Some of his remarks are as follows:

The Potlatch Corporation views this as a time of challenge and opportunity. They own 670,000 acres in Idaho and the land is located from the south end of the Coeur d’Alene Lake to the Clearwater River. The bottom line is: the public use of private forest land is on the increase. Is it an entitlement or a privilege?

The increasing public use is occurring both in acceptable use and unacceptable use. Potlatch is a 102 year old company and for that time, their lands have been open to the public. Their current policy is one of open use and they ask the public to respect their property.

Several slides were shown of the misuse of their property which included an abandoned wrecked car; a pickup truck stuck in the mud in the middle of a meadow; and a demolished camper.

Some of the driving forces of increased use is: growth in Idaho’s population; renewed interest in outdoor family activities; decreased access on public lands; increased mobility of users; and new and fun toys.

Mr. Benson said their immediate challenge is one of cost, which is in excess of \$300,000 due to damage done to their property. Revenue would be one way to offset the cost. The company is listening to what the various agencies have to say, as well as having a citizen’s advisory group. He also stated that the company wants to be sensitive to the needs of their neighbors, as well as to the needs of their shareholders. He said some of the choices before them would be (1) status quo; (2) close lands; (3) manage access; and (4) manage use. Mr. Benson said

they could manage access and manage use. One of the ways to do that is through land sales. With land sales, the vandalism then becomes someone else's problem, rather than Potlatch's. Conservation easements is another way. He used the St. Joe Basin Forest Conservation Project as an example. Potlatch has conveyed to the state 54,000 acres of conservation easement in the St. Joe Basin. With this easement, they have conveyed development rights and rights of public access. This means those lands will not be developed and will be perpetually open to Idahoans for public use. In this effort of the forest legacy (a federal program) project, it requires a 25% non federal match that they have now found, in their three years of experience, to be very difficult. Each time they have closed on one of these transactions, it has been up to Potlatch to "close the gap". The forest legacy program is a great tool, but it is not working in Idaho.

The Potlatch Corporation owns land in Arkansas and Minnesota and have conservation projects there. The difference between Idaho and the other states is that they have state money available for the non federal match. In Idaho, there is only private money. The money they have received has come from the East and the Midwest.

Mr. Benson said the corporation could enter into an exclusive lease and permit program. They currently lease land in Arkansas and about four or five years ago, they started leasing land in Minnesota.

He said they could employ a user access fee, identifiable by a sticker, such as the ones used by the state parks. There are forest landowners in Northern Idaho who have implemented a user access fee and they do not allow overnight stays.

Mr. Benson said the only thing he can say for certain is: The future will not be the same as the past. That concluded his talk and slide presentation.

Chairman Schroeder allowed time for some questions.

Representative Eskridge asked if civil charges were ever filed. **Mr. Benson** said they have contracted for a patrol of their lands. Some people on patrol have encountered abuses and Potlatch has brought some to court and seen satisfactory outcomes. Potlatch owns in excess of 5,000 miles of road and it isn't reasonable to patrol the total amount.

Senator Stennett asked how much money would it take to match the 25% non federal request. **Mr. Benson** said it would be approximately \$2 million dollars.

Chairman Schroeder inquired about existing groups willing to pay for Potlatch land and asked what those values might be. **Mr. Benson** said there are people contacting them about leasing programs. The going rate for leasing forest land is \$4-7 per acre per year. If the lease is for a small parcel (40 acres), they might pay \$7-8; if a much larger parcel, it could be \$3-4.

Senator Burtenshaw inquired about the conditions of the forest legacy program. **Mr. Benson** said they have deeded the conservation easement

to the state of Idaho and coordinate with the state the rules regarding how the public uses those lands. The use is not a problem. The problem is one of funding. They can't find the funds to match the federal dollars.

Senator Stennett asked what the time frame was for the project. **Mr. Benson** said there will be a project this year, then more acres available later. It is unknown what the Forest Service will do this year in ranking the project in fiscal 2007's appropriation. There are 37 states offering projects and Potlatch is finding it to be challenging.

Senator Burtenshaw inquired as to how much federal money is available if the state could come up with the \$2 million that is required and does the Potlatch Corporation harvest the timber on leased land. **Mr. Benson** said there would be about \$6-7 million of federal money. In the working forest conservation easement, they maintain the lands.

Senator Stennett asked if the Plum Creek area had been shut off. **Mr. Benson** replied that he wasn't aware of it.

Chairman Schroeder stated that the Potlatch Corporation is, in part, giving away some of their assets. It is also costing the company money to give them away. Private land has value and it is increasingly being leased out to people who are willing to pay for sporting access. He then asked Mr. Benson to describe the possibilities for the state with respect to the long term of perpetual easements on Potlatch land encompassing 670,000 acres. **Mr. Benson** said they have worked hard to conserve 54,000 of those acres. He also stated that it would be great to bring the St. Joe Basin to completion. In Unit 10, they own about 300,000 acres and it is a popular game unit. He asked the question, "Is there a scenario in which Potlatch would enter into a perpetual granting of the use of their lands to a state entity or some other kind of conservation fund?" The answer was that they would entertain that. He said the annual value of the lease of their property at \$5 per acre (600,000 acres) would be \$3 million dollars. The concept makes sense and is doable, according to Mr. Benson.

Senator Pearce inquired if the boundaries of their land is marked. **Mr. Benson** said it is marked in very few places. The user may not know whose land he is on. It is the burden of the lease holder to patrol boundaries and litter clean up.

Senator Langhorst inquired as to how much of public land would be shut off if Potlatch sold their land. **Mr. Benson** said he did not have a number. However, the travel corridor would remain open. Mr. Benson said he would get the number for Senator Langhorst.

Chairman Schroeder thanked Mr. Benson for his presentation.

SPEAKER:

The next speaker was **Bob Minter, President of the Ada County Fish & Game League**. Inserted into the minutes is a copy of his presentation.

Good afternoon. My name is Bob Minter. I am the president of the Ada County Fish & Game League.

It's my pleasure to come before you today on issues of importance to our organization.

The League is an outdoor sportsman's and wildlife resource advocate club. We have been involved in many wildlife resource and hunting & fishing related issues since our inception in the mid 1920's.

We have been an affiliate of the much larger, **Idaho Wildlife Federation** since its inception in the mid 1930's and are a member of the recently formed **Idaho Sportsman's Caucus Advisory Committee (ISCAC)**, a wildlife advocate organization of several thousand members. Each of our organizations hold a common mission of working to protect our state's wildlife resources and the hunting, angling and other recreational opportunities our wildlife resources provide.

We certainly appreciate this opportunity to provide our thoughts on the issues which Director Huffaker, staff and Commissioner Wright briefed you on at your meeting Monday, namely: **LAP, Big Game Bonus Points and Private lands public access**

In the interest of time constraints today I will touch on only some key concerns and thoughts we have on each of these three issues.

We intend to follow the progress on each issue with the Department and Commission and certainly hope to be involved in any related proposed legislation.

Landowner Appreciation Program

As you are aware LAP is an effort to recognize Idaho's private landowners for supporting our wildlife through legitimate habitat improvements and maintenance.

Sportsmen appreciate and benefit from this cooperative effort,

as do all of the state*s citizens. We are in full support for the LAP program as it was originally structured. It started as a simple program with reasonable requirements for the landowner to qualify.

However, over the past 4-5 years LAP has been modified and redirected through administrative rule changes by the F&G Commission. The LAP is becoming a complicated program. The LAP advisory committee is studying several changes to the program, including adding small and large acreage (Corporate) landowner elements. We look forward to reviewing and commenting on their proposal. However, we believe that the current program should be redirected so that it partially compensates landowners for assisting our wildlife resources in exchange for some level of sportsmen benefit and general public benefit as originally intended.

Our main LAP concerns are:

-

Change in tag transferability The immediate family member designation for LAP tag use, should be reapplied. Restricting the tag to their immediate family or employee designee would remove a main element driving the demand for more antlered tags and get us away from commercializing our wildlife resources. **We do not support the privatization of the state*s wildlife resources by allowing landowners to outright sell LAP tags or transfer them to a designee for purposes of selling access!**

We have no problem with landowners selling access to their lands but allowing tag transfer to anyone is helping to drive the need for additional allocation of tags, particularly for the antlered hunt units which are highly over subscribed. We do not support higher allocations of LAP tags such has already occurred in four of the controlled hunt units.

With the adjustment back to this original rule we would support the tag holder to continue to use the tag for the entire hunt unit and not limited them only their immediate properties.

- **Provisions for Reasonable Access:** We know that many landowners do provide access on or through their property.

The original requirement for landowners to provide some level of “reasonable public access” needs to be reconsidered. This was a main factor in selling the program to sportsmen across the state, for gaining our acceptance of allocating a portion of our license fees and for depredation payments to landowners who participate in LAP. Most sportsmen also supported the increased allocation of LAP tags up to 25% in four of the units as it occurred prior to dropping the reasonable access element. Although defining “reasonable access” is difficult it can be done and should be monitored in some way to make the program acceptable to sportsmen and landowners.

Any changes to the current LAP should mandate a workable public access requirement as was originally promised to Idaho sportsmen when the program was first implemented. This should be given serious consideration for the large landowners as well as under any new LAP Corporate lands program.

- **Unit Tag allocations:** We would prefer that LAP tags be returned to the 10% levels of the controlled hunt levels even for oversubscribed units. Although there are only 700 tags available under LAP these are tags that are not available to the general sportsmen for those controlled hunt units. LAP participants are allowed to apply each year and maybe a successful LAP applicants should have to wait out one or more years like the general controlled hunt applicant do to give other landowners a chance of drawing a LAP tag, particularly in the oversubscribed units.

As we suggested to the F&G Commission given an opportunity to participate, smaller acreage landowners may well provide better habitat and more public access opportunities. With the level of unallocated tags the small landowner may be highly interested in the high level cow

and doe tags which are not being utilized in the program. This could have a major enhancement towards continuing this partnership program between Idaho*s sportsmen and private landowners.

Generally, we **do not** feel that allowing a landowner to outright sell a big game tag is a key factor in whether he stays in business or keeps him from selling out for development purposes. We should not place ourselves in a situation of selling our wildlife to retain private wildlife habitat. There are other mechanisms available to retain good habitat and assist landowners to stay in business, if they choose to do so.

We look forward to hearing more about the Magic Valley pilot program Commissioner Wright mentioned to you Monday and encourage the Department to make a special effort to communicate details about that proposal to sportsmen throughout the state.

Access Yes Program

Idaho*s citizens are blessed with the fact 70% of our lands are public owned just as our wildlife resources are.

We fully support the Department*s “Access Yes” program but feel there is a need to generate additional funds for it to grow.

As pointed out by Mr. Compton on Monday, the program is currently funded at about \$450K through three revenue sources. However, 2005 landowner applications were around \$1 million dollars. Super tag sales raises only about \$ 150K and general license revenue may drop off further in future years if we lose more access, etc. Many of our members have used this program since its inception two years ago and are pleased with their experiences.

The Ada League*s first annual brochure in 1927 included the following statement:

“Hunting on a Farmer’s Land Is Not a Right but a Privilege

Granted by Him”

The bottom line is that we need private landowner support and cooperation to provide good sustainable wildlife populations. Given our states growth and the higher demand being placed upon the land for recreational uses we need landowner/sportsmen cooperation even more today than we have in the past.

Most of us remember the Departments “Golden Triangle Program” which involved sportsmen, landowners and the Department in a cooperative manner for private lands access in the 60*s and 70*s. Sportsmen supported this program to a high degree and all wore the program patch on our bird vests and used the program cards which were left with the landowner so he knew who was on his land and that we respected his property. Today*s “Access Yes” is the modem day version of that program and the League would like to see it expanded.

Keep in mind that, as pointed out earlier by Commissioner Wright, sportsmen are not the only beneficiaries of public access provisions for private lands or though private lands to public lands. Wildlife watchers, hikers, bikers and other citizens* benefit from programs that we license holders are currently carrying the full financial burden.

We recommend that some form of general public financial support be considered for helping fund “Access Yes”. Maybe a “Wildlife Access” passport similar to our user fees applied on other outdoor recreational activities.

Bonus Points System

Our vote is still out on this program until we see more details. Certainly any program is going to benefit some hunters while reducing the chances of others in a given year.

As pointed out by Director Huffaker on Monday applicant*s odds of drawing will go down the first 3 years with a Bonus program. That*s not a good deal for senior hunters who are have been

unsuccessful in drawing a tag for many years already. It might be best we suggest the program not be applied for all units

Although the Departments survey results, indicated a majority of responders felt there should be some type of program to give previous unsuccessful applicants an improved chance of drawing a tag the survey didn't outline all the possibly impacts of a program.

Some suggestions that might help improve applicant draw odds under the current program and keep program costs to a minimum are:

- **Require current successful program applicants to have to lie out of the draw process for a longer period- say, 3-5 years. This type requirement applies to trophy hunt species now and could be applied to other big game species draws at no additional costs.**
- **Limit the Bonus program to select units so seniors continue to have an equal chance with other applicants of drawing a tag in select units under the current program.**
- **Limit all controlled hunt applicants for elk, deer and antelope to one species controlled hunt to reduce draw competition.**
- **Limit applicants to apply only for one big game tag when applying in oversubscribed hunts.**

In closing I think it's important to note that sportsmen activities provide over \$500 million to the states' economy. With well-managed wildlife resources and cooperative programs we expect that value to grow.

Thank you for the opportunity to comment on these wildlife related issues. I would be happy to respond to any questions.

Respectfully,
Bob Minter
President

SPEAKER: The next speaker was **Ms. Cherie Barton, representing the Idaho Wildlife Federation**. Inserted into the minutes is a copy of her presentation.

Messrs. Chairmen, Senators and Representatives:

Thank you for the opportunity to address you today:

My name is Cherie Barton and I'm representing the Idaho Wildlife Federation: IWF is a statewide organization and an affiliate of the National Wildlife Federation. Our mission is, "To preserve, protect and enhance wildlife populations and wildlife habitat for future generations". We are a non-profit organization of outdoor enthusiasts. We don't have professional speakers or hired lobbyists that can visit you on a daily or even weekly basis to help promote our views. So I hope that you will sincerely listen and consider what your constituents are requesting of the Fish & Game Commission and the Fish and Game Advisory Committee.

I'm here today to provide testimony on how important access is to the people of Idaho.

As you all know, Idaho is blessed in that the majority of its land is public. It's for the citizens to enjoy. Experiencing Idaho's outdoor recreation is a major part of our lives and it's critical that we preserve it for generations to come. In Idaho, currently, access is not reserved for the privileged or the rich; it is for all of us. It needs to be maintained for the heritage of our children and grandchildren. Our public land should not be sold. We live in Idaho and people move here every day for many reasons, most of which are directly tied to our precious wildlife and open spaces; it's called our "Quality of Life." I believe that most all of us enjoy the pleasure of viewing wild animals roaming our land. The sight of herds of elk, deer, and antelope and Canada geese flying overhead often makes you stop to enjoy the sight and appreciate the thought that "this IS Idaho!"

The Idaho Department of Fish and Game has an access program, Access Yes, which was started in 2003. It has been a very successful program. Its purpose is to protect and maintain access for hunting and fishing. This

program is vastly under-funded and the Fish and Game is currently looking at ways to financially preserve and expand it. The Idaho Wildlife Federation would support increasing license fees to fund this program on a larger scale. We would also like to see the State get involved with “access” through its own conservation easements and legacy programs, which would preserve access for all the outdoor enthusiasts of Idaho.

But we will not support selling off our wildlife to the rich and elite! It is a public resource, like our public land, and is for all of us to enjoy. Idaho*s wildlife is not for sale, either.

Idaho*s Landowner Appreciation Program, commonly called LAP, was originally designed to preserve our access across private property to public land to hunt and fish. This has also been a successful Fish & Game program, which started around 1992. The Idaho Wildlife Federation feels that above all issues regarding this program, that integrity of wildlife, fair chase, and forbidding the sale of tags is most important. And yes, we know and agree that private property rights need to be protected, too. This program currently allows the transfer of antlered elk and deer tags to anyone the landowner wishes. This transfer allows the private property owner to sell “access” to his land and just give the tag away. It also allows this tag to be used anywhere in the unit. Since these are landowner tags, they should not be able to be given away. Also, since they are landowner tags, users should not be allowed to hunt the entire unit. This practice reduces the opportunity of the everyday hunter who has “fairly” drawn a controlled hunt tag. It turns hunting in Idaho into an elitist activity.

The money, however you look at it, that the landowner receives is really for the tag. We all know that! If we took the antlers away from the equation, the money and probably the complaints would disappear. Hunters won*t pay extra money to hunt cows! By the way, this practice is working in Montana currently.

IWF wants the transfer of tags, outside of family or an employee, and the right to hunt the whole unit withdrawn totally from the program. If not totally, then any “new” tags given to landowners through new changes made to the LAP program, NOT to be transferable and the Landowner would have to hunt on his/her own property. Changes to the LAP would have to insure access to the every day hunter. Allowing Landowners to transfer tags has commercialized and privatized Idaho*s public resource, wildlife. No one can keep landowners from closing off their land. But some are doing it, even though they receive a tag or even two, anyway. There is no protection for the every day hunter to insure access through this program. We do realize it isn*t every landowner who abuses the program but those who do are spoiling it for the others.

We support the original intent of the LAP by providing tags to family members and employees. It is a means of thanking those landowners who

often support Idaho's wildlife year round for all of us to enjoy. We do appreciate all of their conservation efforts.

As our natural resources continually receive additional pressure from an increasing population it is inherit to all of us to preserve them for generations to come. Other than what the State can do in preserving access through conservation easements, legacy programs and the like, for all Idaho citizens, the Idaho Dept of Fish & Game has its own mission and duty. We need to help the Department accomplish its mission and keep the politics out of the equation.

Messrs. Chairmen, Senators, Representatives, thank you again for the opportunity to address you today. Access to hunting and fishing areas for all Idahoan's is becoming an ever-increasing issue for us. One thing we do know, we all have to protect hunting in Idaho from becoming a rich man's sport as has happened in other states. We want our grandchildren to be able to afford to hunt and fish in Idaho. Please preserve this legacy for Idaho.

SPEAKER:

The next speaker was **Jerry Bullock of the Idaho Sportsmen's Caucus Advisory Council (ISCAC)**. Inserted into the minutes is a copy of his talk.

It is the position of ISCAC that the LAP Tag Program be returned to its original intent and structure on the following three issues:

1. Landowners that draw tags may designate any member of their immediate family as the tag holder (immediate family defined as blood or marriage related). The designee will be issued the tag and the tag is not transferable. Only one (1) person may be designated for a partnership or corporate landowner.
2. Reasonable Public Access, as agreed to by the landowner and the Idaho Department of Fish and Game, is a mandatory requirement for eligibility in the LAP Program.
3. No more than 10 percent of the tags in an over-subscribed unit may be designated for the LAP Program.

Voting Data: 22 member organizations support position. Idaho Trout Unlimited did not cast a vote.

Mr. Bullock said he also represents the Idaho Chapter of Safari Club where he has more liberty to speak about details. He feels the sportsmen of the state have no idea of the evolution of the LAP Program - to start with, it was a great program, but now it has been changed into something else. He also stated that there needs to be more funding than just for hunters and fishermen. He stated that when a hunt occurs, it occurs

many times on public land and that's different than the picture people have. He urged the committee to consider what is going on in other states where there are alternative sources of funds. He said when the sportsmen understand the details, they will be very concerned about selling tags to the high money out-of-state hunters.

SPEAKER: Speaking next was **Mr. Russell Heughins, representing the Idaho Bird Hunters**. Inserted into the minutes is a copy of his talk.

Mr. Chairman, committee members, my name is Russell Heughins and I am representing the Idaho Bird Hunters. Our mission is to support, perpetuate and educate the public on game bird hunting, and we promote and support prudent management of game bird habitat on federal, state and private lands. We thank you for the opportunity to share our concerns and views regarding the Access Yes Program, hunting access in general and the Land Owner Appreciation Program (LAP).

- We support the Access Yes Program; support its expansion and providing a sustainable funding base for the program. Suggest a validation provision on hunting licenses as one means of establishing sustainable funding. An additional \$2.00 is acceptable.
- With diminishing hunting access opportunities our organization supports the acquisition of conservation or recreation easements through private property to public lands. This could possibly be accomplished through the Access Yes Program.
- Our members also hunt large game and recommend the current LAP program not be expanded and do not support the sale of LAP permits. The wildlife resources of this state belong to all the citizens of this state, and we do not support the commercialization or privatization of Idaho's wildlife resources.

Mr. Chairman, committee members, thank you for taking the time and listening to the hunting and fishing citizens of this state. We hope our comments are useful to you in your deliberations.

SPEAKER: Speaking next was **Stan Riddle, Vice President of the Deer Hunters of Idaho**. Inserted into the minutes is a copy of his testimony.

Ladies, Gentlemen, Senators, and Representatives

My name is Stan Riddle and I am here on behalf of the Deer Hunters of Idaho for which I am the Vice President. **DHI** is extremely concerned about any proposal to expand the Landowner Appreciation Program (LAP) for the purpose of funding the Access Yes program.

In August of last year a committee (FGAC) studied this problem and unanimously recommended that the LAP be left fundamentally unchanged. **DHI** agrees with this position and goes even further to recommend that the LAP be restored to its original form and intent.

DHI fears that giving more tags to landowners will eventually result in less opportunity for the average hunter and I mean those hunters that cannot afford to pay 5, 10 or 15 thousand dollars to bag a trophy. Yes, all the right words are being used to make this bitter pill sweeter. For example, requiring the landowner to allow public access as a condition of getting more tags. Access where?, access when. At the south forty?, the last day of the season? What landowner who having sold tags for such sums would allow a non paying hunter on his property. Isn't the idea of selling the tags to bag a trophy? Would the person who purchased a tag be upset seeing someone hunting for free? I have a difficult time seeing how this would work. As it's said, "the devil is in the details".

In Utah there is much dissatisfaction with the landowner tag system. The number of antlered tags available for public access on private land is very limited and has terrible drawing odds. When applying for the hunt the public hunter is not given the dates or duration of the hunt. This is just one example of what could happen here in Idaho. Colorado, New Mexico, and Utah have systems that, over time, are leading to the commercialization of game hunting and which leads to the exclusion of the average hunter.

We don't have to change LAP to accomplish funding Access Yes. Other states (Montana , for example) have working solutions. **DHI** would be happy to work with Fish & Game, the F&G Commission, and any other group to help resolve this issue.

Thank you for your time.

SPEAKER:

Speaking next was **Chuck Middleton, Foundation of North American Wild Sheep**. He said one item that had not been mentioned was the landowner preference that occurred a number of years ago because of the controlled hunt areas. He is in favor of the program and said the odds are in their favor on the controlled hunts. Mr. Middleton said he supports the other parts of the LAP Program and with the allowance of transferring the tags, they should be restricted to their own deeded land. He stated that what he doesn't want is something that creates the transfer of dollars.

Oregon has “soft money” and they have raffles and auctions. It is similar to Idaho’s trophy super tags that are available.

That ended the presentations and **Chairman Schroeder** opened the meeting for questions.

Senator Langhorst asked **Director Huffaker** if the department had looked into Montana’s program and, if so, could he make the information available. Director Huffaker said he would accommodate the Senator’s request.

**ADJOURN-
MENT:**

There were no more questions. **Chairman Schroeder** adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 27, 2006
- TIME:** 1:30 p.m.
- PLACE:** Gold Room
- MEMBERS:** Chairman Schroeder, Vice Chairman Pearce, Senators Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst
- ABSENT/
EXCUSED:** Senator Cameron
- CALL TO
ORDER:** **Chairman Stevenson**, House Resources and Conservation committee chairman, called the meeting to order at 1:30 p.m. This was a joint meeting between the senate and house committees.
- LETTER:** **Chairman Schroeder** read a letter he composed to introduce the reason for the meeting. He pointed to several issues at hand: whether private landowners should continue to offer free public access when doing so opens their property up to damages, whether public areas of the state should be preserved so that the public retains access and the lands remain undeveloped, how lawmakers can ensure public access on private lands given the reality that access to private lands has marketable value, and how lawmakers can guarantee public access for significant time periods so that both public agencies and private landowners can adequately plan future management objectives. This meeting is to allow lawmakers the chance to look ahead and recognize the challenges and opportunities that the future holds. His letter is included in-full as an attachment (Attachment #1).
- TESTIMONY:** **Chairman Stevenson** emphasized that the hearings are being held for educational purposes, and he encouraged concerned individuals to attend the commissioner meetings. He turned the time over to testimony.
- Scott Allen, Chairman, Sportsmen for Fish and Wildlife (SFW)**, referred the committee to a letter which SFW recently sent to the Idaho Fish and Game Commission (see Attachment #2). He testified that SFW supports the Commission's current plan to create a pilot program in Region 4 to investigate methods to improve landowner incentives to host game and provide access, with one caveat: the average sportsman must find benefit from whatever is "given" to landowners. Future hunting and fishing opportunities depend on a solution. His written testimony is included as an attachment (Attachment #3).

Vince Restucci, Hunting Lease Network (HLN) program manager, Simplot Corporation, testified with the recommendation that wildlife be used as another rotation crop for farmers. For a fee, the public could hunt on these farmlands. HLN is a national franchise company with approximately 19,000 members signed up on the network as either bidders or landowners and has brought over 200,000 acres into the public domain across the country.

Senator Langhorst asked how many other western states participate in the Hunting Lease Network and whether it makes sense to compare western states (with considerable public land) to eastern states for programming.

Vince Restucci said his organization is the only one in the western states.

Senator Langhorst expressed concern that the promotion of leasing would increase the frequency of incidents in which access to public lands is blocked by private landowners.

Vince Restucci said he thinks this is nothing that is not already happening. The advantage of formalizing the process is access to liability insurance for the landowners.

Senator Schroeder asked Mr. Restucci to explain the Cabela's connection.

Vince Restucci said the only connection between the HLN and the Cabela's Company is that Cabela's is in the business of selling prime hunting properties. One of the realtors who does business is a member Farmer's National Real Estate, and in the Cabela's trophy catalogue is a page that says Farmers National Company. That is the only connection.

Senator Schroeder pointed out that agricultural land can be leased out and has value.

Vince Restucci expounded on Senator Schroeder's comment and explained the cultivation of habitat on farmland.

Senator Schroeder asked for an estimate of the price that farmers in Idaho would receive for leasing their property.

Vince Restucci answered that the fee-price averages seven to ten dollars and acre, but there are a number of leases for less and more.

Rusty Tews, farmer from Shoshone, said landowners need incentives to keep their property open for public use. Additionally, society will not value wildlife until a dollar-value can be attached. He said he favors the Access Yes program because it creates a partnership between the

sportsman and the landowner.

Mark Smith, Boise resident, hunter, testified in support of the Department of Fish and Game's Access Yes program and expressed the need for a better source of funding for it. For the extra funding, he said he supports using a general increase in the hunting licensing fee or an extra-cost validation with the license to use Access Yes lands. He does not, however, support the sale of big-game trophy tags to fund the program because it turns a public resource into a commodity for the rich. His testimony is included in-full as an attachment (Attachment #4).

Jim Lyons, former general counsel for Schweitzer resort, said the Unlawful Enclosures Act is a federal law dealing with access issues. He said the US Forest Service estimates that 22% of their lands are tied up in rights-of-way. Based on his experience, he estimated that 25-27% of privately-owned forest lands are in publicly-owned access. These are called inholdings. He has tried to contact the governor's office on the issue with little success. He discussed how RS 2477 addresses rights-of-way issues.

Jerry Conley, representing himself, testified in support of Access Yes and recommended that a portion of any additional funds raised for it be assigned to a well thought-out easement purchase program. The solution now taken is, at best, temporary, however. Additional funds should be assigned to the program from the sale of back-country ranches and other surplus properties, including private groups to participate. His written testimony is included as an attachment (Attachment #5).

Jack Trueblood, representing himself, testified on the success of Access Yes. He spoke about Landowner Appreciation Permits (LAPs). Given the number of permits going out currently, he said he would not support an increase in the percentage of permits per landowner. He said he especially does not support giving tags to landowners to sell. Wildlife is a public trust, not a property right, he said. Once a landowner has permission to sell his/her tag, that opens the door to individual hunters selling theirs too.

Fred Christianson, Caldwell resident, testified in support of the work of the advisory committee and their present recommendations. He supports Access Yes and agreed that hunting and fishing license fees be raised so long as they are earmarked to fund the program.

Lin Whitworth, former Idaho senator, testified that wildlife belongs to the public. He talked about the injustice of public road closures and the difficulties of late hunting seasons when planning family hunting trips. His written testimony is included as an attachment (Attachment #6).

Glenn Gore, Boise resident, spoke in support of Access Yes. He said before working to open private lands for public use, careful examination needs to be given to make sure public lands are open. Lands near

McCall are often open for snowmobilers but closed for hunters, but snowmobilers are likely to disturb wildlife just as much as hunters, he said. Gated state lands should be opened before farmers should have to open their lands, especially because Idaho has some of the most beautiful land in the nation.

Jack Fisher, Nampa Resident, said he sat on the Fish and Game Advisory Committee when Access Yes was developed. In his opinion, the programs have not progressed to the point he wished they had. He stated for the record that the committee worked long and hard to develop a definition for “reasonable” but he was unsure whether they ever came to a conclusion. He said he has not met a sportsman who thinks it was a good idea to take “reasonable access” out of the wording. He also said he has yet to meet a sportsman who thinks the resale of hunting permits is a good idea. Permits given to ranchers in exchange for use of their land should go to the rancher’s family or groundskeepers, strictly. Large landowners get additional tags to sell by breaking their property into several small segments and make significant profits off of them. Overall, Access Yes is a successful program, and it needs to be expanded. He encouraged the committees to find funding for the program.

Dennis Tanikuni, Idaho Farm Bureau Federation lobbyist, submitted written testimony which is included as an attachment (Attachment #7).

Richard Trudeau, representing Idaho Bird Hunters, testified with concerns that Access Yes is just buying time. Property values on private lands which border public lands skyrocket with the ability to control access. He expressed fears that he, and others like him, will be priced out of hunting as more ranchers have become reluctant to share their land without getting a fee for it. He recommended that legislators require that Fish and Game be an actor in initiative processes to find solutions, and that hunters’ associations be involved too.

Representative Jacquet asked whether Mr. Trudeau had ever participated in planning and zoning in his county.

Richard Trudeau said he was unsure how planning and zoning would fit into his concerns.

Representative Jacquet said some counties include access in their planning and zoning issues.

Brent Crowther, Rexburg resident, testified in opposition to the privatization of hunting tags. As a hunter, he said he fears he and his family may be priced out of the sport as tag prices soar, especially as the price of certain big-game tags are compared to the Idaho’s median household income. His testimony is included in-full as an attachment (Attachment #8).

Mike Veile, Soda Springs resident, testified in opposition to the

privatization of tags. If the LAP program were expanded to allow the sale of tags and direct revenue to the landowner or hunting club, all forms of public access would cease. Advocates of the expansion of LAP has disguised it as allowing public access. He recommended the law be changed to say that any landowner receiving payment for hunting access on his/her property will be disqualified for the LAP program, and that any trespasser fined pay their fine to the landowner. His testimony is included as an attachment (Attachment #9).

Lloyd Oldenburg, representing himself, testified that hunters and fishermen are not the only Idahoans asking for public access, but also are hikers and other recreation-seekers. He asked the committees to consider that if each hunting and fishing license were raised five dollars, earmarked for access issues, and the state legislature matches those funds to acquire access, funding could cease to be a problem.

Mark Bell, representing the National Wild Turkey Federation (NWTF), reported that his organization sent out a poll to gauge the feeling among its estimated 1,500 members around the state concerning access issues. The NWTF supports Access Yes. He expressed concerns about the LAP program, however.

Ted Eisele, bird hunter, testified in support of Access Yes but said it is not enough. Because of growth in the state, there is more demand and competition for access to hunting lands and permits. Landowners looking for the highest bidder could price many hunters out of the market. He suggested that instead of signing landowners up a year at a time, they should sign up for three years at a time. He discussed certain bird habitats which are inaccessible currently. He finished by saying that hunting and fishing should not be sports only for the rich.

Several testimonies were submitted in writing only and they are included as attachments, as follows:

Craig Schuler (Attachment #10)

Frank Priestley (Attachment #11)

Jerry Henderson and Thelma Bell (Attachment #12)

Mark Steele (Attachment #13)

Chairman Stevenson said no vote would be taken and no legislation has been written yet, but he thanked all those who testified for guiding the committees as to how to handle the issues when they arise.

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 30, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

He then asked Senator Gannon to present his RS.

RS 15708

Senator Gannon said the Environmental Protection Agency (EPA) has reduced the amount of arsenic allowed in municipal drinking water systems from 50 Parts Per Billion (PPB) to 10 PPB. Consequently, there are a number of small communities whose water routinely exceeds 10 PPB. He said he had a letter from the University of Ohio stating that they have done a statistical analysis nationwide to try to correlate the amount of arsenic in each county with regard to cancer. The data showed that the more arsenic present, the less colon cancer. The results of the studies are questionable and it has been suggested that we encourage our Congressional legislators to try to convince the EPA to put this request on hold until another study is done in the United States to determine what the dangerous levels of arsenic in drinking water are.

The original study that the EPA used to come up with the 10 PPB was a study done in Thailand where people were exposed to extreme amounts of arsenic. There was a correlation between the exposure of arsenic and health risks. Another study was done in Europe. Senator Gannon said the point is - there has never been a study conducted in the United States with our unique situation with natural occurring arsenic in our drinking water. He feels that is what the study should be based on.

A question was asked if the arsenic was in the ground or aquifer. Senator Gannon responded that it was in the aquifer. The water systems that he is referring to are the wells. He stated that every town in his legislative district exceeds 10 PPB, but falls below 20 PPB. The cost for the city of Buhl to put in an arsenic removal system for 3,000 people would be approximately \$7 million dollars. Senator Gannon said it will bankrupt small towns if required to do this.

A request was made that the Department of Environmental Quality (DEQ) be asked to be present and to provide input when this memorial is heard in committee.

MOTION: **Senator Brandt** made the motion to print RS 15708. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote.

Chairman Schroeder said there would be a request made on the floor to have this memorial returned to this committee for a hearing.

RS 15720C1

Representative Edmunson said this RS is a joint resolution proposing an amendment to Article 1 of the Constitution of the State of Idaho. He said it is modeled after 14 other states' amendments. This amendment gives us, as a state, the right to manage our own wildlife. It is also a shield of protection against any groups that might come into Idaho and try to intervene in our management of wildlife. This memorial also protects property rights as well as water rights.

It was suggested to Representative Edmunson to check on the amount of the fiscal impact with the Secretary of State's office.

There was some discussion as to the wording on lines 39 through 42 (to divert, appropriate, and use water pursuant to Article XV or the statutes and rules enacted pursuant thereto, or to establish any minimum amount of water in any stream, river, lake, reservoir or other watercourse or water body).

Representative Edmunson said he worked with Norm Semanko, Idaho Water Users Association, on the language to make sure it was appropriate. Chairman Schroeder suggested that the Attorney General's Office provide an opinion on the matter. Representative Edmunson said the AG's office has reviewed the language and he will provide a letter to the committee.

Another concern was on line 27 with regards to "all wildlife". Chairman Schroeder requested Representative Edmunson to contact the Attorney General's Office for their opinion on that issue.

MOTION: **Senator Brandt** made the motion to print RS 15720C1. **Senator Cameron** seconded the motion. The motion passed by unanimous voice vote.

SPEAKER: **Chairman Schroeder** welcomed **Jake Howard, Executive Director for the Outfitters & Guides Licensing Board, (IOGLB)**, who will present his annual report.

Mr. Howard provided copies of a slide presentation to all committee members and his report was taken from that information. He read the Board's Mission Statement and it is as follows:

It is IOGLB's responsibility to promote and encourage residents and nonresidents alike to participate in the enjoyment and use Idaho's natural resources, and the fish and game therein, and to that end to regulate and license those persons who undertake for compensation to provide equipment and personal services to such persons, for the explicit purpose of safe guarding the health, safety, welfare and freedom from injury or danger of such persons.

He said in their agency they have:

- 6 full time staff;
- 1 part-time/temporary staff during license renewal period;
- 10 part-time (on call) enforcement agents;
- 3 "outfitter" Board members that are nominated by IOGA and appointed by the Governor and are confirmed by the Senate;
- 1 Board member appointed as a member at large by the Governor and confirmed by the Senate;
- 1 Board member appointed by the Idaho Fish and Game Commission and confirmed by the Senate;
- The Executive Director and Enforcement Chief are appointed by the Board.

With regards to their annual activity:

- 421 outfitters were licensed in 2005, up from 406 in 1999;
- 331 designated agents licensed in 2005, up from 277 in 1999;
- 2,120 guides were licensed in 2005.
- IOGLB processes approximately 2,100 special requests annually and that is up 30% since 1999; and 1,535 outfitter allocated big game tags and it is expected to increase next year;
- They manage nearly 2,000 individual outfitter operating areas.

Senator Burtenshaw asked whether outfitters receive "controlled" tags for antlered and antlerless hunts. **Mr. Howard** said that he was not clear on how many outfitter controlled tags included antlerless opportunities and that he would research the matter after the meeting and would respond. Following the meeting **Mr. Howard** provided a written response that stated outfitters only receive a very small percentage "allocation" of the overall elk and deer tags. He said that there are two types of "allocated" tags: "zone" tags for elk and "controlled" tags for elk and deer. There are no zone tags for deer. Both antlered and antlerless tags are included throughout the overall outfitter allocation for both zone and controlled opportunities. He said that the total number and the type of elk and deer tags allocated to the outfitter industry are determined by the Idaho Fish and Game Commission following established rules. The Board then determines which outfitters receive tags and then based on their historical use, the number of tags each outfitter gets from the total allocation. He said not all outfitters get tags and those that do, don't get the same number of tags. Zone tags and controlled tags are administered differently. Zone tags are much more open ended as far as who the outfitter can book for the hunt; controlled tags are provided to the Idaho Department of Fish and Game (IDFG) lottery winners. Controlled applicants interested in an outfitter controlled tag are required to have a written agreement with an outfitter before applying for the controlled tag lottery. The types of tags are explained in the IDFG big game regulations. Annually, nearly all outfitter zone tags are used and those that are not used are turned back to the IDFG and made available to the general

public. All outfitter controlled tags are used. He said the Board can provide the specific historical use if requested.

In response to a question about whether outfitters can sell big game tags, **Mr. Howard** said that the outfitter is not allowed to advertise or sell tags. They must advertise and sell the overall outfitted hunt.

A follow up question was also asked as to how many guides and outfitters lose their licenses in a year. **Mr. Howard** he said that he could not tell the committee offhand how many were revoked. **Mr. Howard** said there were 267 formal complaints filed during the year and there were a number of denials and revocations. He said that the Board tries to be proactive and address issues with outfitters and guides before they reach the point of revocation. He said that later in his report he would provide those numbers of probationary licenses, warnings, etc. He said that he would prepare a more specific summary of Board actions that he would send to the Committee.

Another follow up question was how many of the outfitter licenses were held by individuals living outside the state of Idaho. **Mr. Howard** said that he didn't know right off the top of his head but it was less than half. He said that he would check and respond to the chairman after the meeting. His response after the meeting was that 24% of the outfitters were from out of state.

Mr. Howard also provided information as to license type and the number issued.

	1999	2000	2001	2002	2003	2004	2005
Outfitters	406	416	419	419	419	423	422
Designated Agents	274	277	286	300	312	325	334
Guides	2,165	2,198	2,081	2,012	2,096	2,119	2,150

Senator Burtenshaw inquired if the Board has the authority to reject or allow the transfer of licenses. **Mr. Howard** said outfitters cannot transfer licenses. If an outfitter sells his business and enters into a sales agreement, the Board reviews the sale. If they are in agreement with the sale, they require the outfitter that holds the license to relinquish it. Then the buyer (outfitter) would be given priority on a new outfitter license. Comprehensive background checks are done on the applicants and experience of an outfitter is also a factor. They are given an open book test and should they not pass, they can re-take it in 15 days. Should they fail a second time, there is a one-year waiting period to re-take it. There have been instances where the Board has not been willing to issue a license and that was based on prior enforcement actions or experience. Director Howard explained outfitter licenses are issued as sole proprietor, partnerships, corporations and limited liability companies (LLC) etc. Corporations and LLCs who are issued an outfitter license must have a licensed designated agent who manages the outfitter business. He said there are designated agents who work for more than one outfitter and they occasionally go to work for a different outfitter but this should not be

confused with outfitter licenses being transferred. He said that outfitter businesses must be autonomous, and that separate business records, client booking, employment records, guide licenses, and etc must be maintained by the outfitter. He said that when the controlling interest in a partnership, corporation or LLC changes a new outfitter license must be issued.

Enforcement statistics are as follows:

267 formal complaints in 2005; up 27% from 2003; (regarding complaints - 76 unlicensed activity, 77 licensing, 38 conduct, 34 non-compliance, 8 out-of-area, 17 illegal activity, 8 IDFG violation);

223 actions taken in 2005; (Regarding action - 77 unfounded, 50 probationary license, 23 letter of instruction, 25 citations, 12 no-action, 9 complaint/hearing, 3 verbal caution, 3 referred).

Mr. Howard stated that the Board's enforcement staff are targeting known problem areas; expanding interagency cooperation (IDFG, United States Forest Service [USFS] and the Bureau of Land Management [BLM]); and need to improve regional coordination.

The next subject covered was Trends. **Mr. Howard** stated:

Industry is becoming increasingly more corporate;
Non-traditional activities increasing (back country, skiing, hiking, mountain biking, walk and wade fishing);
Non-licensed activity is a major concern for the Industry;
Non-licensed individuals tend to be involved in other criminal activities.

Senator Stennett inquired if there had been any applications regarding bird hunting this past year. **Mr. Howard** replied that this matter came up during his presentation last year and since then the Board affirmed their policy as explained last year. He recalled that there had been an application in April on the Lemhi River for outfitter chukar hunts and it had been denied. He explained the Board licenses chukar separately from "upland game." They license outfitters for "upland game" which includes pheasants and quail on IDFG designated shooting preserves and there were licenses issued for this activity during the year. He said this does not seem to be an issue. Licenses for chukar hunting must be in remote areas and must be a minor activity, which means it must be conducted in conjunction with a major activity such as a float trip. The Board will not issue chukar outfitter licenses in areas that are reasonably available to the public at large. He said he was sure chukar was included on outfitters licenses in backcountry settings as a minor activity during the year.

Senator Stennett said that in Montana, more and more bird hunters are being guided with the block management program

Chairman Schroeder inquired about outfitting turkey hunts. **Mr. Howard** said about four years ago, the Board was asked to license turkey hunts. A study was done by IDFG, in cooperation with the Board, and it was

approximately 50/50 whether the public supported outfitted turkey hunts. As a result of that survey, the Board made a determination (2003) to license outfitters who operate turkey hunts on land that they own. There are seven or eight outfitters who were licensed and there have been no reported problems. He said that some time in the future he anticipates that the Board will work with the IDFG and federal agencies to consider providing this activity on selected public lands. He said that he anticipates that this would require the federal agencies to conduct some type of Environmental Assessment as outlined in a Memorandum of Understanding the Board has with them.

Chairman Schroeder said that since we have had three days of hearings on access, do we have situations where outfitters lease large tracts of private land, then obtain a license for that site? **Mr. Howard** said there are two ways that private lands are being addressed. There are private landowners with tracts of land that have asked to be licensed as an outfitter to provide services on their own land and the Board always tries to accommodate them. There are also outfitters who enter into lease agreements with private landowners and have been licensed. In both instances, the Board goes through a process with IDFG involving outfitters in the surrounding area to determine if the licensure is appropriate. That said, it is very difficult to tell land owners what they can or can not do on their own lands. He said the Board considers such matters as whether guided operations are not good for fish and wildlife resources, place a significant impact public access, impact other outfitters or affects the public's safety.

Senator Burtenshaw inquired if the wolves have hampered the success of outfitters who have guided elk hunts in the Lolo area. **Mr. Howard** said they have very much hampered outfitter operations by drastically affecting elk and deer populations and that this is one of the leading issues within the outfitting and guiding industry in the state. He also stated that the overall situation on the Clearwater is very dynamic. The problem isn't just related to wolves, but also includes bears, cougars and habitat. It is a complex issue. However, in talking with the outfitters in that area, they feel the wolves are a significant problem in a number of ways beyond affecting the elk and deer. For an example, one outfitter lost his hunting dogs to the wolves. **Mr. Howard** explained that the Board and the outfitters in the Clearwater region have been working cooperatively with the IDFG and the USFS to increase the harvest of bears and cougar particularly in remote areas. He said that he had participated in the annual agency review of this agreement in a meeting last week where the IDFG Regional Big Game Manager stated that clearly the increased harvest of bear and cougars taken outfitted clients have played a major role in improvement to elk calf survival.

An inquiry was made about the possibility of someone having a controlled tag and having several people looking for a trophy animal in different areas. **Mr. Howard** said that is not permitted. With an outfitted controlled tag, it must be used with the specific outfitter whom the tag is allocated to and used in the area where the outfitter is licensed. He said there is a "one-time controlled hunt process" and that is if a client wants to hunt in a specific area and there is not an outfitter in that area, then they

can work with an outfitter to get authorization to hunt there. This would typically be for sheep, goats, or moose. The Board refers to these as "Trophy Species". He explained that there is an involved process outlined in rule that the outfitter must follow to get authorized for these one-time controlled hunts. He said that usually only a couple of these types of hunts are authorized each year.

Senator Langhorst said there are people who sell information regarding the location of animals. **Mr. Howard** said this is a grey area often associated with "booking agents" and depending on what other services the individual provides may cause it to be an illegal activity in violation of the State Outfitting and Guiding laws. He said that, as he previously mentioned, unlicensed outfitting and guiding is a growing problem that small businessmen in Idaho who happen to be outfitters and guides are dealing with.

Mr. Howard said that the Board has stepped up its activities in addressing this unlicensed problem but the Board is somewhat limited in what it can do in this regard. He said that currently unlicensed individuals who are providing illegal outfitted and guided activities must be prosecuted by a county prosecuting attorney who must be willing to handle the case. There have been instances where this has been awkward. Violations are classified as misdemeanors and it appears that, if convicted, fines are no more than a cost of doing business on some of the more sophisticated illegal operations. He said Idaho could and probably should beef up its statutes to deal with this problem. **Mr. Howard** stated that if the committee so desired, the Board cooperating with members of the industry could provide recommendations to deal with unlicensed activities.

Chairman Schroeder proposed the question - "Where do the ethics of hunting and law intertwine and where do we want to draw that line?" He stated that he would look into this. **Mr. Howard** said that he believed that most ethical problems are usually with the individuals who are unlicensed, and not the licensed outfitter or their guides. He said that the Board holds licensed outfitters and guides to a very high ethical standard. He said for the most part the licensed outfitters and guides are very reputable and are of the highest level of integrity. He said when the Board becomes aware of ethical problems with licensed individuals problems are addressed quickly. He said that the licensed outfitters and guides appear to be taking the blame for activities of unlicensed and illegal operators in many instances.

Senator Stennett inquired as to how other states monitor their outfitters and guides. **Mr. Howard** stated that not all states have licensing boards. Montana and Wyoming have Boards modeled similarly to Idaho who are actively regulating outfitters and guides. He said that Idaho is unique in assigning outfitters individual operating areas. He said Idaho has an understanding with the Montana and Wyoming Boards but it is not formalized. He said that Oregon and Washington monitor their outfitters and guides but they do not seem to act as comprehensively as Idaho, Montana or Wyoming. He said Colorado monitors their outfitters and guides through a Board of Occupational Licenses and he understands

there is movement to make improvements. He said that he is not aware of what Utah and Nevada are doing. **Mr. Howard** said Montana and Wyoming's enforcement divisions seem more capable in addressing the unlicensed problem than Idaho. They have two or three full-time people, where Idaho has one full-time person. Montana has a minimum fine schedule established and cases are prosecuted through the State Attorney General's office. He said the Board's Enforcement Chief is a highly qualified enforcement professional who does an excellent job with what he has to work with. He said over the past several years the Board has been working to improve efficiencies in other areas such as licensing to free up money for the enforcement program and those improvements are starting pay off with expanded enforcement activities. He also stated that he would like to see better regional coordination and two additional full-time Enforcement Agents. He said that under-cover operations are necessary to address the unlicensed/ illegal outfitter problem. This requires coordination with other enforcement agencies. Currently, it is very difficult for the Board's Enforcement Chief to provide the level of coordination necessary by himself. He said last year alone six illegal operators were prosecuted but that is just a small percentage of what is going on.

Senator Stennett asked how the Wyoming guides interact with Idaho on the South Fork of the Snake River. **Mr. Howard** said the South Fork is one of the areas that Enforcement has targeted that he had mentioned earlier and what appears to be happening there is most of the guides in Montana and Wyoming are also licensed as a guide with an Idaho outfitter. He believes on this river the problem is more of identification of the markings on the boats rather than illegal activity. **Senator Stennett** stated it appeared there were no limits on the South Fork of the Snake and the Big and Little Wood River and inquired as to the number of guides and groups on the river at one time. **Mr. Howard** said there is a limit on the number of outfitters and a limit on the number of boats that can be on the South Fork at a time. He said the Bureau of Land Management is implementing its river plan for the South Fork, and he anticipates that some recommendations may be coming to the Board to change operations on the South Fork. He said there are limits on the number of outfitters operating on the Big Wood and Little Wood Rivers but not on the number of guides those outfitters employ. He said that the Board can and does make changes based on resource issues recommended by the federal resource managers, IDFG and the industry. He said reductions are not taken lightly because they typically affect the capabilities of outfitters who depend on the resource to operate their business. The numbers were lowered on the Middle Fork of the Salmon River a few years ago largely though non use, and the St. Joe and Coeur d'Alene Rivers were reallocated last year. There have been concerns expressed to the Board on such rivers as the Kootenai, the Henrys Fork and the Clearwater. He said if there is a need to make changes, the Board will work with the Resource Managers and the industry of those areas affected.

That concluded the report and questions.

Chairman Schroeder thanked Mr. Howard for his report.

**DISCUSSION ON
ACCESS:**

There was discussion regarding last week's Joint meetings held in the Gold Room relating to access and the landowner appreciation program. The Chairman stated that what they want to do is to maintain public access to private ground. When it was first started, it was a program to provide some permits, in controlled hunt areas, to landowners because they could not hunt on their own ground. Some people are charging for access, with the understanding they will get a tag. There is no stipulation that access will be provided, once a tag is received. The threat on one hand is that the land will be leased out to someone who has money, but on the other hand, there is no access anyway. **Ms. Kiefer**, legislative liaison for the Fish and Game Department, said access was defined as "reasonable". Discussion indicated that some of the public are still debating the definition of "reasonable". There is no access requirement now for landowner appreciation tags (LAP).

The **Chairman** said he is putting together a paper as a result of these meetings.

Senator Burtenshaw said he would like to see better relations between the ranchers, landowners, and the sportsmen.

Senator Stennett inquired if there were any action items or rules.

Chairman Schroeder responded that the way he perceives things, is that if the committee does not address or discuss issues as they come up and then something happens, we (the committee) are questioned as to why we didn't foresee it. He said he foresees something happening in the next decade. He also stated that the issues have been brought out in the open and now it is up to the people who were at the meetings to identify the action items.

Senator Stennett also inquired if more information about bonus points would be presented to the committee. The Chairman said he didn't see any consensus on the discussion of bonus points. Senator Stennett said what he didn't want to have happen would be for the Fish and Game Department to enter into bonus points and implement them this fall, then next year the committee might want to undo them. **Ms. Kiefer** said the F&G Commission has directed staff to come back to them with a rule set. A timeline for implementation would be in the 07 hunting season. She said in addition to this, they have an RS yet to be printed.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 1, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: Chairman Schroeder called the meeting to order at 1:35 p.m. and asked Senator Little to present the bill before the committee.

S 1299 The Statement of Purpose states “the purpose of this legislation is to define the term ‘Nonprofit Timber Protective Association’ and to provide specified restrictions relating to liability of Nonprofit Timber Protective Associations and their employees, while acting within the scope of their employment, and while performing contracts with the State of Idaho or any agency of the State of Idaho.”

Senator Little gave a brief overview of this bill. He said there are two Idaho timber protective associations which provide a cadre of services for timber land, most for our state land, but also for timber landowners of the state. When Idaho passed the Tort Claims Act, most people felt the timber protective associations were covered. Since then, they have found out that they are not. All this bill does is to give the Clearwater and Southern Idaho Timber Protective Associations the same coverage as our local fire departments have.

TESTIMONY: Howard Weeks, Chief Fire Warden, Clearwater Potlatch Timber Protective Association, testified in support of this bill.

TESTIMONY: Mark Woods, Chief Fire Warden, Southern Idaho Timber Protective Association, testified in support of this bill.

TESTIMONY: Mark Benson, Director of Public Affairs, Potlatch Corporation, testified in support of this bill.

TESTIMONY: Jane Wittmeyer, Vice President of Idaho Affairs, Intermountain Forest Association, said they support this legislation.

One of the questions asked was, “What is a protective association?” The answer was that they were established over 100 years ago and well-ingrained in the Idaho Forestry Act of 1925. That gave the Director and the Land Board the ability to enter into agreements with timber protective associations to provide wild land fire protection within their boundaries of jurisdiction. The landowners made the decision that they wanted to form

an association and to provide the protection as per 38-111, Idaho Code. They are not employees of the state, but of the association.

When asked about their source of funding, Mr. Weeks responded that their funding comes from the assessments for forest protection. It is set at 45 cents per acre by the Land Board. The General Fund makes up an additional amount of 53 cents per acre. The association's cost to be prepared is 98 cents per acre. Budgets are also supported by contracts with landowners, State of Idaho, industry and the Corps of Engineers doing forestry projects.

Senator Little closed the discussion by saying these two organizations are as efficient as possible and that this legislation will fill in the gap in the Idaho Tort Claims Act to protect the firefighters.

MOTION: **Senator Brandt** made the motion to send S 1299 to the floor with a do pass recommendation. **Senator Stennett** seconded the motion. The motion passed by unanimous voice vote. **Senator Little** will be the sponsor.

SPEAKER: **Chairman Schroeder** welcomed **Ms. Toni Hardesty, Director, Department of Environmental Quality (DEQ)**, who will present the Department's annual report.

Ms. Hardesty provided the committee with copies of a slide presentation, which she used as her talking points. She stated that she would cover two areas - (1) Agency annual highlights and potential issues of interest and (2) Upcoming issues/challenges/opportunities.

She said Idaho is one of the few states which does not have National Pollutant Discharge Elimination System (NPDES) Primacy. NPDES is a program administered by the federal government through the Environmental Protection Agency (EPA), and through H 176 last year, DEQ was asked to determine whether it would make sense for Idaho to take on NPDES Primacy. If so, a funding source would need to be identified. A report to the legislature on the progress of this determination was recently presented to the Speaker of the House and the Senate President Pro Tem.

Currently, there are approximately 900 NPDES permits in Idaho. It would take 23 full-time employees, costing a total of \$2.125 million to operate a primacy program.

Senator Burtenshaw asked who is funding it currently and **Ms. Hardesty** said the EPA is funding and administering the program right now.

In response to **Senator Burtenshaw's** question of what would happen if Idaho began funding and administering primacy, **Ms. Hardesty** said there are three possible scenarios: (1) permit applicants could be charged a fee; (2) funds could be drawn from the general fund; and (3) funds could come from the federal government. Most likely, funding would come from a combination of all three scenarios.

Ms. Hardesty explained some of the benefits of taking on Primacy,

including consultation and the ability of DEQ, as a state agency, to provide a more comprehensive, holistic, and individual approach for facilities.

Mercury levels in several bodies of water throughout Idaho has been the source of much public concern. Fish advisories due to high levels of mercury contamination have been issued at the following water bodies: C.J. Strike Main Reservoir, Salmon Falls Creek Reservoir, Brownlee Reservoir, Lake Coeur d'Alene, Lake Lowell Reservoir, Lake Pend Oreille, American Falls Reservoir, and Priest Lake. Once a water body is listed, DEQ must determine the source of the mercury. A number of different studies are used to make this determination, including network monitoring and air sampling.

Mercury is a global pollutant, but its presence is relatively new in the western United States. It is usually considered an East Coast pollutant. One unique characteristic of the contamination is that traces of mercury are absent in streams but show up in reservoirs.

Determining the source of the mercury is challenging. Historically, it comes from mining, but in many cases throughout the state, the contamination cannot be linked to mining. As a result, air deposition and monitoring is playing a large role in determining the source.

Senator Cameron asked if DEQ has data showing an actual increase of mercury levels over a period of time, and how that data is spread out over time. **Ms. Hardesty** said DEQ is in the process of collecting such data. Not much is known about the contamination because it is so new to the western U.S. The U.S. Geological Survey (USGS) will do core sampling to look at soil contamination over time, and fish can be sampled for similar data.

Senator Cameron asked if DEQ has no data dating 10 years back which would indicate that mercury levels were lower than now. **Ms. Hardesty** explained the only data DEQ has is from fish sampling. Although the EPA has funded mercury deposition monitors for every state with a coal-fired power plant, Idaho received none of the funding because it has no coal-fired plants. As a result, Idaho has no air monitoring data over the last decade.

Senator Cameron asked what sources could potentially generate mercury, and **Ms. Hardesty** said one of the largest sources are the gold mines just south of the Idaho border. Because the mines use a roasting process to mine the gold, high levels of mercury are given off into the air. She said she has met with the operators of the mines and they are collaborating to orchestrate a voluntary control program to reduce mercury emissions. Other more minor sources include thermometers, dental fillings, etc. DEQ is working to educate the public on proper disposal of mercury products like these.

Chairman Schroeder asked if any state in the region has long-term data Idaho could draw from, and **Ms. Hardesty** said DEQ is looking to other states, like Washington, for data.

Senator Pearce asked whether any studies indicate how much mercury is unhealthy, and **Ms. Hardesty** said fish consumption plays a significant role in how dangerous mercury is. The dangers assumed to come from mercury contamination are based on scientific estimates from which a national standard has been developed. Should these estimates ultimately prove to be too conservative, it is better to err in that direction than to put more vulnerable populations, like children, at risk.

Senator Burtenshaw asked about the amount of mercury generated by coal-fired plants, and **Ms. Hardesty** said it varies depending on the age of the plant and the technology it uses. Even the most modern plants emit mercury. Although mercury can be filtered from the stack, no plant has produced data showing 100% control. When **Senator Burtenshaw** asked about gasification, **Ms. Hardesty** said the gasification process also emits mercury, though usually at lower levels. Finally, **Senator Burtenshaw** asked if mercury emitted from a plant in China can contaminate waters around the world, to which **Ms. Hardesty** replied that since mercury is a global deposition, it is probably coming from China to the U.S., but the U.S. also generates large amounts of its own.

Senator Stennett asked about the cap-and-trade program. **Ms. Hardesty** said the cap-and-trade program was created by the EPA in an effort to reduce emissions from coal-fired plants nationwide. Through the program, the EPA estimated the emissions from each state and gave the states credits for the amount of emissions produced. When emissions are reduced, these credits become tradeable. If a new facility is to be built, it must go to the market and buy credits for the emissions it will produce before it can proceed. States can either opt into the program, opt out of it, or opt in with state-specific limitations. Because Idaho has no coal-fired plants, it received no credits, meaning Idaho has nothing to trade. Throughout the coming months, the EPA is reconsidering the program because of resistance.

Senator Stennett asked what would happen if Idaho opted out of the program, and **Ms. Hardesty** said no coal-fired plants could be built unless they proved a 0% emissions rate.

Senator Cameron asked about DEQ's role in educating the public on the issue. **Ms. Hardesty** said DEQ sits on panels to provide factual information about mercury contamination, it works with the Health Department to keep facts updated on their website about the issue, it holds hearings for various entities (including an upcoming panel for county commissioners), it produces editorials for newspapers, etc. DEQ also has a website dedicated to the issue.

Senator Schroeder asked **Ms. Hardesty** to return to the committee at a later date to finish her presentation and thanked her for educating the committee on the mercury topic.

**ANNOUNCE-
MENT:**

Chairman Schroeder announced that two handouts have been provided to the committee members - the Legislative Budget Report for the Idaho Forest Products Commission for FY 2005 and a clarification from Jake Howard regarding antlered and antlerless tags for Outfitters.

**ADJOURN-
MENT:**

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 3, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS: Chairman Schroeder, Vice Chairman Pearce, Senators Burtenshaw, Williams, Little, Stennett, Langhorst

**ABSENT/
EXCUSED:** Senators Cameron, Brandt

**CALL TO
ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m.

RS 15721 Mechanism to provide children with life threatening illnesses to hunt.

Senator Stennett asked that the RS be withdrawn to be considered at a later meeting.

RS 15888 Amends Idaho Code to increase handling charges by Irrigation Districts on drafts or checks refused by banks.

MOTION: **Senator Little** made the motion to send RS 15888 to print. **Senator Burtenshaw** seconded the motion. The motion passed by unanimous **voice vote**.

RS 15889 Provides for exclusive authority of Idaho Department of Water Resources (IDWR) relating to appropriation of public surface and ground waters.

MOTION: **Senator Little** made the motion to send RS 15889 to print. **Senator Burtenshaw** seconded the motion. The motion passed by unanimous **voice vote**.

S 1258 **Sharon Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG)**, presented **S 1258, Fish and Game license/long-term care facility**. This bill would modify section 36-401 of Idaho code, dealing with state long-term care facility residents. The Department currently has the ability to issue a free fishing permit to individual residents of these facilities. With the proposed modification, the Department could issue the permit to the director of the facility, since fishing trips for these residents are usually organized in groups. It would decrease administrative burdens for both the Department and residents.

Senator Little asked whether residents would no longer have the option of getting an individual fishing license.

Sharon Kiefer said residents will not lose fishing opportunities, but they will not have to get their license on their own.

Senator Langhorst asked about the charge for the permits.

Sharon Kiefer said it is a no-fee permit.

Senator Pearce asked for some background on why the bill was brought forward and how it will impact institutions.

Sharon Kiefer explained that directors of nursing home facilities are already allowed to get fishing licenses for their residents through section 36-409 Idaho code. Synchronizing this practice with other long-term care facilities in the state would simplify the licensing process for both residents and the Department.

Senator Pearce asked how many permits will be issued per year.

Sharon Kiefer said 77 individual resident permits were issued last year and 18 nursing home permits, issued through the director. She estimated that the number would be similar this year.

MOTION: **Senator Langhorst** moved to send S 1258 to the floor with a do-pass recommendation. **Senator Little** seconded the motion. The motion passed by unanimous **voice vote**. **Senator Langhorst** will sponsor the bill on the floor.

ADJOURN: The meeting adjourned at 1:45 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 6, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Burtenshaw, Williams, Brandt, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: Senators Cameron and Little

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

ANNOUNCEMENT: He announced that a letter composed by Representative Stevenson and himself to Mr. Jack Troyer, Regional Forester for the U.S. Forest Service, has been distributed to the committee members.

The letter requests Mr. Troyer's presence at a hearing to discuss the issue of landing helicopters in the Frank Church Wilderness area to collar some wolves. Mr. Troyer has agreed to meet on Monday, February 13, before the Joint committee in the Gold Room, to discuss this issue.

S 1259 He then asked Mr. Karl Dreher to present his Senate bill.

Mr. Dreher, Director, Idaho Department of Water Resources, said this legislation is an amendment to existing law which requires annual meetings of water districts for the purpose of administrating water rights. He said this bill would change the notification date for annual water district meetings from thirty days to twenty-one days and for special meetings from thirty days to fourteen days. Some water districts have specifically requested a shortened notice period. Also, special water district meetings are typically called to address a problem of some urgency and a shorter notification period would address the matter in a timely fashion.

There was some discussion regarding this bill.

TESTIMONY: **Jonathan Parker, lobbyist for the Idaho Water Users Association**, testified that the Association supports this legislation.

There was no further testimony.

MOTION: **Senator Williams** made the motion to send S 1259 to the floor with a do pass recommendation. **Senator Brandt** seconded the motion. The motion passed by unanimous voice vote. **Senator Williams** will be the sponsor.

ADJOURN- **Chairman Schroeder** adjourned the meeting at 1:50 p.m.

MENT:

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 8, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Little, Stennett, Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Brandt
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He asked Representative Edmunson to present his RS.
- RS 15936C1** **Representative Edmunson** said this RS replaces a previous RS that he presented on January 30. The concerns that the committee had have now been addressed in this RS.
- MOTION:** **Senator Pearce** made the motion to send RS 15936C1 to print. **Senator Burtenshaw** seconded the motion. The motion passed by unanimous voice vote.
- WELCOME:** **Chairman Schroeder** welcomed **Dr. Bill Rogers, Chief Research Officer, Idaho National Laboratory (INL)**, who will address the committee on “**Using Technologies to Address Idaho’s Natural Resource Challenges**”.
- Dr. Rogers oversees the basic research and applied engineering efforts of four major Research & Development Divisions: Energy and Technology Systems, Engineering Technology, Life & Earth Sciences, and Physical Sciences. The programs and initiatives associated with these divisions contribute significantly to INL’s multiprogram national laboratory status. He provided the committee with colored copies of a power point presentation (seven slides).
- SPEAKER:** Inserted into the minutes is a copy of Dr. Rogers talking points.
1. Glad to meet and discuss issues affecting Idaho
 2. INL’s first year accomplishments (S&T’s patents, awards, accolades, sales, CAES/CAMS)
 3. Governor’s State of the State address noted that science and technology continues to be one of the driving forces behind the strength of Idaho’s economy. He recommended full funding for the Science and Technology Advisory Council (that our Laboratory Director John Grossenbacher chairs) – including funding for the regional TechConnect offices. We also play a role in assisting Idaho

companies to compete for federal research dollars, and collaborate with universities and private businesses for research and technology transfer.

4. In a recent newspaper editorial Grossenbacher said that today, science and technology is the largest sector of Idaho's economy, employing more than 50,000 Idahoans in jobs that pay twice the private sector average. Idaho is recognized as a center of technology innovation and a fertile environment for growing new companies. It leads the nation in the number of patents issued per capita, risk capital is more available than ever before, and the number of technology-based businesses has steadily increased. Gov. Dirk Kempthorne has recently asked the state Legislature to provide funding for several specific initiatives to address various aspects of this challenge. Relative to most other states, the amounts requested are quite modest. It is, however, a significant start for a state just beginning. The challenge cannot be met solely on the strength of government action. It can only be met if all parties that will reap the benefits – private, public, federal, state, and local – join hands to create the solution. In the coming months, the Governor's Science and Technology Advisory Council will be challenging organizations from around the state to step forward, become active partners in defining a path for the future, and begin moving down that path.

OVERARCHING MESSAGES

1. **ENERGY**

Energy supply is a major issue from an economic, health and welfare and global security perspective. Finding and establishing new ways to secure an adequate supply of energy is necessary to secure and maintain our quality of life.

2. **WATER**

Water is fully allocated in the West. The recent drought points to the immediate problem of water shortage. Beyond intrusive legislative action, advances in science and technology (i.e., improved forecasting, water distribution technology) provide ways to forestall crises.

3. **ENVIRONMENT**

Idaho is faced with natural resource and energy issues due to its agricultural nature and the increasing emphasis on economic and population growth. Combined, these issues can cause environmental dilemmas that are best managed with accurate and timely information. INL works daily to resolve such situations.

4. **IDAHO AND INL RELATIONS**

INL works successfully with Idaho universities and businesses to know and understand issues that are important to Idaho.

MESSAGE DETAILS

1. ENERGY

The world isn't running out of energy – it is running out of energy sources we use most...

- a) Petroleum
 - 97% of transportation fuel
 - 35% of industrial base load energy
 - 13% of residential energy
 - 8% of commercial energy
- b) Hydrocarbons (petroleum, coal, natural gas) provide ~85% of the United States' energy, including ~70% of electric capacity

Idaho is rich with renewable energy resources, and INL is working on technologies to further enhance them.

- a) Bioenergy
- b) Geothermal energy
- c) Hydropower
- d) Wind energy

INL is working on the key technological innovations:

- a) Hydrogen generation, storage, transport
- b) Carbon capture, storage (*Big Sky Carbon Sequestration Partnership*)
- c) Energy generation from domestic sources
- d) Methods for combining hydrogen and carbon to produce synthetic fuels
- e) Reforming (*gasification; hardware for coal gasification; biomass gasification for carbon neutrality*)
- f) Energy systems and processes for fuel synthesis (*nuclear, fossil, biomass*)

EXAMPLE:

Bioenergy Program— In Pres. Bush's 2006 State of the Union address, he announced a new Presidential initiative for the production of ethanol as an alternate transportation fuel. Since INL is one of three national laboratories working with DOE's Office of Biomass, INL is expected to increase its role in assuring a steady and sustainable supply of biomass for future biorefineries. Right now, INL develops and demonstrates a suite of key technologies that enable a "biorefinery of the future" to produce bio-based energy, fuels, chemicals and other bioproducts.

- a) Feedstock Assembly R&D Areas
 - Plant Science/Production

- Harvesting and Collection
- Storage
- Preprocessing and Handling
- Transportation
- b) Biomass Refining R&D Areas
 - Filtration and Separation - biomass hydrolysis/refining products
 - Extremophilic Biocatalysis - chemical products/intermediates
 - CO2 Utilization (emerging) - synthesis fuel products

OTHER EXAMPLES:

LNG; Yellow Bus; diesel reforming; advanced vehicle testing in Phoenix, AZ; advanced battery and ultra capacitor testing

2. WATER

Major quantities of water are required to meet growing U.S. power needs.

- a) Irrigation accounts for 50% of water use in the West. Idaho uses greater than 90% of its water for agriculture, and is a great consumer of power (an area where Idaho can improve efficiency). The production of energy (ethanol from corn, straw, etc.) will also require more water.
- b) ALL POWER will need large quantities of water at the point of production. Sustainable power will be required for water quality improvements.
- c) The best way to solve many water issues is to manage resources at a watershed level instead of point sources.
- d) The economy of the future will require vast amounts of clean water. Advanced manufacturing process such as microchip production will require increasingly greater amounts of very pure – and therefore – expensive water.

Federal agencies and the governors of Idaho, Washington, Oregon and Montana are trying to forge a salmon-protection plan that would meet a federal judge's approval and preserve cheap Northwest hydropower. The federal dams tied up in the lawsuit provide nearly half of the electricity that powers the nearly \$400 billion economies of the four states. "It is clear that extensive groundwater pumping has contributed significantly to the declines, in the river, which hurts Idaho Power's ability to generate power," attorney Jim Tucker letter. (Times-News)

EXAMPLE:

National Hydropower Assessment— Hydropower currently provides 50% of Idaho's power, and accounts for 90% of the energy produced within the state. Hydropower is a good example to illustrate the power and need for information technology in

natural resource use and management. INL has recently finished an assessment of all the potential new hydropower sources across the country. Using the information, we have determined that the State could gain 466 MW of undeveloped hydropower, a 20% increase in hydropower capacity.

INL has launched the national “**Virtual Hydropower Prospector**” on line to provide public access to this assessment. The web address is <http://hydropower.inl.gov/prospector>. The site is user friendly, and can be used to examine any stream reach in Idaho or the nation – to identify its hydropower development potential.

OTHER EXAMPLES:

Separations technology (arsenic); bioremediation of groundwater at the Test Area North; Coeur d’Alene Basin Superfund projects, including passive water treatment assessment using appetite (dry fish bones), and a source term characterization study in Canyon Creek; energy/water nexus

3. ENVIRONMENT

As noted previously, bioenergy and hydropower have to do with natural resources as seen from an energy and water perspective. We have a variety of other programs underway that are applicable to other aspects of resource use and management related to sustainable economic development.

EXAMPLE:

Selenium Information System Project (a water and mining technology improvement)— The Selenium Information System is a centralized GIS internet map service for displaying Selenium contamination data in the Southeastern Idaho phosphate mining resource area. The repository combines information that was previously stored in numerous agency, mining company, and consultants’ databases and web sites. These data include selenium concentrations in soil, water, sediment, vegetation and other environmental media, and comprehensive mine information. The Idaho DEQ spearheaded a selenium area-wide investigation through voluntary agreements with the mining companies and interagency participants. The Selenium Information System contains the results of that area-wide investigation, and many other background documents. As studies are conducted and remedial action decisions are made, the resulting data and documentation will be stored within the information system.

The Selenium Information System Project is a collaboration among the Idaho State Department of Environmental Quality, United

States Forest Service (USFS), Bureau of Land Management (BLM), Idaho Mining Association (IMA), Idaho State University (ISU), and the Idaho National Laboratory (INL). The project is funded through an Interagency Agreement between the U.S. Environmental Protection Agency, Region 10 and the U.S. Department of Energy-Idaho. Potential users of the information system are agency officials, students, lawmakers, mining company personnel, teachers, researchers, and general public.

EXAMPLE:

(An idea in the works...) **Towards a Regional Center for Wildlife and Animal Disease Diagnostics**— Emerging diseases in wildlife pose a threat to the traditional way of life in the West. Recent cases of brucellosis in cattle herds in Wyoming and Idaho have resulted in the loss of brucellosis-free status in those states, and substantial costs associated with increased testing, vaccination, and herd depopulation. Massive testing of elk is currently underway in Wyoming as one approach to solving the problem of brucellosis migration from wildlife to domestic animals. Other diseases, such as chronic wasting disease, tuberculosis, West Nile virus and avian flu, to name a few, are on the horizon. The INL has been engaged with regional wildlife veterinarians and managers (states of Idaho, Wyoming, and Montana fish and game departments), the State of Idaho's Dept. of Agriculture Bureau of Disease Surveillance and Diagnostics, Yellowstone National Park, and USDA's Animal and Plant Health Inspection Service (APHIS) in exploring new technologies to rapidly detect the brucellosis bacterium (*Brucella abortus*) in actively-infected animals. Recently, with cooperation from USDA/APHIS and Idaho's Bureau of Disease Surveillance and Diagnostics, INL researchers were able to rapidly identify (by real-time PCR) *B. abortus* in cultures recovered from cattle in Swan Valley before diagnosis was confirmed by the National Veterinary Services Laboratory in Ames, IA. INL researchers continue to discuss the possibility of a regional development laboratory where state-of-the-art diagnostics for wildlife and animal diseases could be examined, validated, and provided to support agriculture and wildlife management in the Intermountain West.

This idea has been discussed informally with Dr. Mark Drew, Idaho Dept. of Fish and Game veterinarian, Dr. Phil Mamer, Idaho Fish and Game's wildlife veterinarian, and Dr. Mark Atkinson, wildlife veterinarian for Montana Dept. of Fish, Wildlife and Parks. Also, Wyoming has been lobbying for upgrades to their facilities in Laramie as a consequence of brucellosis there, and we'll be talking to them about that situation. Dr. Garry Adams, Texas A&M, who pitched a similar concept/consortium idea at a meeting to discuss new strategies for the brucellosis problem in Laramie, has also been briefed on the idea.

EXAMPLE:

Rangeland Monitoring with Unmanned Aerial Technology—

Monitoring vegetative cover in vast, semi-arid ecosystems is a difficult task that is often expensive, requires large amounts of time in the field and presents safety hazards. This task is made more difficult as there are not enough resource specialists or funds available to conduct quality ground surveys to support restoration activities. Resource specialists managing sagebrush-steppe ecosystems are concerned about vegetation condition and habitat losses due to drought, fire, and land conversions. Vegetative cover data provide important information relative to ecological structure and processes such as nutrient cycling, soil development, and desertification. Improved methods are needed to monitor these habitats to ensure quality data are available in a timely manner to make resource management decisions.

INL, in conjunction with the University of Idaho, is evaluating a novel approach for monitoring biotic resources on western lands using Unmanned Aerial Vehicles (UAVs) as a quick, safe and cost effective method. We established seven macro field plots west of Idaho Falls, in areas with varying vegetative types and amounts of cover. In this project, we used two types of UAV platforms, fixed wing and rotocopter. Each UAV was equipped with cameras to collect still frame and video imagery to assess cover in sagebrush-steppe ecosystems. The purpose of our project is to evaluate the feasibility of collecting imagery with a UAV and processing the imagery to estimate total percent cover and percent cover

by selected type (shrub, forbs, grass, dead shrub, litter and bare ground), and compare the accuracy of results from these approaches to standard field methods. We will also evaluate the ability of the image collection approach to locate sage grouse based on representative decoys.

Evaluation of vegetative cover is an important factor for maintaining the sustainability of many biotic resources; especially those associated with sage grouse populations. Vegetative cover is a critical indicator evaluated during ecological restoration activities. Improved methods for assessing cover at the life form level that are accurate and cost-effective could revolutionize how biotic resources are monitored on vast area of western lands. Natural resource managers and specialists may be able to use UAV approaches to address some monitoring tasks when either people or funds are limited for conducting surveys of these lands.

OTHER EXAMPLES:

Ultrastable Catalase Enzyme from Yellowstone bacteria (2004 R&D 100 Award winner); GEOPS— Geologic Probe System (2004 R&D 100 Award winner); Pacific Northwest Regional Collaboratory; sustainable green building technology; geocentrifuge fate and transport research

4. IDAHO / INL RELATIONS

EXAMPLE: WORK FOR OTHERS

[Source: Chuck Briggs]

INL's Work for Others program brought in \$1 million from Idaho sponsors in FY05. (Much of the original funding came from the federal government to Idaho institutions then to INL, including \$321,000 from International Isotopes of Idaho; \$360,000 from Univ. of Idaho projects (original funding was from NASA); and \$210,000 from INL spin-off company Nano Steel. The balance was from other entities.

EXAMPLE: FELLOWSHIPS / INTERNSHIPS

[Source: Una Tyng]

INL fellowship/internship programs during FY-2005 involved high school students and teachers, undergraduate students, graduate students, post-graduates and faculty. In all, there were 107 Idaho participants who received INL funding -- totaling \$1,035,000. INL also placed eight Idaho participants into Lab research programs that were supported financially by non-INL organizations. On average, the INL pays undergraduates approximately \$7,000 per internship and approximately \$10,000 per graduate fellowship.

EXAMPLE: TECHNICAL ASSISTANCE PROGRAM

[Source: Chuck Briggs]

During 2005, INL scientists and engineers provided more than 700 hours of technical assistance on 19 separate projects for Idaho agencies, businesses, cities, schools and private inventor projects.

EXAMPLE: MARKETING TECHNOLOGIES

[Source: Al Hoiland and Nancy Bergmann]

INL's 'Technology Transfer Research and Academic Institutional Linkage for Students' (TRAILS) program is associated with educational institutional partners Boise State University, Brigham Young University – Idaho, and now Idaho State University. An intercollegiate competition, TRAILS offers senior-level business students the opportunity to conduct market research analysis on promising INL technologies. Teams of students select predetermined INL technologies and analyze and prepare market assessments – and at semester's end present their findings and recommendations. Finalists receive an invitation to attend Idaho Tech Launch, held in Sun Valley, for the final competition. In 2005, Boise State University teams took 1st and 2nd place, winning a total of \$4,500 in awards.

POCKET ISSUES

As a DOE multiprogram national laboratory, we are often asked to perform basic research and engineering studies to provide information for decision-makers with answers to scientific questions and issues. Projects, like mercury monitoring and the proposed coal-fired SEMPRA plant, will continue to be debated as we collectively work out our energy security priorities.

MERCURY MONITORING

INL has performed mercury monitoring surveys for a number of clients in Idaho and in surrounding states. We have performed surveys in south central Idaho, near Salmon Falls Creek Reservoir and the Nevada border, in Yellowstone National Park, and as far away as Mt. St. Helens.

QUESTIONS:

Questions were asked by the committee members and Dr. Rogers said that he would respond to them in writing.

Chairman Schroeder thanked Dr. Rogers for his presentation and said that Dr. Rogers was due to speak to the House Resources and Conservation Committee in the next few minutes.

HANDOUTS:

Chairman Schroeder provided copies of letters from Steve Huffaker, Fish and Game Director, regarding an update of their 2005 calendar year acquisitions and from Jake Howard, Outfitters and Guides Licensing Board Director, regarding license application denials/hearings.

ADJOURN- MENT:

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 10, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Williams, Brandt, Little, Stennett, Langhorst

**ABSENT/
EXCUSED:** Senator Burtenshaw

**CALL TO
ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m.

MINUTES: **Senator Brandt** moved to approve the minutes from January 18.
Senator Pearce seconded the motion. The motion carried by a **Voice Vote**.

Senator Stennett moved to approve the minutes from January 20.
Senator Brandt seconded the motion. The motion carried by a **Voice Vote**.

Senator Pearce moved to approve the minutes from January 25.
Senator Williams seconded the motion. The motion carried by a **Voice Vote**.

Senator Langhorst moved to approve the minutes from January 23.
Senator Williams seconded the motion. The motion carried by a **Voice Vote**.

RS 15919 **Senator Keough** introduced **RS 15919, providing for disabled individuals to obtain licenses at a reduced fee**. Last year, a similar bill came before the committee, but it was pulled to give the Department of Fish and Game a chance to work through some of the issues with input from disabled individuals throughout the state. Some of the issues were resolved but some remain. Printing this RS would allow the committee the opportunity to hold a hearing and discuss state policy regarding disabled individuals.

MOTION: **Senator Pearce** moved to print **RS 15919**. **Senator Cameron** seconded the motion. The motion carried by a **Voice Vote**.

**RS 15673
RS 15674** **Senator Langhorst** introduced **RS 15673, extending the statute of limitations from two to five years for fish and game violations, and RS 15674, increasing the statute of limitations for poaching violations from two years to five years**.

MOTION: **Senator Stennett** moved to print **RS 15673 and RS 15674**. **Senator Cameron** seconded the motion. The motion carried by a **Voice Vote**.

SPEAKER:

Dr. Jay O’Laughlin, Director, College of Natural Resources Policy Analysis Group, University of Idaho gave a presentation on “**Forest Health, Forest Products Business Sector and Woody Biomass Energy Potential: Findings from Two New Policy Analysis Studies.**” He said 50 years ago, Idaho had 28 billion cubic feet of growing stock and since then, volume in the state’s forests has increased 37%. The species in the forests have changed significantly, however. Western White Pine, the state tree, has almost disappeared, and Ponderosa Pine has declined. Douglas and True Firs have increased 83% in the last 50 years, and because firs are more susceptible to diseases, insects, and wildfires, this increase puts the forests’ health at risk.

Senator Stennett asked why the species have changed, and **Dr. Jay O’Laughlin** said it is due to timber harvesting and management at the time of the harvest.

Dr. Jay O’Laughlin continued by explaining research done on the role of forests in community development. Out of 215 communities in Idaho, only 6% (12-14 communities) are not dependent in any way on natural resources. Half of the communities use natural resources for commodity production, largely in the form of agriculture or forestry. In 21% of Idaho’s communities, forest resources serve both economic commodity and amenity functions. Thirty-two communities are dependent on wood products manufacturing. Forest products, mostly lumber and paper, accounted for \$2 billion in sales in the state last year. Idaho’s main paper mill employed 15,100 people in 2005. The average wage per job was \$32,000 per year (with benefits), in contrast to the state average for all industries of \$22,000. Though less than 5% of Idaho’s labor income comes from the forest industry, only two states have a higher dependence on the industry: Maine and Oregon. Idaho is the 8th largest lumber-producing state.

There was discussion about mill output, employment, and fire salvage.

Aside from economic benefits, there are other benefits to using wood products. Forests are becoming overcrowded which leaves them vulnerable to disease, insects, and catastrophic fires. The annual growth in Idaho would cover four football fields with a mile-high stack of wood, and only one-fourth of it is being removed per year. Forty percent dies each year, which is the highest mortality rate in 50 years. The forest service projects another 50% increase in the next 50 years which will cause many problems. Because of the growth in forest volume, the potential for lethal fires has tripled.

Senator Schroeder asked if low-intensity fires are good for forests and **Dr. Jay O’Laughlin** said that certain species of trees benefit from them.

Dr. Jay O’Laughlin continued and explained that forest biomass could become a renewable energy source. It would take one billion tons of biomass per year to replace 30% of the transportation fuels in the U.S. It could also be used to produce electricity but without a subsidy, it is difficult to do so, given the economics of the electricity industry.

Lumber imports from Canada have increased from 25-30% to 35-40% of

the lumber used in the U.S. This has been a subject of debate and law suits among trade agencies in North America. The industry is split on the issue because many American mills also have mills in Canada.

Senator Little asked how the commerce clause plays into states requiring certain percentages of energy be produced from renewable sources, and discussion ensued. **Dr. Jay O'Laughlin** said that biomass would count as a renewable source.

Senator Schroeder asked about the costs of producing energy using biomass, and **Dr. Jay O'Laughlin** said converting woody biomass to ethanol would not be economical without significant subsidies, though it is possible. The economics are slightly better for producing electricity.

Senator Williams commented on the difference in the cleanliness between state and federal lands. The state seems to manage its lands better than the federal government does.

Senator Schroeder asked about carbon sequestration and how the Northern Hemisphere forests aid in the production of breathable air even more than the equatorial rain forests do, and discussion followed.

Senator Little explained that second-growth, highly managed forests release less carbon (absent fire) than non-managed forests do. **Dr. Jay O'Laughlin** said the faster the forest grows, the more carbon it produces, because young trees grow at a faster rate. He said the best way to reduce carbon in the atmosphere is to avoid severe forest fires by managing forests well.

ADJOURN:

Senator Schroeder thanked **Dr. Jay O'Laughlin** for the presentation and adjourned the meeting at 2:50 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 13, 2006

TIME: 1:30 p.m.

PLACE: Gold Room - Joint meeting with the House Resources and Conservation Committee

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Representative Stevenson, House Resources and Conservation Chairman**, chaired the Joint meeting. Chairman Stevenson called the meeting to order at 1:40 p.m.

WELCOME: He welcomed the committee members and said that they are fortunate to have **Mr. Jack Troyer, Regional Forester with the United States Forest Service (USFS)**, here today to address two issues: The Permitting of Helicopter Landings Outside Designated Aircraft Landing Strips in Wilderness and Motorized Recreation Use of National Forest System Land.

The Chairman then asked **Mr. Steven Huffaker, Director of the Idaho Department of Fish and Game (IDFG)**, to identify the reasons why this issue is before the committee.

SPEAKER: **Mr. Huffaker** said the Wilderness Act of 1964, SEC.4.(b) says the wilderness shall be devoted to, among other things, scientific, educational, and conservation use. Wildlife conservation is one of the foundational purposes for wilderness. The Central Idaho Wilderness Act that created "the River of No Return" repeats that statement. The Wilderness Act also says that nothing in this Act shall prevent any activity for gathering information on resources. The Secretary of Agriculture's regulations says that the Chief of the Forest Service shall allow any activity for gathering information about resources. The Department recognizes that the same legislation also says, basically, that it has to be done in the least intrusive manner possible and that motorized use sets a very high bar. The Department, in looking forward to the future of wolf management, anticipates the time when they are not going to have radio collars on every pack. He feels they will have to keep track of wolves and inventory the population with less expensive methods than putting radio collars on as many packs as possible. In order to do that, the IDFG needs to know some basic information about how wolves use a huge habitat. Wolf packs occupy from 250 to 500 square miles of habitat. Normally, they pick out a favorite denning site and a number of rendezvous sites within that habitat and that is where they have their pups and raise

their pups.

Mr. Huffaker said they went through a very extensive process resulting in the 23 page application to the Forest Service (Minimum Requirements Decision Guideline) to try to gain a categorical exclusion to allow IDFG to land a helicopter in the wilderness while flying big game counts. These counts are a normal course of business and that activity requires no permits. However, a permit is required to land a helicopter to radio collar wolves.

Mr. Huffaker stated that he and Mr. Troyer have been colleagues for many years and work well together and most things, they are able to work out.

**INTRO-
DUCTIONS:**

Chairman Stevenson introduced **Andy Brunelle, Public Affairs Officer, USFS**, who in turn introduced **Ms. Erin O'Connor, Director of Strategic Communications, USFS**, and **Mr. Jack Troyer, Regional Forester**.

Mr. Brunelle said that Mr. Troyer is here today in response to the letter of January 30, 2006 requesting that he speak to the Joint committee.

SPEAKER:

Inserted into the minutes is a copy of **Mr. Troyer's presentation** regarding "The Permitting of Helicopter Landings Outside Designated Aircraft Landing Strips in Wilderness".

Chairman Schroeder, Chairman Stevenson, members of the committees,

Thank you for the opportunity to be with you today. My name is Jack Troyer. I am the Regional Forester for the Intermountain Region of the Forest Service. As Regional Forester, I have responsibility for the management of 34 million acres of National Forest System lands in southern Idaho, western Wyoming, Utah, Nevada and a small portion of eastern California. National Forests in Idaho within the Intermountain Region are the Boise, Sawtooth, Payette, Salmon-Challis and Caribou-Targhee. The Idaho Panhandle, Clearwater and Nez Perce National Forests are within the Northern Region of the Forest Service, overseen by Regional Forester Gail Kimball.

The Forest Service and the State of Idaho have a long history of working together on matters of mutual interest. I welcome the chance to discuss several issues currently facing the State and what the Forest Service might do to assist. Particularly, you have asked me to talk about my recent postponement of a decision to permit the landing of helicopters in the Frank Church - River of No Return Wilderness by the Idaho Department of Fish and Game in support of the State's role in managing wolves. You have also asked me to talk about the management of off-highway-vehicles in National Forests. I am happy to discuss these topics and others that may be of interest to members of the committees.

With regard to wolf management by the State of Idaho...

First, let me congratulate the State on your recent recognition by

the US Fish and Wildlife Service under the 10 (J) rule for now having jurisdiction over the management of gray wolves within Idaho.

The Forest Service and Idaho Department of Fish and Game have a long history of working together on wildlife species and habitat management. We recognize the State's role to manage the diverse wildlife species within your boundaries. As the land managers, it is the Forest Service's responsibility to be good land stewards and balance the often competing interests in the use of National Forest System lands. Our management must also comply with numerous federal laws and regulations such as the National Environmental Policy Act, The Endangered Species Act, the National Forest Management Act and the Wilderness Act. Over the years we have found by working closely together, the State and the Forest Service often accomplish our shared desired outcomes.

Last spring, Idaho Department of Fish and Game approached the Forest Service with a proposal to dart and collar up to 16 wolves throughout the three congressionally designated wildernesses of central Idaho, the Selway-Bitterroot, the Gospel Hump, and the Frank Church-River of No Return. As Fish and Game's proposal involved landing helicopters in Wilderness, Forest Service authorization was required. Forest Service authorization is required because the use of helicopters in Wilderness is permitted only at established airstrips, or as minimally necessary for the administration of the areas as wilderness. Before I can permit such an activity, I am legally required to conduct an administrative decision-making process in accordance with established procedures.

Members of my staff worked with state wildlife managers to understand the scope of helicopter landings in wilderness necessary for the State to carry out its desired wolf collaring activities. Together Forest Service and Idaho Department of Fish and Game employees developed a minimum requirements analysis. This analysis helped formulate a proposed action and identified issues and concerns that needed to be addressed during the Forest Services administrative decision making process required by the National Environmental Policy Act (NEPA.)

After lengthy discussions, Idaho Department of Fish and Game proposed to conduct collaring activities solely in the southern part of the Frank Church - River of No Return Wilderness. The proposal could require up to 48 helicopter landings outside of designated aircraft landing strips. Idaho Department of Fish and Game's proposal has since been modified and would require fewer landings.

In early December 2005 the Forest Service asked for public comment on the landing of helicopters within the wilderness, landings required to support of the State's wolf collaring activities. A notice describing Idaho Department of Fish and Games' request was sent to 750 individuals and special interest groups. As I said earlier, I am required by law to conduct an administrative decision-making process and providing the public the opportunity to comment is a key part of that process. In the scoping notice, the Forest Service stated that the project might be

categorically excluded from documentation in an environmental assessment or environmental impact statement. That expectation proved to be unrealistic.

The Forest Service received more than 160 comments from individuals interested in the project. Given the depth of the comments received from the public and the complexity of the issues raised, I determined I could not grant permission to Idaho Department of Fish and Game to land helicopters in the Wilderness and additional analysis was needed to comply with the federal laws I must uphold.

We will continue to work with Idaho Department of Fish and Game managers to develop a proposal and determine the appropriate level of environmental documentation necessary. Gail Kimball, Regional Forester for the Northern Region and I have committed our directors of wildlife and wilderness to work with Steve Huffaker and his staff to develop a succinct project proposal that can be analyzed through the Forest Services administrative decision-making process.

While we will work as expeditiously as possible, the environmental analysis will not be completed in time for the Department of Fish and Game to land helicopters within the Frank Church - River of No Return this winter. It is important that I ensure the protection of wilderness while balancing the need for Idaho Fish and Game to manage populations of gray wolves.

This concludes my formal remarks on the permitting of helicopter landings within wilderness. I will be happy to answer questions on this subject at this time.

Chairman Stevenson said that he would allow time for a few questions before Mr. Troyer delivers the second part of his presentation.

Representative Barraclough said, "In applying these laws, there should be some aspect of common sense. We are not asking for 100 Hells Angels motorcyclists to go in.....we are trying to collect some data.....it seems like that is part of the Forest Service's responsibility for the land and animal management. When we make laws, we can't cover every circumstance."

Mr. Troyer replied that they do the best they can to try to apply the rules. There was a signed agreement 20 years ago that they try to follow and it governs this process. He stated that it is a question of balance and perhaps the data could be obtained by leg-hold traps. Mr. Troyer said the issue is so controversial, that they cannot categorically exclude it from the environmental analysis process.

Representative Wood asked if the State of Idaho that is represented in this room would not be a major opposition to the groups that are suing and the 160 letters of protest. She also said that it was felt that the state had jurisdiction over most of the operations of the public land in Idaho. Representative Wood asked Mr. Troyer where he stood on that issue.

Mr. Troyer said it is a partnership - Fish and Game manages wildlife and the Forest Service is responsible the habitat. Each agency, state and federal, has its own set of pressures, laws and regulations that they are responsive to.

Representative Wood asked if the voice of the Legislature representing the people of the state of Idaho would not be an overwhelming consideration.

Mr. Troyer replied that it was a huge factor and that he tries to balance federal and state mandates.

Senator Little said that the state has a responsibility to account for the wolves and to manage them. He asked if “untrammeled” was the ultimate goal and the reply was yes. Senator Little then asked if a case couldn’t be made for a categorically exclusion to issue a permit for “x” number of landings for helicopters to collar wolves, then fixed-wing planes monitor them rather than helicopters hovering for hours. Senator Little suggested the net effect would be a more untrammeled wilderness area and fewer hours of helicopter use.

Mr. Troyer said these points would be considered in their ongoing analysis.

Representative Bedke asked if motorized use was covered by any other categorically exclusion (CE) or have there been any successful environmental assessments (EA) or environmental impact statements (EIS) that have resulted in limited motorized use. He also asked if there were any precedents.

Mr. Troyer said there has been motorized use in the wilderness area, but it has gone through the process and there have been precedents. This kind of use is looked at in a different category than, for example, search and rescue.

Senator Williams inquired as to what kind of environmental damage would be done by the helicopters.

Mr. Troyer stated that the physical impacts of landing helicopters in the wilderness are minor. The language in the Wilderness Act talks about having some places left in America where you can get away from motorized traffic or noise and have solitude. He said he sees the public concerns and comments in that regard, more than the physical impact to the wilderness.

Representative Andrus asked Mr. Troyer if he was legally required to not grant the request because of the responses or was it a judgment call on his part.

Mr. Troyer said they thought they were legally required to do more

analysis, but it was also a judgment call. He said had a categorically exclusion (CE) been used, it's very likely a judge might have said that a CE wasn't designed for this level of project.

Representative Barrett said she wanted clarification on the 160 comments and also wanted to remind him there are 105 people in the Legislature. Representative Barrett inquired as to how much significance was given to the 160 comments.

Mr. Troyer clarified the results of the comments. He said one-third said it was a good idea; two-thirds said it was a bad idea; then that group was broken down into three categories. The main factor was the quality of individual comments and points that they made.

Representative Eskridge asked if this was in litigation now and the answer was no. He then asked Mr. Troyer if there would be less impact on the environment, why won't he allow a categorically exclusion.

Mr. Troyer said regarding impacts on wilderness, he was acknowledging that there is legitimate debate on which would have the most impact to wilderness and agreed with some of Senator Little's points of discussion. But the impact of noise and over-all impacts are still there. The key point in the analysis is - if you can get the data that you need, even though it might cost more or be more inefficient, to do that without impacting wilderness with motorized use, the foresters policy pushes them in that direction.

Representative Wood said the information that she has received indicates that leg traps on wolves are not efficient and a lot of people object to that use. She inquired as to why the Forest Service hasn't worked with the US Fish and Wildlife to do what has been remanded to do to manage the wolves, and counting them is a big part of it.

Mr. Troyer said that they try to work with other agencies as much as they can to get the desired outcome. He feels the data required will be obtained in a way that is satisfactory to a large group of people.

Chairman Stevenson asked if in a year from now, will this issue have been worked through?

Mr. Troyer said he is an eternal optimist and feels the answer is yes. He said he would do everything in his power to make that answer "yes". He also said (1) they would do everything to help get the data through leg-hold traps and (2) have the staff work together to formulate a longer-term proposal that involves the use of helicopters.

Chairman Stevenson said that ended the first half of the program and the last half would be devoted to "Motorized Recreation Use of National Forest System Land", presented by Mr. Troyer.

Inserted into the minutes is a copy of **Mr. Troyer's presentation** regarding "Motorized Recreation Use of National Forest System Land".

Again, Chairman Schroeder, Chairman Stevenson, members of the committees, thank you for the opportunity to be with you today.

In 2005 the Forest Service published final regulations on travel management on the National Forest System. I would like to explain the basis for these regulations. I also want to highlight some of our work in the state of Idaho with other state and federal agencies to advance our management of motorized vehicle recreation.

The USDA Forest Service manages 155 national forests and 20 national grasslands, in 42 States and the Commonwealth of Puerto Rico. Here in Idaho, there are eight National Forests and one National Grassland. A key opportunity provided on National Forest System lands today is outdoor recreation. Over 200 million visitors enjoy their national forests and grasslands each year, participating in a wide range of motorized and non-motorized recreation activities, including hiking, horseback riding, bicycling, snowmobiling, and riding off-highway vehicles. National Forest recreation provides healthy opportunities to enjoy the outdoors, connects people to their public land, and represents a significant contribution to the economy of many rural areas.

Motorized recreation has grown significantly in the past years. Between 11 and 12 million off-highway vehicle (OHV) riders visit National Forest System lands each year.

Motorized recreation and OHVs are legitimate uses of National Forest System lands - in the right places and when operated responsibly. We have a tremendous obligation and a great opportunity to serve these users and, through them, our local communities and economies. We see it as an important part of our mission.

Increasing Demand

In 1972, an estimated 5 million Americans participated in OHV recreation. Preliminary figures indicate that 51 million users participated in 2004, a ten fold increase in just 32 years. Sales of new ATVs alone jumped from 278,000 in 1995 to 799,000 in 2004. In Idaho, between 1994 and 2004, the number of registered ATVs and motorbikes grew by 356% (per cent) to a number exceeding 90,000.

Nowadays, vehicles created for specialized off-highway uses are marketed and sold as family cars. Today's vehicles are more powerful and capable of accessing areas previously unreachable by off-highway-vehicles.

These advances in technology expand opportunities for Americans to enjoy Federal land. However, when coupled with the growing number of recreation users, the magnitude and intensity of motor vehicle use have increased to the point that soil erosion, water quality, and wildlife habitat are negatively impacted. Some national forest visitors report that their

ability to enjoy quiet recreational experiences is affected by visitors using motor vehicles. A designated and managed system of roads, trails, and areas for motor vehicle use is needed.

In 2003, Forest Service Chief Dale Bosworth identified the effects of unmanaged recreation, including OHV use, as one of four key threats affecting national forests and grasslands. This is no longer a matter of a few user conflicts or a few user-created trails here and there. We estimate that we have more than 14,000 miles of user-created trails on the national forests and grasslands. Some of these are well-located and would make good additions to our trail system. Others run through wetlands, riparian areas, and stream channels. Damage to water quality, erosion, loss of wildlife habitat, and introduction of invasive species jeopardize the health of the land, the sustainability of the use, and the opportunities people come to the national forests to enjoy.

That's why we have to change the way we manage OHV use on the national forests. OHV use has reached a critical mass. If we want all the benefits from OHV use to continue, we have to make sure it is conducted responsibly and sustainably. And that means better management.

Travel Management Rule

In 2005 the Forest Service published final regulations on travel management, laying the foundation for a sustainable system of designated roads, trails, and areas for motor vehicle use. The rule provides a national framework for local decisions about motorized recreation. Under the rule:

- Each national forest will designate those roads, trails, and areas open to motor vehicle use, by class of vehicle and if appropriate, by time of year;
- The public will play a central role in the designation process;
- Local managers will coordinate with appropriate federal, state, county and other local governments and tribal governments in the designation process;
- Designations will apply only to National Forest System roads and National Forest System trails and areas on National Forest System lands;
- After designation is complete, the rule will prohibit use inconsistent with those designations - until then current rules remain in place;
- Use of aircraft, watercraft, and emergency and law enforcement vehicles and use authorized under permit or other written authorization are exempted; and

The rule retains current authorities and rules for snowmobiles.

For the Forests in the southern portion of Idaho we have an

implementation schedule for the designation of this system of road, trails and areas for Idaho. I would like to take a minute to review the schedule with you.

The Caribou National Forest released a final travel plan in the fall of 2005; it is going through the appeal process which we expect to conclude next month. The Payette Forest released a draft travel plan following extensive public involvement in January of 2006. The Payette is now accepting public comment.

The Boise and the Sawtooth Forests are developing travel plans on a district-by-district basis. These two forests will designate their systems of motor vehicle routes between the summer of 2007 and the fall of 2009. The Targhee and Salmon-Challis National Forests and the Curlew Grassland plan to designate their travel systems during the summer and fall of 2009.

A point of interest: a 2004 survey by Moore Information, conducted for the Idaho Forest Products Commission, indicates that 82% of Idahoans believe ATV use on public lands should be limited to designated trails only. Still, the development of travel plans is a substantial undertaking and each forest will continue to involve interested public in the spirit of collaboration and cooperation.

Collaboration

To sustain opportunities for motorized recreation, we need to develop partnerships particularly with state agencies and local users groups. The Forest Service is an active partner with the Bureau of Land Management, Idaho Department of Lands, Idaho Parks and Recreation and the Idaho Department of Fish and Game. As an interagency group we meet regularly to identify opportunities to improve management, identify opportunities for recreation improvement and coordinate plans.

I want to express my appreciation for the long standing and mutually beneficial relationship we have with the Idaho Department of Parks and Recreation. Under the leadership of Director Bob Meinen and OHV Program Coordinator Dave Claycomb, a wonderful OHV awareness campaign has begun. Perhaps you have seen on billboards or heard on one of 25 radio stations across the state, the message to ATV riders and OHV operators to **Use Their Power Responsibly.**

Over the next several years, this campaign will have a significant and positive effect on rider behavior on all public lands. This campaign is supported by the State and most federal resource agencies that are part of our interagency group in Idaho.

Today, we would be unable to maintain much of our trail system without support from our volunteers and partners. Having new travel management regulations is critical. However, working collaboratively with the State, user groups, local communities, and the public to revise and implement our travel management plans is critical to our overall success. The Forest Service will continue to foster and actively participate in these

collaborative processes for travel management planning, as I truly believe it is the best way to work together to craft lasting solutions for healthy ecosystems and strong communities.

This concludes my prepared statement on OHV management. I would be happy to answer questions from members of the committees.

Representative Bedke asked what flexibility does the district ranger/manager have, as they compile these travel plans, to include the use of ATVs within allotment management plans? (ATVs replacing horses.)

Mr. Troyer replied that the local flexibility is still there.

Representative Jaquet said that Mr. Troyer talked about the 1% that breaks the law. She inquired as to how he envisions helping people that aren't good neighbors.

Mr. Troyer said the radio, billboard campaigns, and educational campaigns are tremendous help to organized motorized use groups. The organized groups help on trail maintenance and in getting the word out about doing the right thing. More signing will also help.

Representative Jaquet asked in they have a budget for signing and enforcement.

Mr. Troyer responded by saying they did have a budget and they try to be efficient. He also said they can accommodate a lot more use with less impact on the land if they can get the use to stay on the roads and trails.

Senator Stennett asked Mr. Troyer if he is aware of an identification program that works in other areas in helping to identify the abusers.

Mr. Troyer said he doesn't have specifics on any program.

Representative Wood said she was happy to hear about working with the local people. She asked if he is going to observe the Idaho state law in regards to Revised Statute (RS) 2477, roads and trails right-a-way, and the counties jurisdiction over them.

Mr. Troyer said the rule itself doesn't change their approach to RS 2477. There is a legal process to go through.

Representative Wood inquired if the counties needed to make comments to the local Forest Service people.

Mr. Troyer said he encourages the district rangers and forest supervisors to have close relationships with the counties.

Representative Wood reported an incident in the Challis National Forest area where an individual was ticketed (\$116.00) for plowing snow to his own cabin. She inquired if RS 2477 applied.

Mr. Troyer said he was not familiar with that incident and that law enforcement reports directly to the Chief of the Forest Service. He stated that it is important to have local contact with the local line officer.

Representative Raybould inquired if the closure of roads, such as those closed into Targhee, compound the problem he has with OHVs?

Mr. Troyer said some areas need to be talked about on a "site specific" basis. Success in the long run means designated system of roads and trails that has a grassroots agreement and that every situation is different.

Senator Schroeder said he understood that RS 2477 roads guarantees access, but not motorized access.

Mr. Troyer said he would get the details and send them to Senator Schroeder.

Senator Schroeder said that as those designated routes are planned in the national forest, what consideration is given to rural economic development for small towns? Also, is this part of the planning process?

Mr. Troyer said that it absolutely is part of the process that they go through and is also part of their mission to encourage rural economic development.

Chairman Stevenson thanked Mr. Troyer for his presentations.

**ADJOURN-
MENT:**

The **Chairman** adjourned the Joint meeting at 2:50 p.m. and said the Senate committee would remain to conduct some business.

**CALL TO
ORDER:**

Chairman Schroeder immediately called the Senate Resources and Environment Committee to order.

MOTION:

Senator Burtenshaw made the motion for approval of the minutes for January 27. **Senator Brandt** seconded the motion. The motion passed by unanimous voice vote.

MOTION:

Senator Williams made the motion for approval of the minutes for January 30. **Senator Stennett** seconded the motion. The motion passed by unanimous voice vote.

Chairman Schroeder said, without objection, he would like to send the four RS's that are on the agenda (RS 15721C1, RS 16060, RS 16061, RS 16036) to the floor for printing. There was an objection.

MOTION:

After a brief discussion, **Senator Brandt** made the motion to send RS 15721C1, RS 16060, RS 16061, RS 16036 to the floor for printing. The motion was seconded by **Senator Stennett**. The motion passed by a majority voice vote.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 15, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: Senator Little

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:40 p.m.

PAGE RECOGNITION: **Chairman Schroeder** announced that the Senate Pages would be leaving this week and another group would be coming in next week. He presented Page **Dana Nelson** with a letter of recommendation, signed by the committee members, and a watch with the Senate insignia on the dial.

Dana thanked Chairman Schroeder and the committee and said she enjoyed being a Page for the Resources Committee.

HANDOUTS: **The Chairman** said there are several handouts for the committee members to review: Two articles by George Hatley - [Sportsman/Landowner and Depredation Problems Can Be Solved](#) and [A Rancher's Perspective of Hunters and Hunting](#); elk and deer hunts that are listed on the Internet; and information from the Idaho Department of Fish and Game as requested by Senator Schroeder.

SJM 118 **Chairman Schroeder** said this legislation deals with arsenic in the drinking water. He asked Boise State University (BSU) Intern Dayna Halvorson to research the subject and the results of her research has been given to the committee members.

He then called on **Senator Gannon** to present this Joint Memorial.

Senator Gannon said the United States Environmental Agency has adopted a new standard of 10 Parts Per Billion (PPB) for arsenic in drinking water. Many cities and communities in Idaho exceed this new standard. To meet this new standard, it will cost millions of dollars and could bankrupt some Idaho communities.

Senator Gannon has provided two documents to the committee members - information compiled by Jerri Henry on "Public Water Systems with Arsenic Results Over 10 PPB" and a letter from Lynden S. Williams, a retired college professor who lives in Senator Gannon's area.

Inserted into the minutes is Mr. Williams' letter.

Dear Sen. Tom Gannon:

Thank you for your call last week regarding the need for an official study by the Center for Disease Control to determine whether trace amounts of arsenic in drinking water poses a health problem. Probably because Butch Otter contacted the CDC in this regard. The director of the CDC (Julie Gerberding) contacted me, but was not about to consider authorizing a study on arsenic and cancer.

You asked that I keep you informed on this issue, and I am happy to report very good news! I have completed analysis of data for 226 U.S. counties and have solid evidence that counties with higher arsenic levels in their drinking water have measurably LOWER cancer rates. and most especially very significantly lower rates for colon cancer. My study is not yet published, and I am in the process of rechecking all my figures and seeking advice from other scholars on how to proceed with this information.

Please allow me to risk boring you by being very clear about the findings from my study. Using USGS data I selected all US counties where 2/3rds or more of the population obtained drinking water from ground-water wells (there were 1,692 such counties in that database). Also using a second USGS database I calculated the average arsenic levels for all household and public wells for ground-water counties with populations of 25,000 or more (counties with small populations were excluded because the confidence interval on cancer rates is often extremely high making statistical analysis invalid), for a total of 229 counties. I was able to obtain cancer mortality data from the National Cancer Institute for all but 3 of those counties, giving me a final sample size of 226. I defined three classes of counties according to the average arsenic levels in household wells and in public wells: "Low" below 3 ppb; "Medium" between 3 and 10 ppb; and "High" above 10 ppb. I used Analysis of Variance to determine if there is a significant difference in cancer rates between the three classes of counties for Bladder, Colon, Kidney, Lung, Melanoma, Pancreas, Prostate, and Stomach cancers, as well as for all cancers. I tested those cancer rates for all males and females, males and females aged 50-74. and males and females aged 75+, for a total of 51 separate tests. Most of the tests obtained no relationship between arsenic levels and cancer, as expected. However, 11 tests yielded very strong relationships including 4 that are statistically significant (at the 0.05 level). Of these 11 tests. all but 1 found cancer rates were HIGHER in counties with 'Low*arsenic levels. Most striking were inverse relationships between arsenic levels and colon cancer rates. The result strongly suggests that we could achieve a significant decrease in cancer mortality by ADDING trace amounts of arsenic to drinking water (or to vitamin supplements or simply have people consume sea salt which contains trace amounts of arsenic).

I found a single positive association between arsenic level and cancer in the case of lung cancer for females aged 73+ (there are similar,

but not statistically significant, tendencies in that direction for lung cancer for all females and females aged 50-74). This significant relationship did not obtain when counties with arsenic at more than 300 ppb were dropped from the analysis (there are two such counties, and both have very high female lung cancer rates). This might confirm a finding by two previous researchers who suggest that very high arsenic levels (well above the 10-50 ppb in question) may act synergistically with smoking cigarettes to increase lung cancer rates. However, I am puzzled by the fact that male lung cancer rates did not follow that pattern (and indeed tended to be lower in the high arsenic counties).

Prior to going public with this information I intend to seek advice from an epidemiologist who has conducted previous work on the arsenic issue, and other scholars, and double check all my figures. Nevertheless, I cannot see how this study could be in error. It follows trends I found in my original Idaho counties study. It shows very similar results when I change my criteria (from 67% to 90% + ground water users, and from total populations of 25,000+ to 20,000+). Also, it makes sense; a natural element at the background level in the environment is likely to be an essential nutrient. On the other hand, a false report would be disastrous. I must proceed with extreme caution.

I spoke with Chris Steinbach, editor of the Times-News last Friday. He seems receptive to investigating the arsenic issue, especially after you recommended he give my request consideration. I have not shared my latest study with the Times-News as yet.

Thank you again for your support on this issue. I always knew we would win on this—Saddam Hussein does not run this country! But, I never imagined I would have evidence that trace amounts of arsenic can decrease the cancer rate. I am sending the content of this letter to those political leaders who have responded to my requests: Rep. Butch Otter, Rep. Mike Simpson, and Idaho Rep. Bruce Newcomb.

Sincerely,
Lynden S. Williams, Professor Emeritus (Geog. Ohio U.), Retired

Senator Gannon said a further study is needed and he has talked to our Congressional delegation about it.

TESTIMONY: **Dick Rush, representative for the Idaho Association of Commerce and Industry**, testified that they support SJM 118.

There was committee discussion regarding the arsenic levels, cost to the cities, and the need for continued study.

MOTION: **Senator Brandt** made the motion to send SJM 118 to the floor with a do pass recommendation. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote. **Senator Gannon** will be the

floor sponsor.

S 1283 **Chairman Schroeder** is the sponsor of this bill which will lower the Senior Combination License (65 and older) from \$10.00 to \$3.25. He said the need for it had been requested by many senior citizens. They objected to the higher percentage increase of the Senior Combination License, whereas all other licenses and tags were only increased ten percent last year. The Department of Fish and Game estimates that the economic impact of this bill will be \$230,600.

RS 15865C1 **Chairman Schroeder** said this RS rounds up all license fees to an even dollar amount and the economic impact would only be \$57,000. The Senior Combination License would then be \$4.00.

TESTIMONY: Inserted into the minutes is the testimony of **Charlie Chapin, Legislative Chairman for the Disabled American Veterans.**

MY NAME IS CHARLIE CHAPIN. I AM THE LEGISLATIVE CHAIRMAN FOR THE DISABLED AMERICAN VETERANS, DEPT. OF IDAHO, A POSITION I HAVE HELD SINCE 1994. BACK IN 1997 THERE WERE MANY FREE LICENSES AND IN 1998 OR 1999 FISH AND GAME CAME INTO THIS COMMITTEE WITH A PROPOSAL THAT IF A PERSON PAID \$3.00 FOR A COMBINATION FISH AND HUNTING LICENSE THE FEDERAL GOVERNMENT WOULD PAY THEM \$7.00 FROM THE TAX ON SPORTING GOODS.

WE ALL AGREED TO THIS, SO ALL THE FREE LICENSES WOULD GO UP TO \$4.50. LAST YEAR THE IDAHO LEGISLATURE RAISED ALL LICENSES AND TAGS 10%, BUT THE PEOPLE OVER 65 YEARS OF AGE UP TO 300% INCREASE. THESE ARE PEOPLE WHO CAN LEAST AFFORD THIS, BUT CAN ENJOY IT THE MOST. THEY HAVE WORKED ALL THEIR LIVES. SB 1283 WILL CORRECT THIS. WITH THAT I WILL TRY TO ANSWER ANY OF YOUR QUESTIONS.

THANK YOU!

Senator Cameron inquired if Mr. Chapin and the group he is representing are agreeable to the \$4.00 charge, rather than the \$3.25. Mr. Chapin said they are OK with that.

Senator Pearce inquired about software changes and it was determined that any changes could be done smoothly. The vendor fee will remain the same.

TESTIMONY: Next to testify was **Ms. Sharon Kiefer, Legislative Liaison for the Department of Fish and Game.** Inserted into the minutes is a copy of her testimony.

Mr. Chairman and Committee:

I have several points I'd like to make on behalf of the Commission and Department regarding Senate Bill 1283, which would reduce the fee for the Senior combination license from \$11.75 (includes \$1.75 vendor fee) to

\$5.00 (includes \$1.75 vendor fee). The Commission opposes this legislation.

The fee for the Senior combination license went up in July 2005 along with the rest of the Department's license fees. Our overall fee adjustment was a stay-even license increase; it did not create a surplus for the department.

Most fees went up about 10-15%. The senior license went from \$4.50 to \$11.75, (with vendor fee) in part to bring the Jr. and Sr. license costs closer together. However, the actual cost of a senior combination license remains less than half of a regular resident combination license. I have provided a handout that compares the current regular, Jr., and Senior license costs.

The average senior combination, hunting, and fishing license sales for the past three fiscal years is 34,171 licenses, so senior license sales accounts for about \$341,700 income to the Department.

Using current sales as a forecast, S 1283 would result in a loss of about \$230,600 to the Department. We would have to sell almost 71,000 additional combination senior licenses, more than double what we currently sell, to make up this revenue.

It is true that baby boomers are aging and becoming a larger proportion of license buyers. We estimate that about 3,600 potential new seniors will "recruit" as license buyers over the next 5 years based on the number of current license buyers at the right age and residency. This will exacerbate the revenue loss to the department in future years.

We find that Seniors tend to use put and take trout and pheasants, stocked on Wildlife Management Areas, at a higher level than the unsubsidized license buyers, and it costs just as much or more to provide the facilities and services they expect. Increasing the subsidy will mean that other license buyers will need to support the Seniors by that much larger a margin to maintain services. We have heard from many Seniors who did not want any further subsidy for their licenses affecting the costs paid by Juniors, which in many cases, were their grandkids. On the other hand, we have heard from many Seniors who were very angry about their licenses going up at a higher percentage than other folks.

The increase in the Senior licenses was not trivial, but for \$11.75, a Senior can fish all year, hunt small game, and qualify for about half-price big game tags. We think that is a reasonable user-pay approach.

Senator Williams inquired if the Senior reduction did occur, would there be refunds for the people who have purchased their licenses. The answer was that there would be no refunds.

MOTION: After some discussion, **Senator Brandt** made the motion to send RS 15865C1 to a privileged committee for printing, then bring both bills back to the committee for further discussion. **Senator Langhorst** seconded the motion. The motion passed by unanimous voice vote.

SPEAKER: **Chairman Schroeder** welcomed **Mr. Winston Wiggins, Executive Division Director for the Department of Lands**, who will present the Department's annual report.

Mr. Wiggins provided the committee with a booklet - "The Idaho Department of Lands - An Overview" and a three page handout titled "Current Significant Activities". Inserted into the minutes is information from those handouts that Mr. Wiggins referred to in his presentation.

DEPARTMENT OVERVIEW

The Department of Lands carries out the constitutional functions of the State Board of Land Commissioners with a permanent staff of about 264 employees stationed in staff offices at Boise, and Coeur d'Alene, and in fourteen supervisory areas across the State.

Activities of the Department of Lands are separated into a Division of Lands, Minerals and Range, and a Division of Forestry and Fire, each headed by an Assistant Director, and a Division of Support Services headed by a Division Administrator.

The Lands, Minerals and Range Division includes the bureaus of Real Estate, and Surface and Mineral Resources. The Forestry and Fire Division is comprised of the Forest Management, Fire Management, and Forestry Assistance Bureaus. The Support Services Division provides staff and general administrative support in finance, management information services, and human resources.

Fourteen supervisory areas, overseen by Area Supervisors, are responsible for field operations. Area Supervisors report to two Operations Chiefs covering the northern and southern operating areas. Fire Wardens oversee ten fire protection districts, which are responsible for fire control and logging slash disposal.

The Board of Scaling Practices is included in the Department for administrative purposes and the Director of the Department is the Chairman of the Board.

ENDOWMENT REVENUE

The revenues from the management of endowment lands were \$77.82 million in FY-2005, derived from leases authorizing the use of the lands for livestock grazing, cropping, recreation, and commercial enterprises, and the extraction of commodities such as timber and minerals.

Revenue from these programs is deposited into the earnings reserve

fund. The earnings reserve fund is used to finance income producing endowment land activities and to make distributions to beneficiary institutions. Amounts in excess of these needs are held to build the fund as a cushion against periods of reduced earnings.

Mineral royalties and receipts from lands sold prior to FY-2001 are deposited into the permanent funds and are invested by the Endowment Fund Investment Board to support the trust beneficiaries. These revenues totaled \$2.96 million in FY-2005.

DEPARTMENT OF LANDS CURRENT SIGNIFICANT ACTIVITIES

Asset Management Planning

Administrative Rules Review

Increased Timber Harvest

Approved by the 2003 legislature

Additional resources hired for FY-2005

Total timber sale offering of 202,000,000 board feet in FY-2006

Total timber sale offering of 212,000,000 board feet in FY-2007,
continuing for at least ten years

Tamarack Ski Resort

Third year of 49 year lease

Formulating USFS-State land exchange to acquire more land near
resort

Land Leasing

In lease negotiations with Windland, Inc. for wind power development
Cotterell Mountain

Issued REP for development of Buttercup Road property in Blaine
County, lease terms will be specified in a development lease

Inventoried urban and suburban endowment properties in Ada and
Canyon Counties to identify other development opportunities to
increase endowment returns

Land Sales

57-acre parcel in Clear Creek subdivision, Blaine County, Idaho -
\$2,500,000

Elk Valley Lot 12, Elmore County, sold for \$195,000

Elk Valley Lot 13, Elmore County, sold for \$190,000

Building lot near Dienhard Road in McCall, sold for \$102,000

Abandoned Railroad Right of Way near New Meadows, sold for
\$8,500

40-acre parcel south of Mountain Home, sold for \$88,000
Land Bank account balance, \$3,178,752 to reinvest in other higher -
performing properties

Boise Foothills Land Exchange

Goal is to divest of endowment trust land ownership in Boise foothills
and acquire revenue producing lands elsewhere
Continued work on Boise Foothills legislated land exchange with BLM,
facilitated by Boise City, sponsored by Senator Larry Craig

Surface Mining Act Amendments

Participated in joint negotiated rulemaking process with DEQ for
closure of cyanide ore-processing facilities
Amended certain other sections of IDL's reclamation rules

2005 Fire Season

Fire occurrence was below average (55% of average)
Acres burned was 117% of average due to two large fires (Blackerby,
a wildland-urban interface fire and Long Ruggles)
Expecting increasingly difficult fire seasons in the future
Anticipate additional serious wildland-urban interface fires in coming
years
Idaho State Fire Plan Working Group selected to receive 2004
National Fire Plan award for Excellence in Collaboration
National Fire Plan federal funds are decreasing

Endangered Species Activities

Position and funds approved in 2004
Activities to date
Snake River Basin Adjudication
Priest Lake incidental take negotiations
Columbian Spotted Frog candidate conservation agreement
Continued preparation of sage grouse habitat conservation plan
Surveying state land in SWI for slickspot peppergrass occurrences
Carbon Sequestration

Current Challenges

Unmanaged recreation
Aging Workforce / Retirements
Recruitment Issues

Budget Changes

Shift funding of all endowment land activities to Earnings Reserve
Scaling of Forest Products
Road Maintenance
Hazard Management as it relates to state timber sales

Adds an estimated \$9 million dollars to Earnings Reserve Fund
Should result in \$400,000 of additional income to the beneficiaries
each year.

Add two full-time positions to support endowment reform initiatives, for
Land Use Planner

Strategic Business Analyst

Lump sum request for Endowment Land Management Program

Endowment land management is a business

Coupled with a waiver of the 10% transfer limit between major
programs would make business operations more effective

Will enhance long-term earning power of land assets. Annual approval
is needed (like Fire Program)

Senator Brandt inquired if the rules were moving forward to implement the forestry component of the Nez Perce agreement. **Mr. Wiggins** replied that they are. He said there will be no changes to the agreement, but the process of implementing them has been frustrating for him. He stated that they did not anticipate the volume of paperwork that is involved.

Senator Langhorst asked how he determined whether land is leased or sold. **Mr. Wiggins** said if land is adjacent to or in the path of development, that is a consideration. Sometimes a land swap is more favorable. He stated that there is \$3 million in the land bank now.

Mr. Wiggins said another parcel of land is Moscow Mountain and everyone is in agreement that the right thing for that property should be to protect it in its current state.

The next subject discussed was land exchange. **Mr. Wiggins** said it is a difficult process with the federal government. The last exchange took 16 years from conception to the point where they received it. There is an idea on the table where it will try to resolve ownership problems in one move.

Chairman Schroeder requested information regarding land that is classified as "in holdings". **Mr. Wiggins** said he would get the information for him and it would probably be in the form of a map.

Senator Stennett said there are some isolated areas of state ground that haven't any access. He asked what could be done to enhance access to public lands. **Mr. Wiggins** said access to state land can be a problem and they are constantly looking for opportunities to establish access. Some private landowners do not want public access roads across their property; however, some will grant administrative access. One of the reasons for this is the small percentage of people who trash other people's land.

Senator Pearce asked about a land exchange proposal between the U.S. Forest Service and some state land near the Tamarack Ski Resort. **Mr.**

Wiggins said the Land Board has given conceptual approval to examine a land exchange proposal that would extend the state land north and south of the existing ski hill, which is on state land. On the backside of the hill is federal land and through this exchange proposal, they would try to dispose of some lands that are currently not productive. In turn, if they acquired them, they would be leased for the expansion of the resort. Mr. Wiggins said he could provide a map that accompanied the proposal, but there is nothing specific.

Senator Stennett said that if the Legislature was to pass a statute that required the State Land Department, in any future land exchanges or sales, provide that there be no net loss in access to public lands. He then asked if that would be a conflict or constitutional challenge. **Mr. Wiggins** said he would have to refer that to someone in the Attorney General's office.

Senator Stennett then asked what the timeline is for the training range lockup. **Mr. Wiggins** replied that it is years, not months.

Mr. Wiggins said that he wanted to talk about some of the current challenges his department faces.

Unmanaged recreation on state land is a problem, as it is on private and federal land throughout the state. He said they are working with other agencies to come to grips with the problem.

Another challenge is the aging workforce of the department. They lost five percent of their staff last year due to retirements. Currently, nearly six percent is eligible for retirement today. Another six percent will be eligible in the next two years and two years beyond that, another nine percent will retire. That equates to losing one in four of permanent employees over a five year period.

He said they are working hard in the recruitment area. He said there are certain locales in Idaho where you can't compensate state employees enough to keep them. McCall is an area where he cannot maintain full staff. Cost of living is the main factor. **Senator Stennett** said Blaine County is facing the same situation due to the cost of living.

Due to time constraints, **Chairman Schroeder** thanked Mr. Wiggins for his presentation and invited him to speak to the committee again at a future date.

ADJOURN:

Chairman Schroeder adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 17, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst
- ABSENT/
EXCUSED:** None
- CALL TO
ORDER:** **Chairman Schroeder** called the meeting to order at 1:40 p.m.
- MINUTES:** **Senator Pearce** moved to approve the minutes from February 1, 3, and 6. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**.
- HJM 10:** **Representative Ken Roberts** introduced **HJM 10, wolves, delisting strategies**. He said this is a joint memorial to the Secretary of the Interior. Governor Kempthorne has been working closely with the governor of Montana to get the Department of the Interior to delist wolves regardless of whether Wyoming does. **HJM 10** passed the House unanimously.
- Sharon Kiefer, legislative liason, Department of Fish and Game**, testified in support of the joint memorial. She cited a letter by the Idaho Department of Fish and Game Commission which endorses **HJM 10**.
- MOTION:** **Senator Brant** moved to send **HJM 10** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**. **Senator Brandt** will sponsor **HJM 10** on the floor.
- HJM 11:** **Representative Ken Andrus** introduced **HJM 11, wolf monitoring, helicopter use**. He said that on January 5, the state of Idaho took over the management of wolves in an agreement between Governor Kempthorne and the Secretary of the Interior. There are an estimated 15 packs of wolves in wilderness areas in the state, and Fish and Game wants to collar some of these wolves during winter months. The least obtrusive way to access the wolves is via helicopters which is against forest service regulations, although a permit can be obtained. The request for a permit has been denied, so **HJM 11** is to encourage the

Forest Service to grant permission.

Senator Pearce asked about the number of wolves, and **Representative Andrus** stated that there are more than 600. **Jim Caswell, Administrator, Office of Species Conservation (OSC)**, said data at the end of 2005 indicated there are between 513 and 621 wolves.

John Robison, Public Lands Director, Idaho Conservation League, testified in support of the management of wolves, but in opposition to allowing helicopters in the wilderness. Helicopters are not the only way to get to the wolves, but they are more convenient. Other means may be more appropriate. A quick approval of helicopter access now may result in other quick approvals later.

Senator Williams asked whether anyone would know if a helicopter landed in the wilderness in the winter, and **John Robison** expressed concerns that it is a slippery slope toward allowing motorized vehicles into the wilderness.

Senator Langhorst asked about the reference in **HJM 11** to the need to collar the wolves as soon as possible, and **John Robison** explained other reasons beyond emergency reasons why Fish and Game might want this language in the text.

Senator Burtenshaw stated that there are wolves which are collared in the wilderness and asked how they were collared. **Jim Caswell** said they were collared either by leg-hold traps or were picked up outside the wilderness boundary. They discussed alternatives to flying in as well as accessing the wilderness through its airports. **Paul Valcarce, retired Fish and Game officer**, explained the dangers of trapping an animal during the summer months due to the heat.

Jim Caswell said that allowing helicopters into the wilderness through **HJM 11** is not a precedent-setting event.

Sharon Kiefer testified that the Fish and Game Commission formally endorses **HJM 11**.

MOTION: **Senator Cameron** moved to send **HJM 11** to the floor with a do pass recommendation. **Senator Brandt** seconded the motion. The motion carried by a **voice vote**. **Senator Brandt** will sponsor **HJM 11** on the floor.

SPEAKER: **Kathleen Trever, Administrator, Idaho National Laboratory (INL)**, spoke to the committee about the **INL Oversight Program**. She reported on successes and progress within the INL. She spoke about a fire which received news coverage and explained the INL's theory on the cause of the fire. There was discussion on the court proceedings between the state and the federal government over the language of a 1995 court

settlement. Further discussion on the cause of the fire followed.

Senator Burtenshaw asked how much waste has left Idaho, and **Kathleen Trever** estimated that 8,000 cubic meters, or 40,000 barrels, has left the state.

Senator Burtenshaw asked if Idaho is still receiving waste from outside sources, and **Kathleen Trever** said waste at the INL is broken into categories. The main significant source of shipments from offsite involves nuclear fuel shipments from the nuclear navy. There are no significant shipments of transuranic waste.

Senator Burtenshaw asked when cleanup will be done, and **Kathleen Trever** said the deadline for removal of many waste types was set at 2018, and high-level waste is to be removed by 2035.

There was discussion about the possibility of groundwater and soil contamination from the INL's major landfill and the monitoring and cleaning processes which the INL performs.

Kathleen Trever concluded by addressing some of the challenges the INL faces, including major decisions to be made regarding old reactors, the Idaho Nuclear Technology and Engineering Center (INTEC) Tank Farm, and the landfill. She discussed plans the INL has made to deal with the challenges.

Senator Stennett asked about contamination in ducks, and **Kathleen Trever** explained how the INL monitors them and prevents them from landing on bodies of water which may be contaminated. Discussion followed.

Chairman Schroeder thanked **Kathleen Trever** for the presentation.

INTRODUCTION: **Chairman Schroeder** commended the pages from the first half of the session for the slide show they shared with senators on the floor. He thanked **Dana Nelson** for her work as the committee's page.

ADJOURN: **Chairman Schroeder** adjourned the meeting at 2:39 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 20, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 2 p.m. The delay was due to the length of the morning floor session.

He told the committee there are a number of handouts in their folders which include e-mails from several ATV organizations and individual members.

He then welcomed Mr. Norm Semanko who will present his legislation.

S 1352 **Mr. Norm Semanko, Executive Director, Idaho Water Users Association, Inc.**, said this bill would authorize irrigation districts to charge \$25.00 for insufficient funds on checks. This charge is to help recover costs incurred by irrigation districts in processing such transactions. Mr. Semanko said there had not been an increase in the charge since 1983.

MOTION: **Senator Stennett** made the motion to send S 1352 to the floor with a do pass recommendation. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote. **Senator Stennett** will be the sponsor of this bill.

S 1353 **Mr. Semanko** presented this bill also. He said it provides for the exclusive authority of the Department of Water Resources (IDWR) over the appropriation of the waters of the State. It also clarifies that no other agency or political subdivision will take any action which impinges upon the IDWR's exclusive jurisdiction. He said in 1903, the Legislature provided in a statute that if you wanted to create a new water right in Idaho, you would go to IDWR and obtain a permit. It didn't become mandatory for ground water until 1963. One of the challenges that came out was whether the Constitutional provision would dictate that the state can't regulate that. The Supreme Court in Idaho said that you can regulate it as a state and that is what the IDWR does. In some cases, there is confusion about jurisdiction. IDWR is responsible for water resources in the state, counties and cities are responsible for zoning, and DEQ is responsible for air quality.

TESTIMONY: **Dustin Miller, representing the Idaho Farm Bureau Federation,** testified that the Federation is in support of this legislation.

MOTION: **Senator Burtenshaw** made the motion to send S 1353 to the floor with a do pass recommendation. The motion was seconded by **Senator Brandt**. The motion passed by unanimous voice vote. **Senator Burtenshaw** will be the sponsor of the bill.

SJR 106 **Representative Edmunson** presented this Joint Resolution. He said it would amend Article 1 of the Constitution of the State of Idaho by adding section 23 that will provide that all wildlife within the state shall be preserved, protected, perpetuated and managed for the citizens of Idaho to harvest by hunting, fishing and trapping.

He stated that there are 126 anti-hunting groups. Fourteen states have passed right-to-hunt amendments. Wisconsin residents passed their amendment by 82%. **Chairman Schroeder** inquired as to the nature of any problems since the amendment was passed. **Representative Edmunson** said most problems come from people moving into the urban area and not understanding wildlife management.

Representative Edmunson said that he feels we need to be pro-active as Idaho is changing and people need to understand the rights of hunting and fishing. Unmanaged predators (such as California's mountain lion) affect the economy of the state and also has devastating effects on wildlife.

He stated that this amendment supports only the legal right and does not support poachers or people who do not observe the laws. The last part of the amendment deals with private property (hunters not trespassing) and water rights (can't set minimum stream flows or required to have them).

TESTIMONY: **Russ Heughins,** spoke on behalf of the **Idaho Wildlife Federation**. A copy of his testimony is inserted into the minutes.

The Idaho Wildlife Federation (IWF) thanks the Senate Resources and Environment Committee for the opportunity to present our views on SJR 106. Regarding this proposed Constitutional Amendment we are reminded of the adage, "be careful of what you wish for as it might become true". When we completed our examination of this proposed Constitutional Amendment, we determined that there are provisions that raise concerns.

First, we believe a right to hunt presently exists, as stated in item b, page 2 of the Idaho Department of Fish and Game's Staff Analysis; "The right to hunt is a corporate right of the people and is not a fundamental individual right, thus an individual may be prohibited by law or rule from obtaining a license to hunt, fish or trap without overriding the constitution." Our concern with enshrining the "right to hunt" in the State Constitution could complicate the enforcement of our Fish and Game code, that over the years so many of us have diligently worked to make just and fair.

The Federation feels that the language in SJR 106 relating to water rights and minimum water amounts should be addressed in a separate piece of legislation, not in one relating to a hunting right.

These are our two obvious concerns. The Federation believes this proposed Constitutional Amendment raises more issues than it settles. We ask that you vote no on SJR 106. If you wish to proceed with the amendment then we suggest one of the following options, the Federation recommends the second option:

Adopt the language suggested in the IDFG Staff Analysis, but omit the language regarding water rights and minimum amounts of water.

Appoint an Interim Legislative Committee to study the question of amending the State Constitution to include hunting rights. The findings of the Interim Committee can be a guide for further action in the next Legislative Session.

Again, thank you for the opportunity to comment on this important piece of legislation. We are prepared to answer any question you have regarding SJR 106, and we are prepared to offer assistance in improving this legislation. This concludes the testimony of the Idaho Wildlife Federation.

TESTIMONY: Testifying next was **Jack Fisher, board member of the Idaho Wildlife Federation.**

He stated that he agreed with all of the testimony that was just presented. He said the IWF has been a hunting and fishing organization since 1936 and feels the Fish and Game Department does a very good job of regulating the wildlife for the state. Sometimes the Fish and Game has to close a given area for wildlife management and this amendment could be a hindrance to that situation.

TESTIMONY: **Ms. Sharon Kiefer, Legislative Liaison for the Idaho Department of Fish and Game,** was next to testify. Inserted into the minutes is a copy of her testimony.

The IDFG Commission has discussed this constitutional amendment and has directed staff to provide more information about the litigation and management experiences of other states that have similar amendments. The Commission has not taken a policy position at this time.

The Department would like to provide the committee with key issues summarized from a 1998 International Association of Fish and Wildlife Agencies* (IAFWA) Legal Committee report on potential effects of a "Right to Hunt" amendment. We previously shared this with Rep. Edmunson for SJR105. IDFG suggested wording to minimize unintended

consequences and address many of the cautions listed below by the IAFWA legal committee. Rep. Edmunson incorporated those concepts, which we greatly appreciate.

However, at the end of the day, legal review of this constitutional amendment should be required, which is beyond the expertise of the Department.

Issues raised by the IAFWA report:

1. It may mean the state will lose the presumption of validity and have to meet a higher constitutional standard for its management. Currently, fish and game rules are easy to defend by the state as they are presumed to be related to a legitimate government purpose. A constitutional Right to Hunt shifts the burden of proof to the state where a much stricter standard will apply. The decision-making authority will be shifted from the legislature and agency to the courts. It was suggested that this burden issue might be addressed by appropriate language in any constitutional amendment.
2. There may be no legislative remedy for a bad court ruling.
3. A criminal defendant may contend that the state must prove beyond a reasonable doubt that the law/rule and its enforcement in his situation meet the constitutional standard.
4. The state may be required to expend funds to legally support or insure some certain level of hunting opportunity.
5. The viability of inter-state violator compacts may be affected. (Similarly, an amendment could affect administrative license revocations, e.g. safety violations and child support non-payment?)
6. Litigation may include actions for declaratory and injunctive relief from the state. For instance, to what extent is the law/rule truly necessary for conservation, as opposed to serving ethical or traditional practice purposes?
7. There could be possible impacts on private property e.g. trespass.
8. It is unknown whether reviewed by federal courts would conclude the amendment is interfering with federal treaties or laws.

Additional legal issues have been noted, including whether this would demand equal treatment (tag quotas) of residents and nonresidents. Another issue is whether SJR1 06 could be read that the provision of supplies of wildlife for hunting, fishing, and trapping could be interpreted as having primacy over 36-103 preservation, protection, and perpetuation

as a goal of wildlife management.

Obviously, any constitutional wording can be litigated. We cannot predict the outcome (positively or negatively) through time of elevating this activity to a constitutional right. The Department can assist the Legislature by continuing to track the experiences and issues that other states have faced, who have enacted similar amendments.

Please note my comments were a reiteration of comments from the International Association of Fish and Wildlife Agencies based on experiences of member states and do not reflect a policy position of the IDFG Commission.

Chairman Schroeder asked Ms. Kiefer if in the fourteen other states that have passed such an amendment, has there been impacts on private property with trespass issues? **Ms. Kiefer** replied that she didn't know.

TESTIMONY:

George Bacon, Idaho Department of Lands, testified that the Department does not have a position on this legislation. However, he said he would like to speak to the unintended consequences of the bill. The Department of Lands has a constitutional mandate to maximize revenue over the long term. Their concern is that land management could be dictated by outside influences keeping them from completing their constitutional mandates.

Senator Little inquired if the Land Board thought an area might be deemed critical to the calving of elk or winter habitat and therefore, the department couldn't get the timber off. He asked if that was the line of thought they were seeking a legal opinion on. **Mr. Bacon** said it did run along those lines.

Chairman Schroeder said there are times when decisions have to be made with respect to winter range and summer range when you harvest timber. He asked if the value of timber supercedes the value of those particular areas of summer range and winter range for particular species. **Mr. Bacon** replied that the judgment is made on a case-by-case basis. Their resource managers get input from Fish and Game in the design of any timber harvest.

TESTIMONY:

Inserted into the minutes is the testimony of **Carol Bachelder**.

Chairman, Members of the Committee:

The first role of government is to protect the public. That does not include protecting the personal or private interests of the public, which this proposal is blatantly intended to do. To me it is an insult to the power of the law and the purpose of governing bodies to try to guarantee hunting, fishing and

trapping rights to a determined minority who have so little imagination they can only think of different ways to kill animals. I am an animal rights activist, and I personally would like to see more laws protecting animals, such as denying spring hunts for black bears just coming out of hibernation. This bill was offered a few years ago and was defeated by the same interests that are now wasting our time with this proposed constitutional amendment which doesn't pass the smell test for being of constitutional caliber.

Their so-called hunting and fishing "rights" should more correctly be called "privileges." In the lengthy definitions of the word "right" in the dictionary, the word "moral" is repeated more than once, saying that what is "right" or "a right" should also be moral, and to me there is nothing right or moral about killing animals for fun, sport or entertainment. I would urge you to deny this special interest group their self-serving, immoral constitutional amendment, which I doubt would survive a court challenge judging its constitutionality. Thank you.

TESTIMONY: The testimony of **Ms. Marilyn Schmitz** is inserted into the minutes.

Samuel Clemens, better known as Mark Twain once said that our most precious possession is the brotherhood of man - what there is of it. To me, the most precious possession is compassion - what there is of it.

I have compassion, especially for the suffering of animals, especially those caught in the steel jawed traps. Compassion is like a bank account. You can only take out what you put in. Some people are already compassion poor. In fact, when it comes to compassion, they are bankrupt.

Whatever we do, let us not let anyone rob us of our compassion. To me, it is our most precious possession, and we might well need that compassion ourselves someday. We can't receive what we are not willing to give.

In closing, I'd like to quote from a book review I read recently. "One must cling to whatever remnants of love, friendship, or hope above and beyond all reason that one has, for the enemy is all around, ready to snatch it." Thank you.

TESTIMONY: Inserted into the minutes is the testimony of **Mark Smith**, Boise. He is not representing any particular organization and his comments are offered as a citizen of Idaho.

I used to live in Seattle, Washington, so I know firsthand why people are interested in a constitutional amendment to protect hunting and trapping. The problem, in a word, is urbanization. Many urbanites are so divorced from nature that they honestly don't see the irony of downing a hamburger while arguing that hunting offends their sensibilities. Urbanites like these are increasingly moving to Idaho and bringing their sensibilities with them.

So how are we to protect our heritage from folks like these? On the surface, it seems like enshrining the right to hunt, trap, and fish in our constitution might be a good idea. But keep in mind that the anti-hunting crowd never goes for an outright ban on hunting. Instead, they target particular kinds of hunting. Nothing in SJR 106 would prevent them from successfully targeting a particular hunting method.

I have one more comment to make regarding the language of SJR 106. Frankly, it seems to do more to enshrine water and private property rights than hunting, trapping, and fishing rights. Now I've got nothing against protecting water and property rights, but I don't want to see it done in a constitutional amendment that's supposed to protect hunting, trapping, and fishing for future generations.

On balance, I don't like SJR 106 and hope you will defeat it. Thanks for your time.

TESTIMONY:

Inserted into the minutes is a letter from **Justin Hayes, Program Director for Idaho Conservation League**, to Representative Edmunson and Senator Langhorst that he presented to them last week and asked that the committee members be given a copy. Mr. Hayes referenced his remarks to the letter.

Dear Representative Edmunson and Senator Langhorst;

We write to you in regards to SENATE JOINT RESOLUTION NO. 106, the proposed "right to hunt" amendment to the Idaho State Constitution.

After careful review of the resolution, we are concerned that the particular wording of the amendment may cause some unintended consequences. Specifically, the amendment may mandate that there be hunting and fishing seasons on certain species of wildlife for which there are not currently hunting and fishing seasons.

The amendment reads:

"The taking of wildlife, including all wild animals, birds and fish, by hunting, fishing and trapping is a valued part of our heritage and shall be a right preserved for the people. The exercise of this right by the people shall not be prohibited, but shall be subject to the laws, rules, and proclamations of the state."

The first sentence provides that the “taking” of “all” species of “wild animals, birds and fish” is a “right preserved for the people.”

This sentence provides that Idahoans have a right to a hunting or fishing opportunity for every type of species of animal, bird and fish.

How does this compare with the current fact that there are many species of animals, birds and fish in Idaho that do not currently have hunting or fishing seasons? For instance, more than 80% of Idaho*s wild creatures are classified as “nongame” wildlife by the Idaho Department of Fish and Game. Approximately 502 species, including songbirds, waterbirds, raptors, small mammals, reptiles and amphibians are classified as “nongame” animals are not normally hunted, fished, or trapped.

The second sentence that we have quoted above is clearly meant to ensure that Idaho can develop and implement hunting and fishing regulations to govern hunting, fishing and trapping. However, the particular wording of sentence number two, when taken with the wording of sentence number one, creates the situation by which there must be a opportunity to take every type of species; even nongame species.

Sentence one says: there is a right to take all types of species.
Sentence two says: this right can be regulated, but “shall not be prohibited.”

Under this construct, the State ‘shall not prohibit* the ‘taking of all types of species* though, in an effort to mitigate this, the State could limit the allowable take of a particular nongame species to one animal. The State must allow the people to take all types of species - though the State can limit, but not completely prohibit the take. Taken to this extreme, this amendment has some significant unintended consequences.

A solution to this problem would be to eliminate the word “all” in the first sentence we cite.

“The taking of wildlife, including **all** wild animals, birds and fish, by hunting, fishing and trapping is a valued part of our heritage and shall be a right preserved for the people. The exercise of this right by the people shall not be prohibited, but shall be subject to the laws, rules, and proclamations of the state.”

This simple edit will eliminate the unintended consequence that we have identified.

In closing, let me say that we understand that our interpretation of the consequences of this amendment seems a bit extreme. Clearly, the scenario that we have outlined is not the intention of the authors and sponsors. We raise this concern because an amendment to the State*s Constitution is a very significant matter and it is critical that such an amendment not have unintended consequences.

Respectfully, we ask that you present our concerns to the Attorney General's office and ask for an opinion on this matter.

Thank you for our consideration of our concerns.

TESTIMONY: Inserted into the minutes is written testimony submitted by **Rod Davidson** who was unable to attend today's meeting.

Chairman Schroeder and Committee Members:

Thank you for accepting this written testimony. My name is Rod Davidson and I reside in Boise Idaho. I do not represent any group or organization and offer this testimony as a citizen of the great state of Idaho.

I believe SJRIO6 could spell big trouble. The language and content has been reworked many times over the years, but it still would open up a floodgate of court challenges to a system of laws and regulations that, though not perfect, have served all of Idaho's people well enough.

We are all law-abiding people. Who in the heck can tell us right now, today, we can't hunt? Nobody. Who are we scared of telling us we can't hunt when there is over seventy years of Idaho statutes, laws, legal precedence and over two hundred years of national laws; common law, and constitutional law that gives us the right to keep and bear arms and to hunt, fish and trap. I like the way things are and I ain't scared. Some people are pretty nervous about our right to hunt and fish.

The elk breeders might be nervous about people bringing an initiative to ban high fence shooting of cervids and a sunset of their industry; the water users are concerned that if they can't get this right to fish and hunt initiative passed with language protecting them, that fishers will start screaming for minimum stream flow protection; these entities have every right to look after their interests, but is this initiative the right venue for their concerns?

The IDFG in years passed has shied away from this type of initiative because they fear that a constitutional amendment will enable any person or organization to challenge many years of legislative passed statutes, hard fought legal battles and case law precedence. All the long, hard work and legislative crafting and public sentiment and input could be nullified by subjective judicial review in the courts, where activist judges could take not only our rights as hunters away, but private property owners rights to say who can and cannot hunt, fish or trap on their family or corporate property. Easement issues involving access across private property to get to public lands would almost certainly be one of the first challenges to the courts in these days of less and less public access.

This amendment would also open the door for people and organizations to challenge existing laws; we could see courts deciding if it should be legal to trap, to hunt cougars and bears with dogs, to ban bait stations for bear hunting. The

right to fish for salmon and steelhead, that are from year to year a concern, could be subject to judicial review rather than IDFG and federal guidelines. The right of the State of Idaho to address the very important issue of wolf management without the continued control of the federal government could be set back by court challenges. Cities could ask the courts for opinions on hunting within ever-larger areas of impact around urban and city boundaries

There are untold scenarios that could play out if this constitutional amendment initiative is passed in the legislature and sent to the electorate at large. If this amendment initiative goes to all the people of Idaho there may be many more lightly informed but well intentioned people voting on the issue than there are well informed outdoorsmen; including, hunters and fishermen, trappers, land owners, farmers, ranchers, and resource based people voting for their interests.

I think SJR106 could very likely do more harm than good. This proposed constitutional amendment would take away from the people of Idaho the rights to define their own destiny through the legislative and executive branches of state government and turn our destiny over to local, state and federal courts, where just decisions are far from certain. The intentions of this bill are honorable and well meant, but the results could lead us far away from its goals.

Although I am against this initiative proposal, I would ask the committee to forward it to the floor of the senate where it will get wider perusal and debate. Eventual passage of SJR1 06 could lead to an initiative and a vote by the electorate to amend the constitution of the state of Idaho. The gravity of such a proposal should enjoy the widest debate it can get.

Thank you for reviewing this testimony.

TESTIMONY:

Testifying next was **Nathan Helm, Executive Director for Sportsmen for Fish and Wildlife Idaho.**

He stated that their group is interested in pursuing this constitutional amendment and to make sure there is no harm done. They do not want to see unintended consequences and they view this process (hearings) to help make good decisions. His constituents are in favor of a pursuit of an amendment to the Constitution or some way to strengthen the current opportunities they have with hunting and fishing.

Senator Stennett asked Mr. Helm if hunting should be a right, rather than a privilege. **Mr. Helm** answered that he feels some of their membership views it as a right, but if they were provided some increased understanding of what the situation is and what could be provided, they perhaps would be accepting of a lot of different terms.

Senator Stennett asked if a person had a right to do something, would the state have the ability to limit or regulate? **Mr. Helm** replied that rights could be forfeited, and his group does not support the opportunity for

someone who has harmed stewardship responsibilities in managing wildlife as a hunter, such as poaching.

Chairman Schroeder said due to time constraints, further discussion of this bill would continue on Wednesday.

**ADJOURN-
MENT:**

He then adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 22, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Harper (Brandt), Little, Stennett, Langhorst
- ABSENT/
EXCUSED:** None
- CALL TO
ORDER:** **Chairman Schroeder** called the meeting to order at 1:40 p.m. He introduced **Senator Dennis Harper**, who is acting on behalf of Senator Brandt. Senator Harper is from Orofino, Idaho and is a doctor.
- Chairman Schroeder** referred the committee to several handouts in their folders and announced changes to the agenda due to people coming from out-of-town to testify.
- S 1385** **Representative Eskridge** introduced **S 1385**, relating to a **Fish and Game License**, for a **disabled person**. This bill provides the opportunity for all disabled individuals to obtain a combination hunting and fishing license, or a fishing license, at a reduced fee price. It clarifies that disabilities can be determined by several different factors, not solely upon social security determination, and it adds a physician's determination of permanent disability to the list of factors possible for qualification. It will encourage disabled individuals to participate in hunting and fishing activities.
- Senator Sweet**, a cosponsor of the bill, said because of their disabilities, disabled individuals are limited in the hunting and fishing opportunities open to them, so a decrease in licensure costs is appropriate.
- Senator Harper** asked about the forms physicians would fill out to certify disabilities, and discussion followed.
- Sharon Kiefer, legislative liaison, Department of Fish and Game**, said the Idaho Fish and Game Commission has discussed the bill and supports actions to enable the disabled community to enjoy hunting and fishing activities. However, currently, the certification for a reduced fee disability license incorporates both physical impairment and financial hardship. The criteria are standardized. The policy emphasis has not been that anyone with the potential for a diminished hunting or fishing experience should get a reduced fee license because of physical impairment, but rather that the means to test also includes the financial ability to pay. This bill would change that policy position by allowing those with a physical impairment, i.e. "permanent disability," to get a reduced fee license, regardless of an individual's ability to pay. Also, there is no standardized definition of permanent disability to ensure that disabled customers are treated consistently in getting access to the reduced fee

license; the definition of who should qualify for a reduced cost license would be left to individual physicians. For these two reasons, the Commission opposes this bill.

Senator Cameron asked whether this was the position of the Commission, the Department, or both. **Sharon Kiefer** said it is the position of the Commission which makes it the position of the Department.

Senator Harper asked how many disabled individuals were licensed last year, and **Sharon Kiefer** said 8,000 to 9,000 disability licenses were sold.

Tammy Ward, a wheelchair-bound outdoors enthusiast, testified in support of the bill.

Steven Imlay, double amputee from Sandpoint, testified in support of the bill. He said physically challenged individuals should receive a price break because they are not able to get the full hunting or fishing experience compared to an able-bodied individual.

Rod Shaul, brother of Tammy Ward, testified in support of the bill, and talked about social security. He explained that making a living is more difficult when an individual has to live with disabilities.

Fred Christensen, retired Idaho Wildlife Federation (IWF) employee, testified about the indication in the bill that there would be no fiscal impact. He said that while the general fund would suffer no impact from free licenses, the administrative load may increase in the Department of Fish and Game, and although this may seem insignificant to the total Fish and Game budget, the impact needs to be considered because this cost is borne by all other license holders when purchasing their licenses.

Senator Schroeder asked **Sharon Kiefer** about the fiscal impact, and she said the Department is unable to estimate what it would be.

MOTION:

Senator Cameron said he wished the bill defined "permanent disability," but a future rule could remedy it. He moved to send **S 1385** to the floor with a **do pass** recommendation. **Senator Pearce** seconded the motion.

Senator Little expressed concern about the absence of that definition and he asked whether the bill could be sent to the amending order. **Steve Huffaker, Director, Idaho Department of Fish and Game**, said the Department and Commission tries to extricate themselves from defining the term "disability" because of the wide range of disabilities individuals live with. **Senator Cameron** said statutes cannot spell out every nuance, but it would not be difficult for the Department to outline "permanent disability" in rule. Discussion on a reevaluation process followed.

The motion carried by a **voice vote**. **Senators Keough** and **Sweet** will sponsor the bill on the floor.

SJR 106

Chairman Schroeder reintroduced discussion of **SJR 106**, continued from the previous meeting. **Nate Helm, Executive Director, Sportsman for Fish and Wildlife (SFW)**, returned to answer questions. He said his

organization is interested in protecting rights to hunt and fish, and it has been promoting a constitutional amendment in accordance with that interest.

In response to a question asked by **Senator Stennett**, **Nate Helm** said his organization's motivation was not necessarily dealing with initiative protection, which may be better served by an additional piece of legislation.

Senator Cameron asked if SFW has sought a legal opinion on the legislation, and **Nate Helm** said it has, but there are certainly more questions which could be asked. **Senator Cameron** asked if SFW reviewed the memorandum from the attorney general's office prior to deciding on the issue. **Nate Helm** said SFW relies heavily on the attorney general's office for a legal opinion. **Senator Cameron** said he can support philosophically the right to hunt and fish, but he has to look deeper than philosophy.

Senator Langhorst commented on the significance of putting into the constitution the right to fish and hunt, and he cited some examples. Discussion followed. **Senator Langhorst** asked if SFW was willing to take on the risks associated with wording such as, "may, could, and should," if it meant legal challenges to Idaho Fish and Game's ability to charge higher license fees for non-residents. **Nate Helm** said SFW voted to support the legislation in the form it was proposed to them.

Senator Stennett commented that providing the right to hunt and fish might hinder the ability to charge for a license. **Nate Helm** said that many constitutional rights have limits on them, and charging for licensing could be a limit to the right.

Senator Cameron asked about the difference between SJR 105 and SJR 106. **Representative Edmunson** said that the only difference is that SJR 106 includes language dealing with water.

Representative Edmunson testified and said SJR 106 will not create more initiatives, nor will it stop them completely. He commented on international judicial bodies and the protection provided by being incorporated as a right in the state's constitution. The portion of the resolution on wildlife has been in statute for 68 years and has caused no problems, he said. SJR 106 has been reviewed by the United States Sportsman's Alliance, which has reviewed similar constitutional amendments in other states, and they approved of the language. He commented on unmanaged predators, and expressed concerns about protecting the heritage of a sportsman's way of life for future generations.

Senator Schroeder pointed out that the statute to which Rep. Edmunson referred uses the terminology "all wildlife," putting it in agreement with the wording in this resolution. He spoke about the history of this legislation.

Senator Little asked whether Rep. Edmunson had investigated the concern expressed by the Department of Public Lands about the possibility that SJR 106 would restrict the ability to manage endowment properties by putting it in the constitution. **Representative Edmunson**

said he had not and he is confident that the language saying, "subject to the laws, rules and proclamations of the state" will prevent any such restrictions. **Senator Little** expressed some concern that the resolution might not reach its desired effect because of this language, leaving it open to initiatives, but **Representative Edmunson** pointed out some strengths in its wording which would protect the right to fish and hunt as intended.

The committee decided to continue discussions on **SJR 106** on Friday.

S 1391

Senator Stennett introduced **Brian Hamel, Ambassador, Hunt of a Lifetime Foundation**, to speak on **S 1391**. This bill will provide a mechanism for the Idaho Department of Fish and Game to issue a big game permit or tag to a qualified 501 C(3) organization for the purpose of providing children with life threatening medical conditions an opportunity to hunt big game in Idaho.

Brian Hamel explained that in 1999, the Make a Wish Foundation and other similar organizations stopped doing hunting and fishing trips for children with life threatening illnesses. The mother of one of the children who was precluded from hunting/fishing founded the Hunt of a Lifetime Foundation. Since that time, two hunts have taken place in Idaho, made possible by permits donated by landowners. He talked about other trips the Foundation has facilitated and said that Nevada and Arizona have similar bills in effect.

MOTION:

Senator Cameron moved to send **S 1391** to the floor with a **do pass** recommendation. **Senator Langhorst** seconded the motion. The motion carried by a **voice vote**. **Senator Stennett** will be the floor sponsor of this bill.

ADJOURN:

Chairman Schroeder adjourned the meeting at 3:00 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 24, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Harper (Brandt), Little, Stennett, Langhorst

**ABSENT/
EXCUSED:** None

**CALL TO
ORDER:** **Chairman Schroeder** called the meeting to order at 1:37 p.m.

MINUTES: **Senator Williams** moved that the minutes from February 15 be approved. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**.

SJR 106 **Chairman Schroeder** opened continued debate on **SJR 106** by addressing a concern which had been circulating among senators.

MOTION: **Senator Harper** moved that **SJR 106** be sent to the floor with a **do pass** recommendation. **Senator Pearce** seconded the motion. The motion carried by a **voice vote**, five being present at the time of the vote. **Senator Brandt** will sponsor the resolution on the floor.

**S 1386
S 1387** **Steven Huffaker, Director, Department of Fish and Game (IDFG)**, introduced **S 1386** and **S 1387** together. Text from his written testimony is inserted in the minutes, as follows.

The IDFG Commission supports both bills, which extend 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. Two sections of Title 36 would be amended to accomplish these provisions.

An increase in the statute of limitations for these instances will assist the Department with its efforts to deter those who literally steal from legitimate sportsmen and wildlife programs. During “wrong class” license investigations, Conservation Officers often uncover a history of non-residents buying resident hunting/fishing licenses that date back several years. Many times the statute of limitations has passed before investigating officers uncover the purchase of the wrong class license. In addition to allowing for the prosecution of offenders with a long history of wrong class license purchase, an increase in the statute of limitations may deter others from violating.

While conducting complex investigations on the habitual wildlife criminal, Conservation Officers have uncovered a history of wildlife violations that exceed the current statute of limitations. For example, during a 2001 investigation,

unlicensed outfitter Mark Montgomery from CA was found to have unlawfully taken and possessed elk each year since 1997. In some years, multiple elk were taken by him. Because of the current law, the state was only able to file charges on unlawfully taken/possessed big game for 2000 and 2001.

Steven Huffaker passed around four photographs of animals which were illegally taken, two of which were prosecuted and two of which were barred from prosecution by the current statute of limitations.

The Commission believes that an increase in the statute of limitations for these license and wildlife violations would give officers and prosecutors more comprehensive tools when dealing with the habitual wildlife criminal, to the benefit of wildlife and sportsmen.

Senator Harper asked whether wolves would be affected by the bill, and **Steven Huffaker** said they would not because there is currently no season for wolves, but they would be classified as a big game animal if delisted.

There was discussion on cases, investigations, and locations where the offenses have taken place.

Fred Christensen, President, Citizens Against Poaching, testified in support of both bills. He pointed out that **S 1387** refers to egregious violations, whereas **S 1386** refers to wrong class licenses. He explained how wrong class licensing can be difficult to detect.

MOTION: **Senator Langhorst** moved that **S 1386** be sent to the floor with a **do pass** recommendation. **Senator Little** seconded the motion. The motion carried by a **voice vote**. **Senator Langhorst** will sponsor the bill on the floor.

Chairman Schroeder brought **S 1387** formally before the committee. **Senator Langhorst** moved that **S 1387** be sent to the floor with a **do pass** recommendation. **Senator Williams** seconded the motion. The motion carried by a **voice vote**. **Senator Langhorst** will sponsor the bill on the floor.

MINUTES: **Senator Stennett** moved that the minutes from February 8 be approved. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**.

Senator Langhorst moved that the minutes from February 10 be approved. **Senator Williams** seconded the motion. The motion carried by a **voice vote**.

Senator Little moved to approve the minutes from February 13. **Senator Cameron** seconded the motion. The motion carried by a **voice vote**.

SPEAKER: **Sharon Kiefer, legislative liason, Department of Fish and Game**, spoke to the committee to clarify a **Rule relating to ATVs, Rule 13-0108-0501**, passed last year. **Chairman Schroeder** remarked on the amount of public comment this rule has generated. **Sharon Kiefer** referred the committee to a copy of page 19 of the rule in their folders. The 2005

Motorized Vehicle Rule, section 411, was approved by the legislature and the IDFG Commission applied the rule on a hunt-by-hunt basis. A request was made to summarize in a future rule all the units of hunts affected by the restriction. The summary was added in this year's rule docket. The Commission is now working on a big game rule wherein ATVs and ATV restrictions are in conversation. Constituents may be confusing this with the rule passed last year and summarized this year. Any decisions made would not come before the committee until next year.

Chairman Schroeder asked whether most of the public correspondence has more to do with what the Commission is going to do rather than anything already done. **Sharon Kiefer** said that, given the timing, it is certainly part of the concern. **Chairman Schroeder** summarized that encouraging constituents to get involved in the Commission's current decision-making process would be a good response. **Sharon Kiefer** said that there are two different ways to provide information to the Commission: the 2006 All-Terrain Vehicles Survey on their website; and at the Commission's regular meetings, the next to take place on March 1.

Chairman Schroeder asked for the Commission to put out a newsletter and to email sportsmen's groups clarifying the issue.

There was discussion about what kinds of roadways are affected by the restriction and about the distinction between having a gun in a vehicle versus on an ATV. **Steven Huffaker** said that current law prohibits shooting from a motor vehicle or from/across a road. He explained the importance of how the term "hunting" is defined, and discussion followed.

Senator Williams asked if there was any other approach the problem, and **Steven Huffaker** said they have tried to get the Forest Service and the Bureau of Land Management to deal with it, but to no avail.

Senator Little and **Sharon Kiefer** discussed what constitutes an "established roadway." She reiterated that the text before the committee is not new, but rather it is a summary of the rule passed in 2005.

Chairman Schroeder asked for further comments.

Rod Davidson, concerned citizen (in contact with sportsmen's organizations), commented that the concerns do not come from hunters but from recreational ATV riders.

Doug Schleis, Publisher, Wild Idaho News, commented on the difficulty of enforcing laws against ATV use and the inability of the low fine to deter them.

Nate Helm, Executive Director, Sportsmen for Fish and Wildlife of Idaho, added that sportsmen are very concerned with restricting or managing motorized access for the purpose of hunting so that animals can be managed properly.

ADJOURN:

Chairman Schroeder adjourned the meeting at 2:10 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 27, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:35 p.m.

He welcomed the audience of 15 who were in attendance for the hearing of three appointments - **Scott Farr and Marcus Gibbs to the Outfitters and Guides Licensing Board (IOGLB) and Jim Kempton to the Northwest Power & Conservation Council (NWPCC).**

APPOINTEE: Speaking first was **Scott Farr**. His term is from January 31, 2006 to April 20, 2008, succeeding Travis Bullock. Mr. Farr is from Challis, Idaho. He served in the U. S. Marine Corps from 1965 to 1967. He has been self employed as an outfitter since 1968 and was also a rancher. His outfitting business, Wilderness Outfitters, is located on the Middle Fork of the Salmon River at the mouth of Loon Creek and he is also the manager of Middle Fork Lodge.

Senator Williams asked Mr. Farr if the demands on outfitters and guides is increasing or decreasing. **Mr. Farr** replied that license sales are up and the industry is alive and well, but not without some concerns. The industry continues to bring money into the state and the quality of outfitters has improved. The improvement has occurred because of the high standards of IOGLB and good strong statutes and laws of the state.

Senator Stennett asked Mr. Farr to comment on licensing outfitters for bird hunting. **Mr. Farr** stated that chukker hunting is incidental to, or in connection with, other activities. Most hunting-based outfitters are licensed for forest grouse. Licenses are not issued to outfitters for upland game, pheasant or water fowl. However, there are five businesses that are "grandfathered" in for water fowl.

Mr. Farr was asked about chronic wasting disease (CWD) and the impact it might have on the state. **Mr. Farr** said the industry is concerned about CWD or any activity that might increase it. He was then asked if the Board took a position on Senate bill 1279 (importing domestic Cervidae) that was presented earlier. **Mr. Farr** said the Licensing Board usually does not take positions on bills.

Senator Stennett asked about the enormous number of outfitters on

certain popular rivers, especially the South Fork of the Snake and the Wood. He inquired if the Board had any solutions, ideas or plans on how to spread it out and lessen the impact. **Mr. Farr** replied that they are concerned if it is apparent their industry is causing negative impacts on the resources and they would react on a case-by-case basis. The streams are allocated by the Licensing Board and it is limited in the number of outfitters on those rivers. He stated that if there is a resource problem, any future decreases in opportunities, it should be equally shared with all the users.

Senator Burtenshaw inquired as to what is the most popular hunt. **Mr. Farr** replied that the "bread and butter" hunt for the hunting outfitter is elk and deer. The best market is mule deer hunting. Mountain lion hunting is becoming popular. **Senator Burtenshaw** asked about the ratio of success. **Mr. Farr** replied that overall, among the outfitters, it has declined. He said that he bases the amount of clients that he takes hunting on the amount of quantity of harvest that is available and it is slowly diminishing due to the impact of wolves.

Senator Burtenshaw asked Mr. Farr if he had other hunts (besides elk and deer), such as bear and cougar. **Mr. Farr** said that fifteen years ago, cougar hunting was about 10 percent of his business. Now it is 40 percent of his business. He said there is a large population of cougars on the Middle Fork. **Senator Burtenshaw** inquired if people are interested in wolf hunts (if it should ever become available). **Mr. Farr** said he has a list of names of people interested in wolf hunts and it would be a good seller.

Senator Little inquired as to what impact an established pack of wolves would have on cougars and large predators. **Mr. Farr** said they have a significant impact on cougars. When asked about bobcats, he said there seems to be a bumper crop of them. An inquiry was made about grizzly bears. **Mr. Farr** said he has not seen any grizzly bear tracks in recent years and there is not a high density of black bears.

Chairman Schroeder asked if CWD was to come into Idaho, how would that affect Mr. Farr's business. **Mr. Farr** replied that it would devastate his business. **Senator Williams** inquired as to how CWD might come into the state - through the wild populations or through the game farms? **Mr. Farr** replied that it would be much more likely to come in through the game farms.

Senator Burtenshaw asked how brucellosis and CWD could be controlled in the wild elk. **Mr. Farr** said he is in favor of trying to prevent it and where it is identified, drastic measures should be taken.

Chairman Schroeder thanked Mr. Farr for appearing before the committee today.

He then welcomed **Marcus Gibbs**, who has been appointed by the Idaho Fish and Game Commission to the **Idaho Outfitters and Guides Licensing Board**.

APPOINTEE:

Mr. Gibbs was appointed August 30, 2005 and is to serve until August 30, 2008.

Mr. Gibbs, who is from Grace, Idaho is a farmer, hunter, avid trap shooter, and fisherman. He is a life member of the Rocky Mountain Elk Foundation, belongs to Pheasants Forever, the Amateur Trapshooting Association and the Single Action Shooting Society.

He was appointed to the Fish and Game Commission to represent the Southeast Region in 1999 and reappointed in 2002. His Commission appointment expires June 30, 2006.

Mr. Gibbs said it is an honor to stand before the committee for the third time and that he has probably told the committee all they need to know about him from his previous appearances.

He said with his Commission appointment expiring, his fellow Fish and Game Commissioners thought that since the state had invested in some of his education and with his experience on resource issues, he should serve on the Outfitters and Guides Licensing Board. He said he agreed to accept that appointment.

Mr. Gibbs said he wanted to thank Senator Williams and Senator Burtenshaw, on behalf of the Fish and Game and the farmers and ranchers in Eastern Idaho, and said that they will be sorely missed.

Chairman Schroeder thanked Mr. Gibbs for appearing before the committee and for all his good work on the Commission.

APPOINTEE:

He then welcomed **Jim Kempton** who has been reappointed to the **Northwest Power & Conservation Council** for a term commencing January 15, 2006 and expiring January 15, 2009.

Inserted into the minutes is Mr. Kempton's statement that he read to the committee.

IN APPEARING BEFORE YOU TODAY, LET ME FIRST STATE THAT IT HAS BEEN A PRIVILEGE TO SERVE THE INTERESTS OF THE STATE OF IDAHO, THE GOVERNOR AND THE IDAHO LEGISLATURE IN MY POSITION AS A MEMBER OF THE NORTHWEST POWER PLANNING AND CONSERVATION COUNCIL.

THE POSITION HAS BEEN AS CHALLENGING AS ANY POSITION I HAVE EVER ASSUMED.

AS YOU KNOW, THE COUNCIL WAS ESTABLISHED UNDER THE 1980 POWER ACT AS AN INTERSTATE COMPACT PLANNING ENTITY CONSISTING OF TWO MEMBERS EACH FROM THE STATES OF IDAHO, MONTANA, OREGON AND WASHINGTON.

THE RESPONSIBILITY OF THE COUNCIL WAS, AND IS, TO PROVIDE BONNEVILLE POWER ADMINISTRATION WITH RECOMMENDATIONS DESIGNED TO ASSURE THAT THE NORTHWEST HAS AN "ADEQUATE, EFFICIENT, ECONOMICAL AND RELIABLE POWER SUPPLY" WHILE "MITIGATING, PROTECTING AND ENHANCING" FISH AND WILDLIFE ADVERSELY IMPACTED BY THE HYDRO SYSTEM.

THE COUNCIL ACTS TO BALANCE THESE COMPETING OBJECTIVES THROUGH THE CONGRESSIONALLY DIRECTED 20 YEAR POWER PLAN AND ASSOCIATED FISH AND WILDLIFE PROGRAM; THE FORMER HAVING A REQUIREMENT TO BE UPDATED EVERY FIVE YEARS, THE LATTER AS REQUIRED.

SINCE MY ORIGINAL APPOINTMENT IN 2000, AND RE-APPOINTMENT IN 2002, I HAVE SERVED TWO YEARS AS CHAIRMAN OF THE COUNCIL'S POWER COMMITTEE, ONE YEAR AS COUNCIL VICE-CHAIR, AND AM AGAIN SERVING AS CHAIRMAN OF THE POWER COMMITTEE.

MY FIRST TWO YEARS AS POWER COMMITTEE CHAIR WERE SPENT WORKING WITH COUNCIL STAFF AND COUNCIL MEMBERS TO REFOCUS THE RELEVANCE OF BOTH A NEW REGIONAL POWER PLAN AND THE COUNCIL IN A WORLD OF DEREGULATED ENERGY AND TRANSMISSION.

SINCE 2000, THE COUNCIL HAS, AMONG OTHER THINGS:

COMPLETED A MAINSTEM AMENDMENT TO THE COUNCIL'S 2000 FISH AND WILDLIFE PROGRAM;

OVERSEEN THE DEVELOPMENT AND ADOPTION OF 58 SUBBASIN PLANS IN 11 ECOLOGICAL PROVINCES OF THE COLUMBIA RIVER DRAINAGE. (THE LARGEST SUCH ENVIRONMENTAL EFFORT IN THE WORLD - COSTING 14 MILLION DOLLARS.);

HELD REGIONAL HEARINGS AND COORDINATED COUNCIL RECOMMENDATIONS ON THE FUTURE ROLE OF BPA IN POWER SUPPLY;

COMPLETED THE 5TH POWER PLAN;

AND OVERSEEN AN ANNUAL FISH AND WILDLIFE BUDGET OF APPROXIMATELY \$175 MILLION (\$139M direct program + \$36M capital) IN BPA RATEPAYER DOLLARS.

THESE ARE NOT NEW AREAS OF INTEREST TO MEMBERS OF THIS COMMITTEE, BUT THEY ARE ISSUES THAT ARE COMPLEX IN NATURE AND REQUIRE CLOSE CONTACT BETWEEN IDAHO COUNCIL MEMBERS, THE GOVERNOR, THE IDAHO LEGISLATURE, AND REGULATING OFFICES SUCH AS THE IDAHO PUBLIC UTILITIES COMMISSION.

I BELIEVE I HAVE RESPONDED TO THE TRUST THIS COMMITTEE EXPECTED WITH MY CONFIRMATIONS IN 2000 AND 2002 - AND I COMMIT HERE TODAY TO RETAIN THAT TRUST IN THE FUTURE.

MR. CHAIRMAN, I STAND FOR ANY QUESTIONS YOU AND THE COMMITTEE MAY HAVE.

Mr. Kempton provided the committee with handouts regarding the Columbia River Fish Runs and Fisheries (charts and graphs on the Spring/Summer Chinook, Snake River Sockeye and the Fall Chinook Returns); Lower Granite information; and charts on 2005 World Oil Prices, Natural Gas Prices - 2005, Monthly Electricity Prices - 2005, Monthly Fuel and Electric Prices - 2004 & 2005.

Senator Williams said that he just wanted to let Mr. Kempton know that he has done an exceptional job and is proud of the work he is doing for the state.

Senator Stennett thanked Mr. Kempton for the previous reports from NWPCO regarding coal gasification and coal-fired plants.

Senator Cameron inquired about the potential shortage of energy in the near future. He then asked Mr. Kempton how should they (the legislators) convey to the public the potential risks they foresee in the next ten years and how do they walk the balancing line between public safety, but not scare off future energy developments that may be safe. **Mr. Kempton** replied that the resource adequacy issue is one of the toughest issues before the Council now. He said they are trying to pull all the utilities in the region together to address this issue; however, he said it is not his role on the Council to suggest political solutions to situations that was just posed.

Mr. Kempton reviewed the handouts that he provided to the committee, which was followed by questions and discussion.

Chairman Schroeder thanked Mr. Kempton for the work he is doing and also for his report to the committee.

**ANNOUNCE-
MENT:**

The **Chairman** announced that Chairman Raybould of the House Environment, Energy & Technology Committee has invited the Senate Resources and Environment Committee to their meeting Tuesday, February 28 in the Gold Room at 1:30 p.m. There will be a presentation by Julia Souder, Western Regional Coordinator, and Neil Parekh, Policy & Communication Director and Program Manager, about the US Department of Energy Office of Electricity Delivery and Energy Reliability and also an update and briefing on Sections 368 & 1221 of the Energy Policy Act of 2005.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 3:00 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 1, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Senators Williams, Brandt, Little, Stennett, Langhorst
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Pearce and Senators Cameron, Burtenshaw
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m.
- MOTION:** **Senator Langhorst** made the motion to approve the minutes of February 22, 2006. The motion was seconded by **Senator Williams**. The motion passed by unanimous voice vote.
- GUESTS:** **Chairman Schroeder** welcomed the students and teachers from Canyon Christian School, Hazleton, Idaho.
- MOTION:** **Senator Little** made the motion to approve the appointment of Scott Farr to the Outfitters and Guides Licensing Board. **Senator Brandt** seconded the motion. The motion passed by unanimous voice vote. **Senator Burtenshaw** will be the floor sponsor.
- MOTION:** **Senator Williams** made the motion to approve the appointment of Marcus Gibbs to the Outfitters and Guides Licensing Board. **Senator Brandt** seconded the motion. The motion passed by unanimous voice vote. **Pro Tem Geddes** will be the floor sponsor.
- MOTION:** **Senator Brandt** made the motion to approve the appointment of Jim Kempton to the Northwest Power and Conservation Council. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote. **Senator Little** will be the floor sponsor.
- INTRODUCTION OF SPEAKER:** **Chairman Schroeder** said that several years ago, there was a meeting held in the Gold Room relating to ATVs and he learned of the interest the public has in this sport. The Chairman said he could foresee an economic development on small towns if trails were provided near or through them. Mr. Irby is involved with trails in Northern Idaho. Chairman Schroeder said he has known Alex Irby for many years, both of them having served on Region Two Wildlife Council. Mr. Irby works for Conkleville Lumber Company as Resource Manager and serves as an Idaho Fish and Game Commissioner. As a result of Mr. Irby's involvement with ATVs and trails, the Chairman asked him to make a presentation today.

SPEAKER:

Mr. Irby said he wanted to explain the concept of their plan for trails. It started a few years ago when their opportunities were diminishing on federal land in the Clearwater to have access. They formed an organization called PLAY (Public Lands Accessed Year around) and then invited people who wanted to have the access motorized. They worked with the Forest Service in the Clearwater National Forest and Nez Perce National Forest to develop some trails. Trails are necessary as landowners are tired of people riding wherever they wish. At the present time, there are 90,000 to 100,000 registered ATVs.

Mr. Irby said that after seeing the video of the Paiute Trail in Utah, he felt that Idaho could do something very similar. He encouraged the committee to view the video in order to see the possibilities of what could be done with trails and campgrounds for people with ATVs.

Two large maps were displayed on the wall showing present trails and potential sites for trails. One trail starts from Orofino, linking Wierpe, Pierce, and Wallace. Trails also go through Florence City and that mining district and from there, they can go to the Salmon River area. Mr. Irby said they have talked to the major landowners (Potlatch, Department of Lands [state], Forest Service [federal], Bureau of Land Management). He said there is excitement for the trail system. Mr. Irby said he had been at a meeting in Coeur d'Alene and stopped at Elk River on his way home. He proposed the North-South trail system to their committee and it was well received.

Mr. Irby said one area that he has explored recently, and has had good response, are the Chambers of Commerce in the small communities. He feels if they work as a body, rather than individually, the trail system will be more of a success. The routes would take people into these small towns and they could shop, eat, and stay overnight. Most of these towns were former logging and mining towns and Mr. Irby said this could help to rejuvenate them.

Senator Little suggested forming a quasi-recreational district, then the district would have the ability to have government agencies do the maintenance on trails and parking lots and be responsible for liability. **Mr. Irby** said some volunteer groups not only help maintain the trails, but also enforce the laws. **Chairman Schroeder** inquired if the Department of Parks could be the responsible agency. **Dean Sangrey** from the Department of Parks said the Parks Board might possibly be interested in being a major player. They are presently involved in the Lost River Recreational Trail. The loop concept there is a direct result of monitoring and looking at the Paiute Trail in Utah.

Mr. Irby said he likes the enthusiasm he is hearing today. He would like to see a route from North to South with turnouts, campouts, and loops. He said it will take combined efforts to accomplish this. **Chairman Schroeder** said the committee stands ready to help the Department of Parks to find solutions as to what needs to be done. **Mr. Irby** said there are efforts to have a statewide organization comprised of ATV chapters to help.

Chairman Schroeder thanked Mr. Irby for his presentation.

**ANNOUNCE-
MENT:**

The **Chairman** announced that Friday's meeting will be held in the Gold Room and it is a seminar on pheasant management. Lew Pence, retired from the Natural Resource Conservation Service and Dr. Les Flake, retired professor from South Dakota State University will present the program.

**ADJOURN-
MENT:**

Chairman Schroeder then adjourned the meeting at 2:20 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 3, 2006
- TIME:** 1:30 p.m.
- PLACE:** Gold Room
- MEMBERS:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Little, Stennett
- ABSENT/
EXCUSED:** Senators Langhorst and Brandt
- CALL TO
ORDER:** **Chairman Schroeder** called the meeting to order at 1:45 p.m.
- SEMINAR:** The meeting began with the scheduled Pheasant Management Seminar.
- Steven Huffaker, Director, Department of Fish and Game (IDFG),** introduced two experts to speak on the issue of pheasant management: **Law Pence**, of the **National Resources Conservation Service (NRCS)**; and **Dr. Les Flake**, retired professor from **South Dakota State University** who was involved in pheasant research throughout his career.
- Law Pence** gave a brief background on his experiences in animal management, including a project on beaver management. He is from Mackay, Idaho, and graduated from the University of Idaho with a degree in Forestry, specializing in range management. He now raises trees for landscapers in Gooding, Idaho.
- Law Pence** talked about how changes in habitat have affected pheasants, and he presented a chart which depicted an efficient 160 acre farm. The islands and wetlands created by elevation variations on a farm are ideal places for pheasants to live. He estimated that on the farm depicted in his chart, there would be 48,840 feet, or 9.25 lineal miles, of ideal pheasant cover. He calculated that there would be about 19 acres of pheasant cover spread out over those 9.25 miles. Changes in irrigation practices from dirt ditches to concrete ditches and pipe sprinkler systems cause a great loss in pheasant habitat because they create fewer wetlands and because the groundcover has to be cleared for the pipes. This has certainly contributed to the decline in the pheasant population in southern Idaho. The variety of crops per farm is not as great as it once was, and grain crops have decreased as favor for hay and corn silage has increased, also contributing to the decline in the pheasant population. Farms and fields are also larger than ever before. Finally, the timing of when crops are harvested is often not conducive to the nesting season of pheasants.
- Senator Williams** asked about how predators contribute to the decline in pheasants. **Law Pence** said, in his opinion, the dangerous predators are coyotes, foxes, and raptors. Because modern farms are so much more efficient, there is less groundcover to hide pheasants from predators.

Senator Stennett asked about a region in southern Idaho which still uses old farming practices and whether this region still has pheasants. **Lew Pence** said it was the last region to lose its pheasants, but pheasants need more than just a small region of good habitat to survive as a population.

Chairman Schroeder asked where pheasants go to survive in the winter when snow blankets their protective cover, and **Lew Pence** said he does not think they survive. **Chairman Schroeder** asked whether herbicides kill the bugs on which young pheasants feed, and **Lew Pence** said herbicides are a valid concern. **Chairman Schroeder** then asked what effect the hay harvest has on nesting, and **Lew Pence** said it is devastating. Pheasants start to nest at about the same time that the hay harvest begins. A pheasant will nest again in the same spot about 28 days later, but hay is often harvested in 28 day cycles.

Senator Stennett asked if an incentive program to keep farmers from harvesting would increase the pheasant population, and **Lew Pence** said he was not sure because the habitat has to also be in place.

Senator Williams asked if Mr. Pence has noticed pheasants moving into his tree farm, and **Lew Pence** said he sees quails instead. There was discussion as to why quails survive instead of pheasants.

Senator Little asked whether any single factor is the actual cause of the decline in pheasants, or whether it is a combination of factors, and discussion followed.

Senator Burtenshaw asked if hatcheries would help the pheasant population, and **Lew Pence** reiterated that a habitat has to also be in place.

Chairman Schroeder thanked **Lew Pence** for his presentation, and **Dr. Les Flake** took the podium.

Dr. Les Flake gave a brief history of his background and of the history of pheasants in South Dakota. He presented a slide show with photographs of ideal pheasant habitat in South Dakota, where pheasants are currently at a 40 year high. Parallel in time to the most recent population increase is a land retirement program, the Conservation Retirement Program (CRP).

He stressed the importance of willows and cattails to pheasant habitat. Large blocks of coverage provide a good place for pheasants to winter and to nest when these blocks of land are near fields which produce grains, corn, soybeans, etc. Shelter belts made up of dense shrubs, spruce trees, or cedars/junipers which provide wind protection for crops are also a good place for pheasants to live. When abundant waste grain exists near wetland cover, the ideal habitat for pheasants is created. He talked about various types of cover which are good for pheasants.

Predators are never a problem unless habitat is insufficient because predators are a good thing. If certain types of predators are removed, other species take over. He gave an example where predators were

removed and ground squirrels began taking over pheasant nests. Moderate numbers of coyotes are very important to maintaining a healthy population of pheasants.

Magic Valley provides little ideal habitat for pheasants because fields are plowed to the road and use wheeled irrigation, with no ditch and no trees. He said it would be a miracle if pheasants lived in habitat like much of Magic Valley. If blocks of grass were set aside to build some habitat, pheasants will come. Predators are not to blame as much as habitat is. Magic Valley has had a ten year average of 0.21 pheasants per mile, as opposed to counties in South Dakota which range from 3.7 to 37.5 pheasants per mile. Because the climate in southern Idaho is milder in the winter than South Dakota, pheasants could winter in sage brush as long as they are close to food. Pheasants do not usually move more than a quarter of a mile to find food, although in rare cases, they will go 10 miles for winter food.

He recommended that small blocks of land be developed as pheasant habitat and they will come back without any inducement. Pheasants will try five times to nest in a single location before they will move on.

Chairman Schroeder commented on how ground squirrels and other small mammals play a contributing role in declining populations because they interfere with nesting, and **Dr. Les Flake** added that cats could also be a problem.

Senator Stennett asked why quail are replacing pheasants, and **Dr. Les Flake** explained that quail are much more adapted to edge habitats and are more difficult for predators to find. They are also more adapted around people.

Senator Cameron asked why pheasants do not live in the miles and miles of range land and sage brush which provide excellent cover, and **Dr. Les Flake** explained that adequate cover is not enough to attract pheasants if it is more than a half mile from crop land. **Senator Cameron** asked how much the arid climate plays into the lack of pheasant habitat in southern Idaho, and **Dr. Les Flake** said pheasants do not need drinking water to live because they derive most of their moisture from their foods. Pheasants do not necessarily need wetlands to survive as long as a food source and cover is present.

Senator Cameron asked what South Dakota has done to control predators, and **Dr. Les Flake** said South Dakota does very little predator control, aside from removing a few key problem animals. Problem animals are individual animals which interfere with livestock. Hunting and trapping animals would help to keep them in check. Raptors are federally protected so they cannot be taken, but they cause problems particularly if a pheasant has been raised in captivity and released for repopulation because the pheasant has difficulty recognizing dangers in the wild.

Senator Stennett asked about pheasant lifespans in the wild, and **Dr. Les Flake** said they have a high turnover. Young pheasants have a 50% turnover before they reach flight. Of the 50% that survive past the first year, 60-70% die each year, necessitating rapid replacement. A three

year old rooster is old. Pheasants can live for 12 years if there is nothing around to kill them.

Chairman Schroeder asked if Magic Valley would be better served to focus on quail than to try to bring back pheasants, and **Dr. Les Flake** recommended maintaining the quail population because it is an excellent game bird. Quail would benefit from an increase in pheasant habitat, too. **Chairman Schroeder** summarized that habitat is the key to raising pheasant numbers, and **Dr. Les Flake** agreed, and recommended concentrating on areas with potential winter cover in place and to work from there to develop bigger blocks of cover.

UPDATE: **Chairman Schroeder** announced that **RS 16165** and **RS 16167C1** would be held until the next meeting.

MINUTES: **Senator Pearce** moved to approve the minutes from February 17 and February 20. **Senator Williams** seconded the motion. The motion passed by **unanimous voice vote**.

Senator Stennett moved to approve the minutes from February 24. **Senator Little** seconded the motion. The motion passed by **unanimous voice vote**.

Senator Williams moved to approve the minutes from February 27. **Senator Burtenshaw** seconded the motion. The motion passed by **unanimous voice vote**.

ADJOURN: **Chairman Schroeder** adjourned the meeting at 3:15 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 6, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Stennett
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- SPEAKERS:** He then welcomed **Ms. Toni Hardesty, Director of the Department of Environmental Quality (DEQ)** who will present a report on "Mercury". She will be joined in the presentation by **Dick Schultz, Health Administrator from the Department of Health and Welfare**, who will address health related concerns.
- Inserted into the minutes is the presentation given by Mr. Schultz. It was prepared by Ms. Elke Shaw-Tulloch, Chief of the Bureau of Community of Environmental Health, who was unable to be here.
- What is Mercury?**
- Mercury is a naturally occurring element found in soil, water and air. It exists in several forms: elemental or metallic, inorganic compounds and organic compounds. It is released into the environment by natural breakdown of minerals in rocks and it is also released during specific industrial processes (mining, burning fossil fuels, solid waste incineration).
- Mercury in the air eventually settles into water or onto land where it can be washed into water. Once deposited, certain microorganisms can change it into methylmercury, a toxic form that builds up, or bioaccumulates, in fish, shellfish and animals that eat fish. (See handout - Cycle of Mercury in the Environment)
- Methylmercury is of particular importance to public health because approximately **95%** of methylmercury will be absorbed into the gastrointestinal tract when swallowed compared to elemental mercury where virtually none is absorbed.
- Mercury is persistent in the environment and is transported and deposited

globally through specific meteorological conditions. Mercury deposition is not an issue specific to Idaho. A February 9 article in the LA Times describes results of a study conducted by the University of North Carolina-Asheville showing that methylmercury exposure has little to do with proximity to pollution sources because of mercury's ability to be transported globally and its bioaccumulative effect. Instead the majority of methylmercury exposure appears to be determined by diet and in particular the consumption of fish.

Health Effects of Methylmercury:

The health effects of methylmercury exposure depend upon:

- Dose (amount that enters the body)
- Age of person (fetus and young children most susceptible)
- Duration of exposure
- Route of exposure (eating, breathing, skin contact)
- Health of person exposed

Methylmercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages. Because many regulatory and environmental changes have occurred over time lowering the global release of mercury, it is unlikely the general population will receive high level exposures. Research shows that most people's fish consumption does not place them in the high exposure category where health issues are of concern.

Unborn babies, however, may receive a high level exposure of mercury due to a mother's ingestion of fish with lower levels of methylmercury. Methylmercury is known to pass easily through the mother's bloodstream into the developing brain of the fetus making them less able to think and learn as they grow. Young children can be adversely affected by low doses of methylmercury because of their developing nervous systems.

Several low dose studies in the 1990s (i.e., Seychelles Island, Faroe Island, and New Zealand studies) show this relationship between lower level maternal exposures and the health effects in unborn babies. Based on these and earlier studies, US Environmental Protection Agency (EPA) developed a reference dose of 0.1 ug/kg of body weight per day that is protective of young children and fetuses.

- Provided to you is the ToxFAQs™ developed by the Agency for Toxic Substances and Disease Registry (ATSDR), which provides more detail on the health effects of mercury from all exposures.

States across the nation have been becoming more aware of the need to address mercury in fish tissue and the potential risk for children and

fetuses. EPA and the Food and Drug Administration (FDA) have issued a national fish consumption advisory targeting women of reproductive age.

To date, every state with, the exceptions of Alaska and Wyoming, has fish consumption advisory efforts occurring. Some states, such as Idaho, develop individual advisories for water bodies. Thirty-one states have statewide fish consumption advisories with 24 of them being specific to mercury.

Idaho Fish Advisories:

In 2001, the Idaho Fish Consumption Advisory Project (IFCAP) was established. IFCAP allows the Department of Health and Welfare, in partnership with the Governor's office, Idaho Department of Environmental Quality (IDEQ), Idaho Department of Fish and Game (IDFG), Idaho Department of Agriculture, US Geological Survey (USGS), and EPA, to determine what the public health risks are in Idaho from consuming locally caught fish.

To date, this has been a very cooperative and opportunistic relationship because there are no funds for this program and because there is no specific statutory responsibility for any agency to issue fish advisories. Each agency involved has been working on this as part of something else they do routinely, or because they feel it is an important issue to address.

The IFCAP is designed to encourage the public to:

- check for advisories;
- keep only those fish that are deemed safe for consumption for the water body from which they were caught;
- clean and cook the fish in a manner consistent with the advisory;
- limit consumption of fish from certain water bodies as detailed by the advisory; and
- understand that fish is an important part of a balanced diet and that the public should continue to eat fish from Idaho waters while observing the consumption advisories.

IFCAP Protocols: (see handout)

IFCAP identifies the locations for sampling, designs the survey process, performs and reviews the analysis, agrees on the criteria for issuing an advisory, and cooperatively informs the public. In summary, IFCAP:

1. Identifies the sites for sampling on the basis of the likelihood of mercury and other contaminants being present and knowledge that the water body is actively used for sport and/or subsistence fishing. However, in the past many of the sampling was conducted at the sites

already being evaluated by IFCAP partners.

2. Determines the species of fish to be collected based on reports from IDFG as to what species are most commonly caught and kept for consumption. Typically the sampled fish are sport fish (trout, crappie, walleye, bass) and bottom-feeders (bullhead, catfish). Sampled fish have to be of legal size limit and species that can be legally taken from the waters.
 - Ten fish from each species need to be collected in order to perform a valid analysis.
3. Relies on sampling of fish to be done by IDFG and USGS. After collection, the fish samples are shipped to a laboratory certified to perform the analysis — typically the State Public Health Laboratory.
4. Assures the results of the laboratory analysis are reviewed by the IDHW State Public Health Toxicologist to determine if an advisory is warranted.
 - The geometric mean of all fish collected in a species is used to calculate the dose for each population (general public, women/pregnant women, and children). If 9 fish meals per month puts the population group above the EPA reference dose of 0.1ug/kg body weight, an advisory is issued.
5. Assures that information is disseminated to the public via a news release, posting of materials (typically laminated signs posted at the water body at points of access, such as boat launches by IDFG or other IFCAP partners -see example from American Falls Reservoir), the IDHW Web site, and IDFG's fishing regulations.

Where have fish advisories been issued? (see map/chart)

Fish advisories have been issued at the following water bodies in Idaho:

C.J. Strike Main Reservoir - 2002 for Mercury
Brownlee Reservoir - 2002 for Mercury
East Mill Creek - 2002 for Selenium
Salmon Falls Creek Reservoir - 2003 for Mercury
Lake Coeur d'Alene - 2003 for Lead, Arsenic, and Mercury
Lake Lowell Reservoir - 2003 for Mercury

Lake Pend Oreille - 2005 for Mercury
American Falls Reservoir - 2006 for Mercury
Priest Lake - 2006 for Mercury

Note:

Oregon has an advisory for the Owyhee River and Reservoir which flow through Idaho. They also issued an advisory for Brownlee Reservoir. Both of these are for Mercury

Summary:

In summary, methylmercury is the form of mercury that is primarily of public health importance because of its bioaccumulative and persistent effect and its adverse effects on the nervous system and development in fetuses and young children. Consistent with the majority of states, Idaho has developed a fish consumption advisory project. While this project is unfunded and unmandated, partners have developed a protocol for identifying water bodies, sampling and analyzing fish caught in those water bodies, and for determining if a fish consumption advisory should be issued.

Handouts were provided to committee members by Mr. Schultz and they included: Cycle of Mercury in the Environment; questions and answers relating to mercury; Idaho Fish Consumption Advisory Program (IFCAP) Protocol; warning in fish meat; a map of Idaho Fish Consumption Advisories (bodies of water where fish consumption should be limited); and Safe Fish Eating Guidelines.

Ms. Hardesty continued the "Mercury" presentation. She also provided the committee with a handout (slides of Power Point) which she referred her remarks to. She said that she would specifically address what DEQ is doing about the mercury environment.

Ms. Hardesty said that mercury is a global pollutant. Asia is the largest contributor of mercury emissions - 53%, followed by Africa - 18%. Europe accounts for 11%, North America - 9%, Australia - 6%, and South America - 4%. Mercury deposition in the U.S. is more prominent where there is rainfall.

Following are sources of mercury emissions in the U.S. (tons per year):

Coal fired utility	47.8
Solid waste incineration	15.0
Non-ferrous metals processing	11.5
Miscellaneous industrial processes	7.8
Inorganic chemical manufacturing	4.0
Mineral products	3.6
Other	20.2

Ms. Hardesty said the Nevada gold mines are responsible for some of the mercury emissions, due to the process they use with non-ferrous metals.

The two main things DEQ is doing about mercury is getting the word out to people with their fish consumption advisories so that they can make informed decisions and collecting baseline data points to determine sources and extent.

Some of the fish data that has been collected shows that walleye and bass in the Salmon Falls Creek Reservoir are over the recommended criteria. Trout and kokanee were below the criteria. Jordan Creek had some fish over the criteria. At Salmon Falls, IDEQ is monitoring air, snow, rain, water and sediment.

The department's plan for the future is to develop a statewide monitoring program. It will utilize expertise and authorities from the three participating agencies: IDHW, IDEQ and IDFG. They will also identify waters needing fish advisories and also identify range of mercury fish concentrations. The Idaho Fish Monitoring Plan is now in draft form. It is a five year plan. Sites will be both targeted and random, prioritize the sampling based on potential from mercury sources. Samples will be taken from lakes, reservoirs, rivers, and streams. They plan to do public outreach so that people understand what a fish advisory is and isn't. The estimated cost is \$125,000 to \$250,000 per year.

That concluded Ms. Hardesty's presentation. Time was allowed for questions from the committee.

RS 16165

Chairman Schroeder presented this RS at the request of the Department of Commerce. This legislation would authorize the Legislative Council to appoint a committee to undertake and complete a study of specific tax and investment incentive proposals relating to the biosciences. There would be no additional impact upon the state general fund.

The Chairman asked for unanimous consent to send RS 16165 to the Judiciary and Rules Committee, a privileged committee, for printing. The committee members consented.

RS 16167C1

Chairman Schroeder and Senator Langhorst presented this RS. It is a concurrent resolution urging and encouraging the Idaho Department of Fish and Game to continue to issue landowner appreciation tags for use by landowners, family members, and employees for use on private lands of the landowner, and to ensure that no landowner appreciation tags be allowed to be sold or otherwise transferred in any manner in which there is a nexus between the tags and any money or other commercial consideration.

He said that they support private property rights and private landowners have the legitimate right to lease their lands to whomever they wish for all lawful purposes.

Some landowners are selling hunting access for thousands of dollars and advertise that a tag is part of the package sold. Chairman Schroeder provided information to the committee that was obtained from the Internet indicating that this practice does occur.

After much discussion, **Chairman Schroeder** said he would hold the bill this year, but would circulate it among the sportsmen's groups this summer to refine it, then bring a new bill back next year.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 8, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m. He then welcomed Mr. Douglas Hancey.
- APPOINTEE:** **Mr. Hancey** has been reappointed by the Governor to the Park and Recreation Board. His term is from June 30, 2005 to June 30, 2011.
- He attended Brigham Young University and received a degree in accounting. He is now retired, lives in Rexburg, Idaho and is involved in civic and community activities.
- Mr. Hancey said he had served six years on the Board and is asking for confirmation for another six years.
- Senator Burtenshaw** asked Mr. Hancey the condition of the state parks. **Mr. Hancey** replied that many of the state parks are in sad condition. In some parks, the sewer and water systems are broken down. Other parks, the buildings are just worn out. Better housing is needed also. He said that the Board is appreciative of the funds that they have received.
- TESTIMONY:** **Senator Hill** said that he would like to testify in support of Mr. Hancey's appointment, having known him for many years. Senator Hill said that Mr. Hancey is completely dedicated to whatever he does.
- Chairman Schroeder** thanked Mr. Hancey for appearing today before the committee. Committee consideration for the appointment will be Friday.
- S 1283** **Chairman Schroeder** reviewed this bill for the committee. It would lower the Senior combination license from \$10.00 to \$3.25. Last year, when other licenses were increased ten percent, the Senior combination license was increased 300 percent. The Department of Fish and Game estimates that the fiscal impact would be a decline of revenue of \$282,500.
- S 1420** **Chairman Schroeder** presented this bill also. By rounding up the fee charge to the next dollar amount, and raising the Senior Combination to \$4.00, the fiscal impact on Fish and Game would only be a negative \$31,000 to their budget.

TESTIMONY:

Inserted into the minutes is the testimony of **Ms. Sharon Kiefer**, Legislative Liaison for the Idaho Department of Fish and Game.

Mr. Chairman and Committee:

Idaho Department of Fish and Game fees were implemented in July, 2005. Fees were generally increased 10-15% as a “stay-even” adjustment.

S 1420 proposes to reduce the Sr. combination license to \$4.00 (\$5.75 with vendor fee). A rationale of this bill is to provide about a 10% increase for the Sr. license compared to the 2005 increase from \$4.50 to \$11.75 (including vendor fee). To offset the estimated \$230,600 revenue deficit from this fee reduction, this bill would “round up” fees for several licenses and tags to the nearest dollar, generally \$0.25 to \$0.50.

Our estimate is that this fee adjustment still results in a revenue deficit of \$31,000. This may grow because we expect Seniors to rapidly increase as a customer group, based on demographics (i.e. maturation of the baby boomers).

The Commission previously opposed S 1283, a bill which would reduce the Sr. fee to \$5.00 (including vendor fee). Key points for the opposition were: 1) revenue effect to the Department that is expected to increase as this user group increases (baby boomer demographics), 2) further subsidy of a significant user group of resources, and 3) support for the current fee structure, which the Commission and Department had worked with the Legislature to develop and a structure that makes the cost of Senior and youth hunting license comparable.

The Commission opposes this bill for reasons expressed in their opposition of S 1283 but also because:

“This bill increases fees for most Department customers, albeit a small amount, but the increase is not targeted to Department program needs or wildlife resource needs, as are fee proposals from the Commission and Department.

“Another fee adjustment, on the heels of the last fee adjustment, may preclude customer and legislative support for near-future fee increases targeting specific needs of the Department, including inflation and potential program enhancements.

- The Commission and Department provide substantial public input opportunity for adjustment to fee structure. A legislative adjustment will preclude broad public input opportunity and will have negative effect on Department customer relations.

Senator Pearce inquired as to the reason for the dramatic increase in the Senior license fee. **Ms. Kiefer** replied that it was not the Department's original proposal, but working with the legislative body to adjust that proposal, the rationale was to try and harmonize costs between seniors and youth hunting licenses.

MOTION:

Senator Cameron said it would be interesting to see what the House would do with these two bills. He made the motion to send both S 1283 and S 1420 to the floor with a do pass recommendation. There was no second to the motion.

Senator Cameron then made a motion to send S 1283 to the floor with a do pass recommendation. There was no second to the motion.

Chairman Schroeder said both bills would remain before the committee and anyone could make a motion on them at anytime because no action was taken.

Chairman Schroeder passed the gavel to **Vice Chairman Pearce** and asked him to chair the remainder of the meeting.

S 1393

Senator Schroeder presented this legislation pertaining to bio diesel fuel. It will provide a biodegradable fuel standard, provide an effective date, define "biodiesel fuel", and provide for disclosure of biodiesel content.

He said that he served as co-chairman on the Biotechnology Task Force this past summer. He provided material relating to the committee's work, Bioldaho, and questions/answers on bio diesel obtained from the Internet.

Senator Schroeder said the biodegradable fuel standard is the Minnesota language. He then read from the bill, lines 11-14, which says " Minimum content. Except as otherwise provided in this section, all diesel fuel sold or offered for sale in Idaho for use in internal combustion engines shall contain at least two percent (2%) biodiesel fuel oil by volume."

TESTIMONY:

Testifying was **Rob Franklin** whose family owns United Oil. They run farm delivery bulk plants from Mackay to Caldwell in 13 different towns. They also sell fuel to truckers and construction companies. He is opposed to the mandate that biodiesel, blended with diesel fuel, as written in S 1393. He said there are a number of problems with the bill - supply, quality, the fact that it jels, and the price. Mr. Franklin said they sell biodiesel to some of their customers and last spring they went for more than 30 days and could not get a supply. Their supplier had problems. He also said that he is not aware of any specific standard for manufacturing biodiesel. The product itself actually jels at over 30 degrees and this is a real problem in the wintertime.

Mr. Franklin stated that the cost is 25 to 50 cents a gallon above regular diesel fuel, which is a significant impact. Because of the cost, they have

few customers who choose to buy it. Mr. Franklin again stated that he is opposed to the bill.

Senator Burtenshaw inquired if additives could be added to keep the fuel from jelling. **Mr. Franklin** said additives could be added and there would be some relief, but it won't perform like regular diesel fuel.

Senator Stennett noted that Minnesota has had the two percent mandate for over a year and it is colder in Minnesota than in Idaho. He asked Mr. Franklin as to how the fuel is working there. **Mr. Franklin** replied that he didn't have any direct knowledge, but has heard that the state of Minnesota has had to suspend blending, more than once, because of performance issues with the product.

Senator Schroeder said it was his understanding there were some producers in Minnesota that were not getting all the glycerin out. (The glycerin is removed by the transesterification process, where the glycerin is separated from the fat or vegetable oil.) The state did not have a program of quality control, but they since have become more aggressive. Senator Schroeder said that Dr. Jon Van Gerpen, Department Head of the Biological and Agricultural Engineering, University of Idaho, said a disadvantage of biodiesel has eight percent less energy per gallon, but using a 20 percent blend shows almost no difference in power.

TESTIMONY:

Testifying next was **Paul Sudmeier, president and CEO of the Idaho Trucking Association**. The association has 290 members serving the trucking industry and they are opposed to the bill. He said a product should not be mandatory for truck transportation and there should be no difference in the two modes that haul the bulk of Idaho's freight (railroads are exempt).

Senator Williams inquired if the trucking industry in the state of Idaho has had any problems with jelling, using straight #2 diesel oil in the wintertime.

Mr. Sudmeier replied that there are always some jelling problems somewhere and it's usually a case of overdue maintenance on fuel filters and in some cases, the fuels. He said #2 diesel performs quite well. Minnesota passed a mandatory law in spite of the truckers opposition.

Senator Little inquired as to the number of gallons of diesel Idaho consumes annually. **Mr. Sudmeier** said he didn't know, but would get the figures for Senator Little.

Senator Burtenshaw said he use to run trucks and in the wintertime, they mixed #1 with #2 to keep it from jelling. He asked if biodiesel would mix. **Mr. Sudmeier** said that it will mix, but part of the problem is there is no uniform standard as to what biodiesel really is.

TESTIMONY:

Inserted into the minutes is the testimony of **Dennis Campo, President of Campo Oil Company, Inc.**

Dear Members of the Resources & Environment Committee:

I am a long-time fuel distributor in the state, and I am opposed to the passage of Senate Bill S1393 Biodegradable Fuel.

As fuel suppliers, we are currently having to deal with the Federally mandated Ultra-Low Sulfur Diesel switch-over this year. Despite assurances to the contrary, there are serious lack of supply and storage issues. This proposed "biodiesel" bill has the potential to cause much more serious supply issues for the state.

One of the main un-resolved issues with biodiesel is the cold weather suitability. There are currently no additives available that prevent biodiesel from solidifying at the low temperatures found in the majority of the state at various times during our winter months. Until a solution is found, our customers will have every incentive to fuel out-of-state, or bring fuel in from out-of-state, to prevent the costly thawing of fuel lines and repairs to vehicles that biodiesel solidification causes.

There have been reports from other states where biodiesel has been used of quality issues, leading to costly repair issues for customers. Considering biodiesel is mainly used by trucking firms and farming, two industries which are already struggling these days, the forced biodiesel mandate is probably the last thing they need at this time.

While we all support our President and his ideas for reducing the necessity of imported oil onto our shores, I do not feel that the forced mandate of biodiesel in the State of Idaho is the best way to accomplish anything but reducing diesel availability and increasing diesel prices.

TESTIMONY:

Next to testify was **Karl Ward, Ward Oil**, from southeastern Idaho. He is also vice president of the Idaho Petroleum Marketers. Mr. Ward said their industry is not against biodiesel, but oppose a state mandate. They feel there should be a nationwide biodiesel standard to regulate the quality of diesel being produced.

He said Minnesota became the first state to mandate biodiesel, but they quickly repealed the mandate during the winter months. He then read from the Milwaukee Journal Sentinel about some problems that Valley Cartage Trucking had. It cost them thousands of dollars in engine breakdowns and time lost on the road. Valley Cartage alone changed about 50 fuel filters in a month.

Mr. Ward stated that biodiesel is a good thing, but it was wrong for the state (Minnesota) to pass a mandate requiring its use. Now the public and consumers of diesel fuel have to bear risks that would have been borne by investors in a normal and unfettered market.

TESTIMONY:

Inserted into the minutes is the testimony of **Steve Thomas for Chevron**.

He gave a copy of the following information to the committee members and referred to it as the "Blue Sheet"

Like many American businesses, Chevron opposes mandates. And, while this bill is clearly well intentioned, it uses a government mandate to achieve its purpose; further, the bill is ahead of its time, in terms of applicable ASTM standards, which are still being developed.

In particular, the bill...

1. Mandates that 2% by volume of all diesel sold in Idaho be biodiesel ("B2");
2. Two combined trigger events: (a) 30 days after Ag Director certifies 4 million gallon production "capacity" exists in Idaho (not that it is actually being produced), and (b) 18 months after the Ag Director certifies a 2cent/gallon price reduction for B2 biodiesel;
3. Defines "biodiesel" to mean animal or plant derived fuel meeting ASTM *D6751-03a* for biodiesel fuel (B 100) blendstock;
4. Requires disclosure on the bill of lading, with exceptions, that diesel being transferred from refinery or terminal is in fact biodiesel.

Problems with the bill include:

- A. Markets allocate resources better than government mandates, including preservation of product innovation/improvement and consumer free choice, e.g. how many people have been demanding biodiesel for personal use in their own trucks or farm equipment?
- B. No specification for finished biodiesel blend, a spec the ASTM is working on now;
- C. While the ASTM is developing that new spec, biodiesel blends should, at minimum, meet ASTM *D975*, which is the current spec for today's diesel fuel (one notes several recent adverse experiences in Minnesota, where that state had to suspend its mandate, due to biodiesel blendstock quality problems, e.g., trucks were being disabled by gummy deposits plugging fuel filters);
- D. Enforcement: the bill is silent. Yet, to meet quality minimums, protect expensive engines, and avoid interrupting Ag planting/harvesting or truck shipments, Weights & Measures (or other appropriate state agency) must be charged with active quality enforcement of the ASTM standards set;
- E. "Capacity": no mandate should be triggered until actual production in Idaho exists;

F. The proposed thirty (30) day implementation trigger is unworkable. Producing the proposed biodiesel blends will require new tankage, piping, and injection facilities at fuel distribution terminals. Adequate time must be provided for engineering design, permitting, materials acquisition, installation, and commissioning. The implementation trigger should be at least one (1) year.

Following, is Mr. Thomas' verbal testimony.

"I'll be brief as many of my points have been made by people close to the industry. I represent Chevron and do oppose this particular bill. Not because we are against bio diesel, per se, we are not. We do have problems with mandates as a market of good market allocation, as a matter of political philosophy.

We hope the bill will be held for the number of reasons already stated, but if you choose to make the bill go forward, I would direct your attention to paragraphs Band C on the blue sheet. Currently, there is no specifications for a finished biodiesel blend. The American Society for Testing Materials (ASTM) is now working on a spec, but it doesn't now exist. So, we think it should be held pending the development of that spec or moving ahead on an interim basis, we need an interim spec for biodiesel. We suggest it should meet the current ASTM D975, which is today's spec for diesel fuel. The bill is silent on enforcement. Because of these quality issues, which I've heard from both sides of debate so far, we suggest something be done by way of amendment to send a message to the appropriate agency, I don't know if it's Weights & Measures or who it would be, but somebody needs to be told to release the specs on this fuel if indeed it's going to be permitted in our state.

Next, on paragraph E, the capacity trigger on this is 4 million gallon, I believe. That word capacity is a little tricky. I think the actual production ought to be the standard.

And finally, we ought to make sure that we have at least more than the 30 days after the triggering event because if indeed this is law, my industry will need time to build tankage, piping, to get various permits, etc. in order to be ready to meet the new law. "

TESTIMONY:

Dan Riley, Vice President, Government Relations, Tesoro Refining and Marketing Company, testified next. He stated that Tesoro is not opposed to alternative fuels, but they do oppose mandates. He stated that the US Congress passed a Comprehensive Energy Policy Act in 2005 that mandates use of alternative fuels. The legislation adopted imposes a nationwide renewable fuel standard of 7.5 billion gallons be blended into transportation fuels by 2012. The mandate requires 4 billion gallons of renewable fuel be blended into fuels in 2006. Biodiesel qualifies as a renewable fuel in the federal energy bill. Agriculture based biodiesel receives a \$1.00 gallon tax credit. He concluded his remarks by

suggesting that a policy built on incentives will serve the consumer far better than an additional mandate.

TESTIMONY:

Ms. Suzanne Schaefer, legislative advisor for the Idaho Petroleum Marketers, testified on behalf of Rick Waitley, Executive Director of Food Producers of Idaho. She said the Food Producers oppose S 1393, with three members abstaining. Those three were the Idaho Farm Bureau, Idaho Grain Producers and the Potato Growers of Idaho.

That concluded testimony from the audience.

Senator Cameron inquired as to why this committee had this bill, rather than the Transportation Committee. Senator Schroeder said the bill was assigned to this committee by the Pro Tem.

In **Senator Schroeder's** closing remarks, he referred to one of his handout's - Biodiesel definitions. The American Society of Testing and Materials (ASTM) has given their approval for the **technical definition** which is: a fuel comprised on mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D 6751. The **general definition** of biodiesel is: a domestic, renewable fuel for diesel engines derived from natural oils like soybean oil, and which meets the specifications of ASTM D 6751.

He stated that we need to stop buying overseas products and running up our national debt. Dr. Van Gerpen, from the U of I, estimated that with just the requirement in Idaho, over 75,000 acres more of canola could be planted and the price per gallon would go up just a little. Senator Schroeder said this is what this is all about - American independence - producing things here, rather than buying them overseas.

Senator Williams said it is important to look to the future and alternative fuels are part of that. He said, with no disrespect to the fuel companies, they have almost a monopoly, as they have done very well for themselves and will protect their turf. One problem that Senator Williams has is the lack of quality control, but he has hopes that it can be worked out.

MOTION:

Senator Stennett made a motion to send S 1393 to the 14th Order. It was seconded by **Senator Schroeder**.

Senator Cameron said that he needs to be better informed and suggested that they wait for a year. However, he agrees with the energy independence and feels there needs to be a comprehensive approach on an over-all energy policy. Senator Cameron said he is very supportive of the agriculture industry to have other places to market their products. He said he opposes moving the bill out of the committee.

Senator Stennett said he sees three ways to improve and amend the bill: to change capacity of production in Idaho; the trigger mechanism; and the standards. He feels they can do things within the bill to improve it and make it better.

Senator Schroeder said, as a way of explanation, he was appointed co-chairman with Doug Jones on the Biotechnology Task Force this past summer. They worked very closely with Bioldaho and this bill was one of their objectives.

A roll call vote was requested. Voting aye were Senators Langhorst, Stennett, Brandt, Schroeder and Pearce. Voting nay were Senators Little Williams, Burtenshaw and Cameron. The vote was 5-4 in favor of sending S 1393 to the 14th Order. Senator Schroeder will be the floor sponsor of the bill. Co-sponsor is Senator Stennett.

Chairman Pearce returned the gavel to Senator Schroeder.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 3:05 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 10, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS:** Chairman Schroeder, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Langhorst
- ABSENT/
EXCUSED:** Vice Chairman Pearce, Senator Stennett
- CALL TO
ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m.
- MINUTES:** **Senator Brandt** moved to approve the minutes from March 6. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**.
- Senator Burtenshaw** moved to approve the minutes from March 3. **Senator Brandt** seconded the motion. The motion carried by a **voice vote**.
- APPOINTMENT:** **Senator Brandt** moved to approve the appointment of **Douglas Hancey**, whose hearing was held on March 8, **to the Park and Recreation Board**. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**. **Senator Hill** will sponsor the appointment on the floor.
- H 524** **George Bacon, Operations Chief, Idaho Department of Lands (IDL)**, presented **H 524**, regarding **Encroachments, navigational permits**. He introduced **Mike Murphy, Program Manager, Navigable Waters Program**, who was present to answer questions. The Lake Protections Act, passed in 1974, set out regulations for property owners with encroachments on navigable lakes. People who already had encroachments, such as docks, at that time were allowed a free permit. Over the years during regulatory enforcement, individuals who had not obtained their free permit prior to the Act were still allowed to as long as they could prove that the encroachments existed prior to the Act. More than twenty years later, many properties have changed hands. This bill would allow a free permit for any encroachment which has not changed its footprint since 1974 as long as there is proof, such as photographs, to back it up. Permits are a one-time payment only, if the encroachment has not changed.
- Senator Langhorst** asked about the procedure and cost for adding an encroachment after 1974. **George Bacon** said there is a \$50 permitting fee to be paid prior to construction, and the encroachments must conform to guidelines on size and length.
- MOTION:** **Senator Little** moved **H 524** to the floor with a **do pass** recommendation. **Senator Brandt** seconded the motion. The motion carried by a **voice**

vote. **Senator Little** will sponsor the bill on the floor.

H 525

George Bacon introduced **H 525**, relating to **encroachments on Navigable Lakes**, and explained that it is a simple change to facilitate the Department's regulatory duties and to make procedures easier for the public to understand. The Lake Protection Act dictates that the distance which a dock may stick out into a lake depends on the size of a boat typical to that lake. This requirement makes regulatory personnel determine whether a boat is too big, and the requirement fails to reach the heart of the issue. This legislation changes the criteria by allowing the length of a dock to be determined by the lengths of other encroachments already in existence, in cases where a line of navigability has not been determined. This change would also allow for site-specific planning.

Chairman Schroeder asked what happens when a lake changes depth, shoreline, etc. and **George Bacon** described the determination process which would then be used.

Senator Little asked if this legislation would affect encroachments which were grandfathered in, and **George Bacon** said it would not.

MOTION:

Senator Brandt moved **H 525** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote.** **Senator Brandt** will sponsor the bill on the floor.

H 526

George Bacon presented **H 526**, on **certain permit fees for Encroachments.** This bill establishes a new maximum for fees which can be charged for permits, but does not raise the fees. The current fee structure has not changed in 32 years. He referred to a chart which shows costs and projections associated with the program. Although the program spends more than it receives currently, the chart showed the Department's plan to remedy the discrepancy between revenues and expenditures.

In response to a question by **Chairman Schroeder**, **George Bacon** stated that any fee changes would have to be introduced through rules and would have to come again before the committee for consideration.

Senator Cameron discussed with **George Bacon** some of his concerns about the projections in the chart.

Senator Little commented on the profit earned, in terms of returns on the endowment from cabin sites and how maintaining the quality of lakes is part of the endowment.

There was more discussion on the numbers reflected in the chart and the reasons behind some of the cost increases. **George Bacon** said the biggest spikes in cost have to do with commercial leases. Discussion on commercial leases followed and Coeur d'Alene Resort and Henry's Lake were highlighted as examples. The legislation includes the flexibility to adjust the costs of permitting commercial docks in a way which would cost the Department less. There was also discussion on the permitting process for single- and multi- family docks.

MOTION: **Senator Burtenshaw** moved to send **H 526** to the floor with a **do pass** recommendation. **Senator Langhorst** seconded the motion. The motion carried by a **voice vote**. **Senator Burtenshaw** will sponsor the bill on the floor.

H 527 **George Bacon** introduced **H 527**, on **Encroachments, permits, and recording**. This bill would require encroachments to be recorded with the county in a similar manner to the process by which easements are recorded. Currently, the administrative rules state that all permits are to be recorded, but it is difficult to enforce because the requirement is not specifically outlined in Idaho Code. Because it could be misinterpreted that the rules overextend the Code, this legislation seeks to remedy the difference. It will cause no change to the Department's administrative process but it would clarify the rules. Having encroachments recorded is important when property changes hands.

MOTION: **Senator Langhorst** moved to send **H 527** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion.

Senator Little asked about the recording process and whether everyone with a permit would have to visit the county courthouse once the bill is passed. **George Bacon** explained that if a permit is not recorded, it is not valid. This bill causes no change to current practice because current practice is dictated by rule. This bill simply conforms existing Code to current practice in accordance with the original intent of the requirement. No permits will be invalidated.

Senator Burtenshaw asked how multi-family docks would be recorded and commented that property owners should be protected from docks coming under one owner's possession when other property changes hands.

Senator Langhorst asked how the bill would be enforced, and **Mike Murphy** said there would be no invalidation but a request that the owner record the encroachment as soon as possible. There have been no cases where a fine had to be assessed, but fining the property owner would be the next step if he/she refused to comply. If a lawsuit were to result, it would be a civil, not criminal, case.

The motion carried by a **voice vote**. **Senator Langhorst** will sponsor the bill on the floor.

H 528 **George Bacon** introduced **H 528**, on **Community Navigational Encroachments**. It cleans up language defining community docks in Idaho Code to conform with how they are defined in rule.

MOTION: **Senator Brandt** moved to send **H 528** to the floor with a **do pass** recommendation. **Senator Williams** seconded the motion. The motion carried by a **voice vote**. **Senator Brandt** will sponsor the bill on the floor.

H 529 **George Bacon** introduced **H 529**, on the **Sale and Measuring of State-owned Timber**. This bill relates to endowment land management. Timber sales, which bring in 85% of the revenue on endowments, are appraised and part of the appraisal process includes an estimate of the

costs for the state to measure logs. The billing process, which costs about \$1 million per year, is paid from the dedicated fund. Timber bid prices are reduced by the amount needed to measure the logs and then go into a dedicated account from which the general fund accrues interest (about \$20,000 per year). This bill is part of the Department's budget package wherein the Department wants to move log measurement from the dedicated account into the Earnings Reserve. The Earnings Reserve would take care of paperwork, etc., as they do currently, but this bill will allow them to budget for it. The earnings from the interest would accrue to the endowments and will ultimately result in a budget reduction of \$400,000, once a few other programs are dealt with similarly.

Chairman Schroeder asked about lump-sum selling, and **George Bacon** explained that lump-sum selling is used in small sales, called direct sales. All Eastern Idaho sales are lump-sum sales.

Senator Little made an inquiry about costs, and **George Bacon** explained that the downside to the legislation is that the general fund would lose about \$21,000 in interest. This led to discussion on the fiscal impact and other financial implications of the legislation, such as whether it is proper for the general fund to receive interest on endowments.

Senator Langhorst asked about a change in wording from "public interest" to "in the interest of the State," and **George Bacon** responded that public interest should drive endowment land, but it is managed for a specific purpose for the state. The way the legislation was written prior to the change, it could be implied that everyone has an interest and could create challenges in court. The Supreme Court has ruled that not just any party has standing during a suit against the endowment. The wording change was for clarification.

Chairman Schroeder asked if there was a trend toward excluding the public from accessing Department lands for hunting and fishing. **George Bacon** said there are no plans to that effect, and that allowing the public to access their lands for recreational use is part of their mission.

Senator Burtenshaw asked about the process of and restrictions on timber sales, and discussion on the bidding process followed.

MOTION: **Senator Little** moved to send **H 529** to the floor with a **do pass** recommendation. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**, **Senator Langhorst** voting no. **Senator Little** will sponsor the bill on the floor.

H 639 **George Bacon** presented **H 639**, relating to **encroachments on Navigable Lakes**. This bill originated from the House Resources and Conservation Committee during discussions on the navigable waters program. There was concern about a lack of clarity on the definition of a navigable lake, and this bill remedies the confusion by stating clearly that a manmade reservoir does not fall under the program's jurisdiction.

MOTION: **Senator Williams** moved to send **H 639** to the floor with a **do pass** recommendation. **Senator Brandt** seconded the motion. The motion carried by a **voice vote**. **Senator Williams** will sponsor the bill on the

floor.

DISCUSSION: **Chairman Schroeder** stated that without objection, **H 524, H 525, H 527, H 528, and H 639** would be sent to the consent calendar.

MINUTES: **Senator Williams** moved to approve the minutes from March 1. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**.

S 1283 **Chairman Schroeder** handed his gavel to **Senator Burtenshaw** during discussion on **S 1283**, regarding **Fish & Game** and its **senior combination license fee**.

MOTION: **Senator Brant** commented on the need to address this issue this year and moved to send **S 1283** to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion.

Senator Schroeder reminded the committee that this bill lowers the Senior Combination license fee to \$3.25. Its fiscal impact would be \$230,000.

Senator Cameron stated that the fiscal impact was analyzed by Ray Houston and based on the numbers of anticipated licenses to be sold, the fiscal impact will probably be less. Many seniors bought their license early to avoid the fee increase which would also lessen the fiscal impact.

Senator Langhorst asked for the Department of Fish and Game to comment on the fiscal impact. **Sharon Kiefer, legislative liason, Department of Fish and Game**, explained that the numbers used to calculate the fiscal impact were averaged from the numbers of Senior Combination licenses sold over the last three fiscal years.

There was discussion about the possibility that the state never benefitted from the fee increase last year because so many seniors avoided the increase by buying their licenses early. If so, then the state would not see as much fiscal impact as has been projected. The Department's budget was probably set on the current, higher fee, but since the Department usually has greater expenditures than revenue taken in, the budget will run in the negative either way. Since the legislation would not go into effect until July 1, there would be no impact to the Department's 2006 budget.

Senator Schroeder commented on the reasons behind the bill.

There was discussion about whether the fee would still qualify for the federal match program, and **Sharon Kiefer** indicated that it would. She explained how the match program works. She also said the fiscal impact would not be higher than the amount indicated.

Senator Schroeder requested a roll call vote.

Senator Little commented that it might be a slippery slope to begin setting fees one program at a time. **Senator Cameron** said that this bill is to right a wrong, and the committee discussed its history.

The motion carried by a **roll call vote, 6 ayes to 1 nay**. The roll-call vote is included as an attachment with the minutes.

AYES: Chairman Schroeder, Senators Cameron, Williams, Brandt, Little, Langhorst

NAYS: Senator Burtenshaw

ABSENT/EXCUSED: Vice Chairman Pearce, Senator Stennett

Senator Schroeder will sponsor the bill on the floor.

Chairman Burtenshaw returned the gavel to **Senator Schroeder** at the close of the discussion on S 1283.

ADJOURN: **Chairman Schroeder** adjourned the meeting at 3:08 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 13, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 a.m.
- He welcomed **Karl Dreher, Director, Idaho Department of Water Resources**, who will present several bills relating to water issues.
- HCR 37** **Mr. Dreher** said he would like to provide some background information on this bill, as well as on H 636. Fact sheets were furnished to committee members which he reviewed.
- On January 13, 2006, IDWR issued a preliminary order approving a minimum streamflow application on the North Fork of the Clearwater River. That order became final on January 28, 2006 authorizing the appropriation of water. Due to an oversight, the minimum streamflow was inadvertently excluded from the list of Snake River Water Rights Agreement Minimum Streamflows. This stream is on the North Fork of the Clearwater River above Dworshak Dam.
- MOTION:** **Senator Burtenshaw** made the motion to send HCR 37 to the floor with a do pass recommendation. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote. **Senator Burtenshaw** will be the floor sponsor of this bill.
- H 636** **Mr. Dreher** said this bill is very similar to the last bill. This stream is below Dworshak Dam and creates a minimum streamflow. It, too, was inadvertently omitted from the list of Snake River Water Rights Agreement Minimum Streamflows.
- Senator Williams** made the motion to send H 636 to the floor with a do pass recommendation. **Senator Stennett** seconded the motion. The motion passed by unanimous voice vote. **Senator Williams** will be the floor sponsor of this bill.
- HCR 36** **Mr. Dreher** said this legislation is to approve an application to appropriate water for minimum streamflow. He had a fact sheet for the committee to review. The source of water is Niagara Springs and Niagara Springs Creek. This request was made by the Idaho Department of Park and

Recreation and the Idaho Department of Fish and Game for the purpose of preserving aesthetic beauty and to provide recreation, fish and wildlife values. There is a state park and a commercial hatchery in that area.

Senator Stennett made the motion to send HCR 36 to the floor with a do pass recommendation. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote. **Senator Stennett** will be the floor sponsor of this bill.

H 546

Mr. Dreher said this legislation deals with loans made for water projects by the Idaho Water Resource Board. This amends existing law and makes some technical corrections. This will allow the Board the ability to approve loan requests and move projects forward in a timely manner.

Senator Pearce made the motion to send H 546 to the floor with a do pass recommendation. **Senator Burtenshaw** seconded the motion. The motion passed by majority voice vote. **Senator Little** voted nay. **Senator Pearce** will be the floor sponsor of this bill.

H 637

Mr. Dreher said this legislation deals with an exemption for public works projects that is within the jurisdiction of the Department of Water Resources and the Water Resource Board. There are two sections of existing law that can be changed. One is a requirement to file a facilities needs plan with the Department of Administration on a rolling five year basis. The second section deals with the construction process. Under current law, agencies such as the Department of Parks and Recreation, the Department of Transportation and the Department of Fish and Game are exempt from this requirement. Mr. Dreher is proposing to add the Department of Water Resources and the Idaho Water Resource Board. This exemption does not extend when office buildings or parking facilities are involved.

Mr. Dreher said when this came to light was when the Water Board was involved in constructing a small hydro electric generation plant below Dworshak. Technically, they were subject to oversight by the Department of Administration and the Department of Administration had no interest in overseeing the construction and essentially gave them a waiver. But more and more, the Water Board is getting involved in construction projects as part of its role. Again, Mr. Dreher said that the Department of Administration has no interest in exercising over-sight, so he proposes that the Department of Water Resources and the Idaho Water Resource Board be exempt.

Senator Stennett made the motion to send H 637 to the floor with a do pass recommendation. **Senator Burtenshaw** seconded the motion. The motion passed by unanimous voice vote. **Senator Stennett** will be the floor sponsor of this bill.

H 544

Norm Semanko, Executive Director, Idaho Water Users Association, presented this legislation. He said a number of irrigation districts have worked on this for the last two years and what it does is to allow the irrigation districts to have the option, if they choose to, to have weighted voting and that would be based upon the assessed acres owned within

the irrigation district. No change would be made without the majority voter approval.

Senator Cameron made the motion to send H 544 to the floor with a do pass recommendation. **Senator Little** seconded the motion. The motion passed by a majority voice vote. Voting nay were Senators Stennett and Burtenshaw. **Senator Cameron** will be the floor sponsor of this bill.

H 576

Mr. Semanko said this legislation was brought to them by attorneys from the Upper and Lower Valleys. They identified a conflict in the code with regards to elections for directors. This legislation would also match up the notice provisions, as well as amend the notice provisions for bonding to make them consistent with other notice provisions.

Senator Little made the motion to send H 576 to the floor with a do pass recommendation. **Senator Cameron** seconded the motion. The motion passed by unanimous voice vote. **Senator Little** will be the floor sponsor of this bill.

HJM 14

Representative Eskridge presented this House Joint Memorial. It opposes the Federal Lands Recreation Enhancement Act. This Act allows the Forest Service, Bureau of Land Management, Fish & Wildlife Service, National Park Service, and the Bureau of Reclamation to charge fees for recreational use of federally managed land by the general public. Access fees are required in order to enter certain land. Failure to comply with these access fees, can result in substantial fines and criminal penalties. Those fines can go as high as \$5,000. The Act intended fees to be restricted to developed sites and lists six amenities that need to be in place before charging fees. These amenities include permanent toilets, trash cans, picnic tables, interpretive signs, designated parking and security services.

Representative Eskridge said they are finding that the land management agencies are charging fees for land that has not been improved and people are being ticketed.

Montana, Oregon, and Colorado have already passed a resolution to repeal the Act and Alaska is on the verge of passing their resolution.

Representative Eskridge said that this legislation is not directed against fees, but a memorial directed against the abuse of fees and in those areas where the land management agencies charge fees for unimproved land and go beyond the intent of the Act.

TESTIMONY:

Inserted into the minutes is the testimony of **Ms. Lanie Johnson** from Sandpoint, Idaho.

I am Lanie Johnson from Sandpoint in the Idaho Panhandle. I want to thank the Memorial's sponsors, Sen. Langhorst, Sen. Stennett, Rep. Eskridge, Rep. Anderson and Rep. Harwood for all their efforts. I'm here representing the Kinnikinnick Chapter of the Idaho Native Plant Society. Here are copies of the Resolution (copies were given to committee members) passed by KK last July calling for the repeal of the Federal

Lands Recreation Enhancement Act which authorizes the collection of fees for recreational use of public lands. Instead of the Recreation Enhancement Act, or REA, opponents prefer to call it the Recreation Access Tax, or RAT.

KK holds field trips, often on public land, for its members to observe and learn about local native plants in their habitats. User fees would either limit the attendance on field trips or limit the areas where field trips could occur. Of course we can observe native plants we've planted in our Arboretum in town. We're proud of the Arboretum but it can never provide the adventure of being out on a trail in a forest, not to mention the possibility of coming across new species of natives we haven't seen before.

RAT requires a minimum number of amenities in an area in order for a fee to be charged. Public land managers have already been greatly tempted to add amenities in order to qualify an area for fee collection. This concentrates use on the more profitable areas and diminishes access and opportunity to enjoy other places. New amenities such as parking lots and roads will necessarily degrade native plant habitat.

As a private citizen, I have other concerns as well:

What would you call a law that was never introduced, never had hearings, never debated or voted on, but was passed anyway? Unfair? Undemocratic? That is the story behind RAT. It was passed a little more than a year ago as a 'midnight rider' on the congressional Omnibus Appropriations bill.

This law is replete with vague, ambiguous language that both invites and allows manipulation by the public land agencies. One example is in Section 3 on Recreation Fee Authority. Part (f) uses the term an "area" without defining how large an area is to be covered by a fee. This has allowed the grouping of many areas into one in order to have the required number of amenities for fee collection. For example, Uinta National Forest managers kept the entrance fee for the American Forks Canyon by "bundling" all the amenities in the vast 46,000 area to meet the letter of the law.

Our state is about 2/3 public land. This means that most Idahoans will experience negative impacts from this law. One provision is at once the darkest and most ridiculous: criminal penalties for nonpayment of a fee include Class A or Class B misdemeanors which means fines up to \$5000 plus 6 months in jail or \$10,000 and 1 year in jail. (First offences carry a penalty of not more than \$100.) Liability includes vehicle owners, whether they are present or not.

In addition to the expansion of fee sites on most public lands, there are the Forest Service's Interim Guidelines for implementing the RAT. In these Guidelines can be found entirely new categories of recreation fees and permits not included in RAT and in fact prohibited by RAT. These include:

river and road corridors, hot springs, trail heads, wilderness camping, and equestrian, biking, and motorized trails; even scenic drives.

In explaining this fee program to people, I once joked that soon they will charge us for looking at a sunset. Later I found out that my joke had come true. There is a cliff overlooking the Pacific in the Los Padres National Forest in California, where people come to view the sunset. It became a fee area.

Today you all have an opportunity to join many other western states in sending a message to Washington: the people of Idaho want to pass on to their children and grandchildren our traditional heritage of every person having access to public lands which remain in their natural state. I hope you will take advantage of this opportunity and I thank you all for listening to this testimony.

TESTIMONY:

Inserted into the minutes is the testimony of **Ken Fischman**, Sandpoint.

Ladies & Gentlemen: My name is Ken Fischman. I live in Sandpoint, Idaho. I want to thank Senators Langhorst and Stennett for sponsoring this Resolution in the Senate. It will be crucial in our battle to preserve our public lands.

If you are fortunate enough, there is one spot on Earth you can go to that makes your heart sing. For my wife and me, that place is the Aravaipa Wilderness in southeastern Arizona where we once spent an idyllic season as Wilderness Rangers for the BLM.

A few years later we brought some friends there to let them experience the abundant birds, perennial stream, and gorgeous multi-colored sandstone cliffs. As we approached the entrance to the canyon we noticed a sign on the boundary fence that we did not remember having seen previously. After all, this was a wilderness canyon, with no designated trail, no facilities, and no markers.

The sign stated something to the effect of 'Fee Demonstration Program, \$5 per day per person.* That was our introduction to the wonderful new world of fees for practically everything on Federal land.

I am here today to represent the Northern Idaho NO-RAT coalition. I have noticed that laws from Washington often do the opposite from what their titles state. We do not think that the name, Federal Lands Recreation Enhancement Act, is accurate. Funny name for a law whose effect is to keep people out of public lands. We prefer to call it the Recreation Access Tax or RAT.

NO-Rat is a diverse alliance, including among them, Republicans, Democrats, wilderness advocates, and motorized recreation enthusiasts. Groups that have signed on include: Kinnikinnick chapter of the Idaho Native Plant Society, the Pend Oreille Pedalers, North Idaho Backcountry Horsemen, Lake Pend Oreille Cruises, and Sandpoint Sports.

Last June, our ad hoc group in the small town of Sandpoint collected almost 500 signatures on a petition demanding that the RAT be repealed, and presented it to Senator Larry Craig.

Here is what Senator Craig had to say in an Op Ed a month later. "The next time you visit your local public library, drive an interstate highway through the West or attend a city council meeting, imagine how frustrated and upset you*d be if you were charged a fee for the privilege of doing so. In spite of the tax dollars you already pay to support these entities, imagine if you were charged an extra "user fee" or "admission fee."

I know a guy named Scott, who lives in Bend, Oregon. He loves to wander through the nearby Newberry National Volcanic Monument. Though retired, and on a modest budget, he continued to visit, even when the Forest Service started charging entrance fees a few years ago.

Recently, he was thrilled to learn that The Federal Lands Recreation Enhancement Act, prohibited entrance fees. The next time he visited Newberry, sure enough the entrance fee was gone, but he found to his dismay that it had been replaced with fifteen separate fee sites within the Monument. Scott has had a glimpse of the future of public land recreation.

The implementation of the RAT has prompted resolutions demanding its repeal by the Montana, Oregon, Colorado, and Alaska legislatures. Testimony for the Montana resolution came from the Montana Wilderness Association, Montana Logging Association, the Sierra Club, and the Montana Trail Vehicle Riders Association, among others.

We have asked our state Representative George Eskridge to sponsor an Idaho resolution against the RAT, and we thank him very much for doing so. At our very first meeting with him, Mr. Eskridge said of our National Forest*s founder, "Teddy Roosevelt*s intent was *not* to make money."

The Federal government has been systematically starving the National Forests recreation and maintenance budgets for years. Last year that budget for the Panhandle NF was exactly the same as it has been for the last fifteen years. At historic inflation rates, that is actually a 45% decrease from 1990.

A few years ago, my wife and I were volunteer fire lookouts in Washington state*s Gifford Pinchot NF. The efforts of the firefighting crew there to provide us with everything we needed was heroic, but they had to do it with spit, cardboard, and ceiling wax because they had insufficient money for maintenance. It should not be that way.

No wonder the forest managers are tempted to institute more fees in more areas. Inadequate budgets, together with the passage of the RAT, now gives them powerful financial incentives for development of public lands in order to lure more visitors to increase revenue.

The ironic part of this is that they may make no money at all from these revenues. The Government Accounting Office, which is the investigative

arm of Congress, did a study in 2002 of the previous Forest Service fee program, and showed that the cost of collections and enforcement was more than 50% of the amounts of fees collected. Therefore, the fees did not provide much additional money. This is a heck of a way to run a railroad - or a National Forest.

The RAT marks a radical change in the way our public lands are funded. Charging fees for land we already own, and maintain through our income taxes, is tantamount to double taxation. Fees for accessing public lands to fish, hunt, or hike, also constitute a regressive tax, discriminating economically against those least able to pay.

I have been an Interpretive Guide for the Forest Service on Durango & Silverton Narrow Gauge Railroad that carries tourists up the spectacular Animas River Gorge. Many of these tourists are foreigners, and they constantly told me of their amazement that America had so much public land. "We have nothing like this in our country. How lucky you Americans are".

Paying fees to use public lands is contrary to the idea that these lands belong to the American people, and are places where everyone is granted access and is welcome. Let's send Washington a message. Thank you for your attention.

TESTIMONY:

Inserted into the minutes is the testimony of **Richard Alexander**.

Thank you Mr. Chairman and members of the committee -as a concerned citizen I have followed this issue since 2002.

First let me say I am not against fees. We have always paid for amenities like water, power at developed campgrounds or mechanize boat ramps. Fees can serve a useful purpose. Take the Middle Fork of the Salmon River. By necessity it is capacity controlled to limit impact. By necessity it has seasonal rangers protecting human life. It is a situation that justifies reasonable fees. But that does not mean fees in the off season or fees for someone to hunt, fish or other non-capacity controlled use. The Federal Lands Recreation Enhancement Act is a poorly drafted piece of legislation.

Objections in 8 areas:

1. The way it passed
2. Impact on local business
3. Double Taxation
4. Unreasonable criminal penalties
5. Vague
6. Widespread Noncompliance by the agencies
7. Overly aggressive collections
8. The retaining of fee revenue at the local level

1. The way it passed

Signed into law December 2004 - replacement for the Recreational Fee Demonstration Law. Rider to the 2005 Omnibus Spending Bill - can only

be voted up or down - no amendments are allowed.
No floor vote in the House of Representatives. No vote in the Senate.
We now have a law that creates major criminal penalties and it never had hearings or even a vote This is the legislative process at its worst.

If for no other reason, this committee would be justified in sending a message to Congress that citizens deserve a better legislative process.

2. Impact on Local Business

Visitorship is falling. People are avoiding fee areas - not spending money in restaurants and local businesses Personally I used to frequent Sawtooths - have avoided for the last 3 years. I know of many others who do as well

3. Double Taxation

Outrageous to charge citizens merely to enter lands they already own. No one has an objection to paying for amenities they need, but we do object to pay for mere entry.

4. Unreasonable penalties

This law that never received a vote, imposes major obstacles to public access, creates misdemeanors criminal penalties of first offense a \$100 fine and second offense 1 year in jail or a \$5,000 fine or both. Worse it prescribes strict liability. Lack of intent has no bearing on your guilt or innocence.

One example:

You are a passenger in automobile at a fee site and you believe the driver has a pass. Turns out the driver has no pass. You are just as guilty, just as culpable for a misdemeanor.

The same would apply if someone borrowed your car and did not pay a fee. You as the owner of the automobile are guilty of a misdemeanor.

5. It's Vague - it's hard to know where fees begin. The law refers to "areas", but doesn't define what "areas" means.

As an example:

If one trailhead of the Sawtooths has fees and another not - and you enter a non-fee trailhead and walk towards the fee trailhead, how close can you come to that fee trailhead before you must pay a fee. Another way to ask the question is, which one of your forward steps turns you into a criminal?

6. Widespread Noncompliance by land Agencies

The new 2004 law greatly restricted the agencies from charging entrance fees, fees for undeveloped sites, or fees for disbursed usage. Sites must qualify by having certain amenities like picnic tables, toilets and other permanent amenities.

Regardless of site qualifications the agencies continue to charge illegal fees. As one example the agencies created the concept of HIRA - Hi

Impact Recreation Areas - this category was created out of thin air - you will find no mention of this category in the new law or any other law.

The significance of HIRA is it allows the USFS to throw out the rule book. Simply by unilaterally declaring an area as a HIRA they can charge fees. I have to feel for the land agencies. I can only imagine the frustration they must feel. Congress has placed them in a tough position. They steadily reduce their appropriations while telling the agencies to generate fee revenue.

Congress orders the agencies to: Reject their role as stewards of public lands and focus on revenue, focus on profits. The result by necessity is that citizen needs must take a back seat to compelled development.

The agencies have not complied in the past, they are not complying now and they will not comply in the future. They simply cannot. Because of this law, agency viability depends on adding amenities to produce revenue and cutting costs by closing or neglecting areas simply because they do not produce revenue. The solution is sufficient funding for the agencies, not compelled development.

7. Overly aggressive enforcement: So many people have stories of overly aggressive collections. There are stories here in Idaho of misconduct by agency employees, but Idaho is fortunate to have the fees collected primarily by public employees. This is not the trend in the rest of the country.

Elsewhere the agencies are contracting out fee collection to private companies. One mountainous area in California has fees collected by a company whose main business is the management of parking lots in downtown Los Angeles.

As subcontracting migrates into Idaho we will see aggressive collections become a greater problem.

8. Keeping proceeds at the local level.

On the face it seems like a great idea. Keep 80% for fee revenue and invest the proceeds locally so local citizens benefit. It is the worst part of the law and I'll tell you why.

- * Keeping the revenue locally, as opposed to nationally, puts the incentives in the wrong place.

- * A local manager has every incentive to develop for the sake of revenue.

- * To abdicate stewardship of our lands but instead to become businesses compelled to develop for the sake of revenue.

- * To close areas that do not produce revenue.

- * To classify areas as "unsustainable" or "unwanted", so designated because they do not produce fees.

- * To raise revenue by dispose of these "unsustainable" or "unwanted", areas by public auction.

In summary, I object to the way the law passed; impact on local business; double taxation; unreasonable penalties; vagueness; widespread

noncompliance by land agencies; overly aggressive enforcement; and keeping the proceeds of fees at the local level. As I look at the future ramifications of the Federal Lands Recreation Enhancement Act I suggest to this committee that we will see entrance fees disguised as "Backcountry Permits"; unwanted amenities added solely to generate revenue; closure or neglect of sites because they do not produce revenue; classifications of areas as "unsustainable" setting them up for disposal by public auction.

The Federal Lands Recreation Enhancement Act is a poorly drafted piece of legislation. I urge this committee to recommend to the full Senate the passage of this joint memorial.

Thank you Mr. Chairman and members of the committee for the opportunity to share my views.

TESTIMONY: **Ms. Susan Giannettino, Deputy State Director for Resource Services, Bureau of Land Management**, submitted written testimony, which is on file. The Idaho BLM is not taking a position on these bills (HJM 14 and HJM 20), but is providing information as to how they use the fees as authorized by the Federal Lands Recreation Enhancement Act.

TESTIMONY: This testimony was submitted by **Idaho County Commissioners Randy Doman and Jim Rehder**.

FLREA Facts for Idaho County

Idaho County receives funds from the Nez Perce National Forest, which are collected from users of the facilities on the Main Salmon River. The Idaho County Maintenance and Solid Waste Disposal use the Federal Lands Recreation Enhancement Act funds.

Funds to Idaho County vary from year to year under FLREA but generally we get the following amounts:

\$10,000 for solid waste disposal
\$25,000 for road maintenance

The main take out points for rafts, boats, kayaks, etc., are on the Main Salmon River in Idaho County, therefore, the county has the full responsibility of collection of garbage generated by folks recreating on the river. Funds received from FLREA, are used to provide extra dumpsters to accommodate that extra waste. Additionally the Forest Service uses some of the money they collect to provide a SCAT machine in Riggins to take care of human waste.

Idaho County maintains the Main Salmon River Road from Riggins to Vinegar Creek, which is used by the public for access to the take out points. This road requires far more maintenance than most county roads due to the steep side slopes, which continually dumps rocks onto the road

surface. Further, the road is extremely narrow, yet highly traveled, so the county ends up removing rocks 2-4 times a week just to keep the road reasonably safe.

The Nez Perce Forest has been very generous in supporting Idaho County with money from FLREA. If other counties are having problems getting funds from FLREA, perhaps we could work on better communication and use the Nez Perce as an example of how the program should work. Don't throw the program out because of poor execution in some areas. Please do not support HJM 14.

TESTIMONY: Inserted into the minutes is the testimony of **Rich Vaughn on behalf of the Western Whitewater Association , Inc.**

Dear Chairman Schroeder and members of the Senate Resources and Environment Committee.

The Western Whitewater Association General Membership express their support for the adoption of House Joint Memorial Resolution No. 14.

The Western Whitewater Association (WWA) is a family oriented riverboat club, organized and incorporated in the State of Idaho since 1978.

Membership currently exceeds 600, including individuals, families, commercial organizations, boat manufacturers, other manufacturers related to the boating industry, outfitters and guides.

One purpose of the Association, is to advocate for the interests of all recreational water users and to defend such users against discriminatory legislation, unfair regulations, and burdensome taxation.

The Federal Lands Recreation Enhancement Act (REA), became law by the action of one U.S. Congressman who attached this Act to a late session 'must pass' Omnibus Bill.

In our view the REA would never have passed public scrutiny. Public criticism was one of several reasons The Recreational Fee Demonstration Program was repealed.

Eight years of public criticism and scrutiny, as well as fiscal mismanagement found in General Accounting Office audits, led Idaho's U.S. Senators to withdraw their support of the Recreational Fee Demonstration Program.

One Idaho Senator is quoted as saying, "from what I have heard from Idahoans, as well as what I have seen on the ground, the United States Forest Service has not done a very good job implementing the demonstration program".

Idaho's U.S. Senators supported a 2004 Senate Bill, introduced and passed unanimously in the Senate, ending all fees except for the National Park Service.

The Western Whitewater Association has always embraced the concept that public lands are held in trust for the American people and mandatory fees limit access only to those who can afford the cost. We firmly believe fees are simply another form of taxation on the recreating public.

House Joint Memorial Resolution No. 14, expresses the controversy and opposition, which surrounds the Federal Lands Recreation Enhancement Act.

The Western Whitewater Association is one of the "hundreds of organizations" in opposition of the REA. We oppose the Act, as a result of the manner in which it became law. We oppose the Act because it is taxation on the recreating public and limits access to only those who can afford the cost.

This Resolution is one of several passed in States including Colorado, Montana, and Oregon. Alaska has a similar Resolution, which passed the House, has passed the Senate Resources Committee and waiting passage in the Alaska Senate. California and New Hampshire had passed similar resolutions several years ago.

House Joint Memorial Resolution No. 14, is the only means available to the general public to express their views and concerns toward the REA.

Fees for access to lands and waters which the Public already owns, Fees to hike, Fees to bike, Fees to picnic, Fees to observe wildlife, Fees to take a scenic drive on state roads and public right-of-way, Fees to hunt and fish, and Fees to boat, do not represent the spirit of Idahoan's who recreate on public lands and waters.

The Western Whitewater Association commends the Idaho State Legislature, this Committee for your time and consideration, especially Representative Eskridge for introducing House Joint Memorial Resolution No 14, and we respectfully ask that it receives a 'do pass' recommendation.

TESTIMONY:

Andy Brunelle, Government Affairs Officer with the US Forest Service, provided the committee with a handout, IDAHO UPDATE, from the USDA Forest Service Intermountain and Northern Regions National Forests of Idaho. It contains tables that summarizes each national forest in the state of Idaho with regard to how much revenue is being generated by users fees for campgrounds and for river access.

MOTION:

Senator Pearce made the motion to send HJM 14 to the floor with a do

pass recommendation. **Senator Langhorst** seconded the motion.

There was discussion about the fees. **Representative Eskridge** said what they are asking for is to have public involvement, redo the Act, and apply the fees where they are appropriate. He said they are not arguing against fees if there are amenities, but objecting to fees if there are no amenities.

TESTIMONY: **JEREMY PISCA**, submitted testimony from the Idaho Outfitters and Guides Association, which is inserted into the minutes.

Prepared by
Grant Simonds, Executive Director
Idaho Outfitters and Guides Association

The Idaho Outfitters and Guides Association (TOGA) understands the frustration surrounding the passage of the Federal Lands Recreation and Enhancement Act (FLREA), HR 3283, during the 108th Congress. TOGA also was appalled that HR 3283 was not voted on separately in the US House of Representatives and was not introduced in and did not receive hearings in the US Senate, but instead was attached to the omnibus spending bill, HR 4818, as an appropriation rider.

The outright repeal of FLREA, however, as encouraged by HJR 14, would lead to unintended consequences for the outfitting industry in Idaho and the nation in that this federal legislation included Forest Service and BLM permitting authority for outfitters and guides. In light of this, members of the Idaho House of Representatives graciously worked with TOGA to craft HJR 20 which compliments HJR 14 and address TOGA's concerns.

There are more than 400 licensed outfitters in Idaho and nearly all of them operate on public lands and waters managed by either the USFS or BLM. Outfitters must be special use permitted in order to operate legally on public lands and waters. HJR 20 would give IOGA members assurance that the repeal of the FLREA would reauthorize permitting of outfitters by the BLM and the USFS. With no permitting authority, the agencies might cease or repeal permits.

We understand the intent behind HJR 14, and would this committee to pass both HJR 14 and HJR 20 together, concurrently with each other.

Chairman Schroeder said there was a motion before them to send HJM 14 to the floor with a do pass recommendation. The motion passed by unanimous voice vote. **Senator Pearce** will be the floor sponsor of this bill.

**HJM 20 and
MOTION:**

Senator Little made the motion to send HJM 20 to the floor with a do pass recommendation. **Senator Stennett** seconded the motion. The motion passed by unanimous voice vote. **Senator Little** will be the floor

sponsor of this bill.

Chairman Schroeder said without objection, he would like to send the following bills to the Consent Calendar: H 636, H 546, H 576.

ADJOURNMENT: **Chairman Schroeder** adjourned the meeting at 3:05 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 15, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

He announced a change in the agenda - HCR 59, which was to be heard today, will be heard on Monday. H 650aa, which was scheduled for Friday, will be heard on Monday also.

He then welcomed Mr. Stan Boyd who will present H 640.

H 640 **Mr. Boyd represents the Idaho Wool Growers Association and the Idaho Cattle Association.**

He said this bill simply brings the code up-to-date. The fund (Animal Damage Control {ADC}) is for the control of predatory animals and birds. There were two transfers of money for \$50,000 and it has been consolidated to make one transfer for \$100,000.

Senator Pearce inquired about the source of funds. **Mr. Boyd** said that the wool growers have a tax on their wool at three cents per pound and cattlemen are assessed four cents per brand inspection. There are a number of other different sources. Any monies over \$750,000 from the Big Game Depredation account would go to habitat (the first \$100,000) and any remaining money would go to the ADC program. This bill also brings the code into compliance with S 1171 which was passed last year.

MOTION: **Senator Pearce** made the motion to send H 640 to the floor with a do pass recommendation. **Senator Cameron** seconded the motion. The motion passed by a majority voice vote (7-2). Asking to be recorded as voting nay were Senator Langhorst and Chairman Schroeder. **Senator Pearce** will be the floor sponsor of this bill.

H 545 **Representative Clark** presented this bill. He said it is the adjudication process for the Rathdrum Prairie and will put the final piece in the statewide puzzle for water management. The Basins that will be affected are the Coeur d'Alene-Spokane River Basin, the Palouse River Basin, and the Kootenai and Clark Fork-Pend Oreille River Basins. With regard to water rights, the first Basin, there were 13,000; Basin Two in the

Moscow area has 1,500; and the last Basin, Clark Fork, there are about 10,000. He said they would try do about 30,000 water rights in nine years, compared to Eastern Idaho taking about 20 years to do about 150,000. Representative Clark said the fees would be doubled of the current water rights holders and they would pay when it is started in their Basin. There also is an amnesty clause which means when it is done, it will be set to January 1, 2006.

Representative Clark said the main reason for this being done is there could be a dispute between the state of Idaho and the state of Washington. When there is a dispute, the case goes to court and the federal court decides who has what water right. He stated that what hasn't been defined, can't be managed or administrated.

TESTIMONY:

Representative Saylor testified in support of this bill also. It has the support of the Latah County Commissioners, Gooding County Commissioners, city of Coeur d'Alene and the Chamber of Commerce.

There was discussion regarding tribal interests and funding for the adjudication.

MOTION:

Senator Williams made the motion to send H 545 to the floor with a do pass recommendation. **Senator Cameron** seconded the motion.

There was discussion regarding the fiscal impact. **Senator Cameron** said that from his perspective, if ever you are going to adjudicate north Idaho, the time to do it is as soon as they stop adjudicating south Idaho - they are in the winding-down stages in the next year or two. There is staff, trained personnel, and a judge that would not have to go through the whole process again. Ideally, it could be dove-tailed when southern Idaho is ramping down and northern Idaho is starting to ramp up. He also stated that costs are being reduced as they ramp down and from a financial standpoint, he doesn't feel it will be a big problem as they transition into north Idaho.

Senator Pearce said he felt if there was not a lawsuit motivating the action, he did not see a genuine need. **Senator Cameron** responded by saying that the question was whether we wait for the lawsuit or not and if the issue of the tribes is better suited in our court than in a federal court or a court in the state of Washington. He feels it is something that needs to be considered.

A roll call vote was taken. Voting aye were Senators Langhorst, Stennett, Little, Williams, Burtenshaw and Cameron. Voting nay were Senators Brandt, Pearce and Chairman Schroeder. The vote was 6-3. Chairman Schroeder said that **Senator Jorgenson** would be the floor sponsor of this bill.

H 656a

Representative Harwood asked that this bill be held in committee and said he would explain the reason for his request. The purpose of the bill is to allow the cities who are affected by the decisions made by the Basin Commission to have a representative of the cities on the Basin Commission. He explained that after the bill passed the House, the

Department of Environmental Quality agreed to meet and discuss some of the issues this bill addressed. If the issues cannot be resolved, he will bring the bill back next year.

Chairman Schroeder said that without objection and per Representative Harwood's request, the bill will be held.

HCR 38

Representative Saylor presented this concurrent resolution. He said it is the intent of the resolution to express legislative support for the development of the Idaho Birding Trail, which is being completed by the Department of Fish and Game. The resolution 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.

Representative Saylor said birders are passionate about their hobby and they spend about \$138.00 per day. He provided a fact sheet regarding money spent in Idaho by hunters, fishermen and wildlife watching. Wildlife-based recreation generates more than \$1 billion in Idaho every year.

TESTIMONY:

Inserted into the minutes is testimony provided by the **Idaho Department of Fish and Game, Steve Huffaker, Director.**

Mr. Chairman and Senate Resources and Environment Committee:

The IDFG Commission has discussed House Concurrent Resolution 38. The Commission supports this bill, which expresses support for development of the Idaho Birding Trail and declares it to be the official Idaho birding trail.

The Idaho Birding Trail (IBT) is a collaborative project led by Idaho Department of Fish and Game that includes federal and private partners. It is in the final stages of development after almost three years of scoping, planning, and outreach. The expected launch of the IBT is May, 2006.

A map of the approximately 200 birding sites, organized into 4 regional loops will encourage the public to conduct their own self-driven auto routes to view birds, generally passing through rural areas. I have provided you with a copy of the map as part of my testimony. No site requires access via or onto private land; by far, the majority of the sites are state parks, public trailheads, refuges, or Wildlife Management Areas. A handful of sites point out opportunities to view birds on private land adjacent to public roads and these sites will be clearly marked that access is denied and that users should stay on the road.

From IDFG's perspective, a key objective of the IBT is to promote Idaho's rich wildlife resources to the viewing public. A likely spin-off will be income to rural economies from IBT participants. Hunting and fishing license dollars have not been used for this project.

IDFG funding has come from IDFG's nongame wildlife program, primarily supported by proceeds from the sale of specialty license plates and income tax check-offs.

We believe legislative support of the IBT as the official Idaho birding trail will facilitate public interest and knowledge of the trail.

MOTION: **Senator Langhorst** made the motion to send HCR 38 to the floor with a do pass recommendation. **Senator Stennett** seconded the motion. The motion passed by a majority voice vote (8-1). Senator Brandt asked to be recorded as voting nay. **Senator Langhorst** will be the floor sponsor of this bill.

CHANGE OF VOTE - H 640: **Senator Langhorst** asked that his nay vote on H 640 be changed to aye. Chairman Schroeder said that without any objection, Senator Langhorst's vote would be changed, making the decision 8-1.

H 541 **Dean Sangrey, from the Idaho Department of Parks and Recreation,** said this bill contains some necessary housekeeping that will fix an incorrect reference to enforcement of IDPR rules by commissioned peace officers of the Idaho state police. This legislation provides that the Director of IDPR may issue citations for violations and may delegate this authority to qualified employees of the IDPR who have completed required training.

MOTION: After a brief discussion, **Senator Burtenshaw** made the motion to send H 541 to the floor with a do pass recommendation. **Senator Langhorst** seconded the motion. The motion passed by unanimous voice vote. **Senator Burtenshaw** will be the sponsor of this bill.

H 638 **Dean Sangrey** said this bill was introduced last year (H 70), made it through the House and Senate, but was later vetoed. There are various inconsistencies in the guidelines that are established for the Grant Advisory Committees whose members assist the IDPR Board with grant application review and approval. The discrepancies include committee member compensation, term lengths of appointed committee members, and appointing authority. This legislation will enable IDPR to correct these problems. There is no fiscal impact on the general fund as the expenses for committee members are obligations covered by a specific recreation program dedicated fund.

MOTION: **Senator Little** made the motion to send H 638 to the floor with a do pass recommendation. **Senator Langhorst** seconded the motion. The motion passed by unanimous voice vote. **Senator Little** will be the floor sponsor of this bill.

Chairman Schroeder said that without objection, H 541 and H 638 would be sent to the consent calendar.

ANNOUNCEMENTS: He announced that there would not be a meeting Friday unless something unforeseen occurred.

ADJOURNMENT: **Chairman Schroeder** adjourned the meeting at 2:30 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 20, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:40 p.m.

He welcomed **Brent Baker** of Sandpoint who has been reappointed to the **Lake Pend Oreille Basin Commission**.

APPOINTEE: Mr. Baker was reappointed to serve a term commencing July 24, 2005 and expiring July 24, 2008.

He is a building contractor, developer, investor and consultant with over 33 years experience in construction and development. Projects have included light commercial, residential, recreational and agricultural.

His community service includes Careywood Fire Station; Board of Directors, Schweitzer Alpine Racing School; Commissioner, Sagle Fire District; Bonner County School District Board of Trustees; Co-Founder and President, Gnomus, Inc.; Past President, Sandpoint Tennis Association; and Youth Soccer coach.

Mr. Baker said it was good to be back in Boise and meet with the delegation from his area to discuss and share some issues from home.

He stated that he is impressed with what the Lake Pend Oreille Basin Commission has done. The first issue they tackled was water levels in Lake Pend Oreille. It is a natural lake and has been there for tens of thousands of years. Mr. Baker said it was their primary economic engine in North Idaho, as logging and mining have given way to tourism. Recreation is now the primary activity. Priest Lake is critical to the area also. Water levels were previously being managed for downstream farmers, utility companies and fish management on the coast. The water management was not being managed for the benefit of local fish. The Corps of Engineers has started making adjustments to their management decisions. The Commission provides the Corps with input after multiple hearings and lets them know their needs.

The next issue the Commission dealt with was the Rock Creek Mine. The mine is located in Montana and could threaten Lake Pend Oreille. The

developers asked the Commission for an endorsement as to the adequacy of their environmental protection, which the Commission could not give to them. They based their decision and comments on research and information brought before them. They learned there was another neighboring mining claim, sharing the same ore body, with an access.

The third issue was milfoil. Mr. Baker said he understands there is some legislation pending to get some funding established. Milfoil does not exist in Priest Lake right now but there are acres of milfoil in Lake Pend Oreille. They want to eradicate it before it becomes a serious problem. Mechanical harvesting is expensive and does not work real well. They don't want to use poisons, but using the right pesticides and properly applying it is tricky, but safe when done right.

Mr. Baker said they were working on a number of issues relating to water quality and water quantity. Their group is bringing together various agencies, who in the past, have worked somewhat independently. Now they have a unified voice.

Chairman Schroeder thanked Mr. Baker for appearing before the committee and said the committee would vote on his appointment Wednesday.

MINUTES:

Senator Pearce made the motion to accept the minutes of March 8, as written. **Senator Burtenshaw** seconded the motion. The motion passed by unanimous voice vote.

Senator Langhorst made the motion to accept the minutes of March 10, as written. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote.

Senator Stennett made the motion to accept the minutes of March 13, as written. **Senator Burtenshaw** seconded the motion. The motion passed by unanimous voice vote.

HCR 59

Representative Stevenson said this concurrent resolution rejects a pending rule of the Idaho Department of Fish and Game governing the importation, possession, release, sale or salvage of wildlife (Docket Number 13-0110-0501). The rule is not consistent with legislative intent. Mink being raised by mink farmers are governed by the Department of Agriculture and wild mink are under the Department of Fish and Game.

TESTIMONY:

Ms. Sharon Kiefer, Legislative Liaison, IDFG, said that when they revised definitions, in particular - private wildlife parks - they formerly only dealt with big game animals. In redefining that, wildlife became a much broader definition. It was not the intent of the Department to include individuals holding wildlife for private purposes where a license is required. This was an unintended consequence while trying to clean up some authorization language in conjunction with the Department of Agriculture.

MOTION:

Senator Williams made the motion to send HCR 59 to the floor with a do pass recommendation. **Senator Burtenshaw** seconded the motion. The motion passed by unanimous voice vote. **Senator Williams** will be the

floor sponsor of this bill.

H 650aa

Representative Nonini presented this bill. He said it would authorize the board of county commissioners to form an aquifer protection district to protect the quality of underground waters. There was a one-time funding of \$90,800 that has continued for several years for aquifer protection issues in North Idaho. They were told the funding would end and they would need to deal with the aquifer protection issues on a local basis. He said that Representative Henderson and Senator Compton have been working with him since last spring on the aquifer protection district. An aquifer protection district may be initiated by the filing of a petition signed by 50 qualified electors, then an election would be held. The aquifer protection district will have borrowing authority through the Idaho Department of Water Resources Revolving Development Fund. Representative Nonini said this bill only applies to the Rathdrum Prairie Aquifer. He said there are caps on the fees, with the maximum residential fee being \$12.00 per year and \$24.00 per year for commercial or an industrial operation. The Pan Handle Health District would administer the program and if the fees are more than enough, they would lower them.

Representative Nonini provided handouts in support of this legislation. Inserted into the minutes are two letters of support.

POST FALLS AREA CHAMBER OF COMMERCE
STATEMENT OF SUPPORT

Position: The Post Falls Area Chamber of Commerce, acting by and through its elected Board of Directors, supports the adoption of enabling legislation allowing for the formation of an aquifer protection district, provided that the legislation includes the following elements:

- (1) That the legislation be elective and not mandatory.
- (2) That the formation process include a required study commission comprised of stakeholder representatives, and specifically include a representative of the business community.
- (3) That the governing body be comprised of elected officials.
- (4) That the governing body be required to appoint a policy and budget advisory committee for the District.
- (5) That the maximum annual fee to be capped at \$12.00 per residential property and \$24.00 per commercial property.

Rationale: The Rathdrum Aquifer is the sole source of domestic water for Post Falls. It's protection is of vital importance to the economy of Post Falls. There are in excess of 1,300 known uses over the Rathdrum Aquifer that could currently potentially contaminate the aquifer. It is in the best interest of the public that any surface use of property that could be a contaminator be regulated and monitored. Those surface uses presently pay substantial permit fees that are not sufficient to cover the costs of a

proper monitoring program. While the Post Falls Area Chamber of Commerce views fees as a substitute for taxes, a modest household and commercial fee assessed against property owners benefitted by the quality of the aquifer for the future protection of the aquifer is warranted.

Signed by Eric English, Chairman

Dear Representative Nonini:

The Kootenai County Commissioners are in support of your amendments dealing with the Aquifer Protection District legislation HB 650. We feel that the changes made will give a voice to the residents who live over the aquifer in expressing how they wish to protect that natural resource.

We appreciate your continued efforts on behalf of Kootenai County.

Signed by S.J. "Gus" Johnson, Chairman; Elmer R. Currie, Commissioner; Katie Brodie, Commissioner

The third handout was an editorial, "Water Wisdom", from The Spokesman-Review, which is on file.

TESTIMONY:

Representative Henderson said the bill was written so that the aquifer protection district would not have taxing authority. The only authority for funding would be an annual fee to those residents of the aquifer in the recharge areas. The Board of County Commissioners will appoint a permanent budgetary and policy committee to make annual recommendations on programs to protect the quality of the aquifer water.

Chairman Schroeder inquired as to the difference between a fee and a tax. The response was that a fee can be assessed only to the limit to recover the cost that is incurred to deliver a service and any money above that would be considered a tax.

Senator Stennett asked if the fee, if delinquent, could become a lien against the property. The answer was yes.

MOTION:

Senator Brandt made the motion to send H 650aa to the floor with a do pass recommendation. **Senator Stennett** seconded the motion. The motion passed by unanimous voice vote. **Senator Compton** will be the floor sponsor of this bill.

HJM 21

Representative Paul Shepherd said the purpose of this memorial is to request the transfer of 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.

He then introduced **Ms. Lois Van Hoover, employed by the Board of the Valley County Commissioners**, who will speak on behalf of the bill.

Ms. Van Hoover said this legislation provides an alternative to the selling

of public lands. In 1908, Congress created the Twenty-five Percent Fund Act to pay states and counties 25% of receipts collected from national forests and mandated that payments were to be spent on schools and roads. Currently, they are operating under what is known as the Craig-Whiten bill and it comes up for reauthorization this year. There are questions about the reauthorization and the re-appropriation of that bill. Ms. Van Hoover said this could possibly be the last time it would be authorized and they needed to look for a long-term solution.

In Valley County, it is 8.5% privately owned. If the Craig-Whiten funding goes away, the county's portion which goes to roads and bridges would go up by 46.8% and the two school districts would lose about \$900,000. Ms. Van Hoover said that's a lot of money for Valley County. With this memorial, they are asking Congress to start the discussions now to work out a long-term solution.

Chairman Schroeder said that he had read that if all the federal lands were given to the state of Idaho, it would cost more to manage them than what the state would get in return. He asked Ms. Van Hoover to address that statement. **Ms. Van Hoover** said what they are asking for is not for all the land that is federally administered under national forest system land for the state. It is mainly the road in front - things that do not have special designations. This memorial sets forth a provision that there would be no cost liability to the state for the administration of this program. Currently, the federal land managers have money that is appropriated. She said they want to make sure that the state does not incur any financial liability.

Senator Stennett asked what the fiscal impact would be to industries in the state. **Ms. Van Hoover** said she did not have that figure. She stated that when you come to the management, it would come with a management plan and issues could be addressed at that time. This memorial is a broad template and does not have all the specifics in it.

Senator Burtenshaw said if the federal government transferred the rights to the state, nearly every timber contract has been objected to and halted, but within the state we have been able to sell timber. He asked if this will allow the state to manage the federal forest the same way they manage the state's. **Ms. Van Hoover** said if you look at the same process in the way the management plan for wolves was done, after the plan was set forth, then the state took over the management. This would be handled very similar to that plan. **Senator Burtenshaw** replied that it would need to be a better plan than what we have with the wolves or the state would lose money. (Much laughter!)

MOTION:

Senator Pearce made the motion to send HJM 21 to the floor with a do pass recommendation. **Senator Brandt** seconded the motion. The motion passed by a majority voice vote. Senators Langhorst and Stennett asked to be recorded as voting nay. **Senator Pearce** will be the floor sponsor of this bill.

H 523

Ms. Sharon Kiefer, Legislative Liaison for the Idaho Department of Fish and Game, presented this legislation. She said the IDFG

Commissioners have heard extensively from hunters to hold a hunt draw system that would improve drawings odds over the current random draw system. The Commission is working on developing a bonus point system based on two key principles: the system improves drawing odds over the current system for controlled hunts; and the system will be revenue neutral.

This bill is one of the steps the Commission needs for meeting these principles. Currently, the IDFG Commission is authorized to assess a non-refundable fee to each applicant for a controlled hunt permit. The current cost for a controlled hunt application is a non-refundable charge of \$4.50, that's excluding a vendor fee of \$1.75, and then the controlled hunt permit fee is \$6.00, once again excluding a vendor fee of \$1.75.

This bill will amend 36-104 to allow the Commission to add an application surcharge to implement, operate, and maintain a bonus point control hunt system. That bonus point surcharge does not exceed the control hunt permit fee (\$6.00, excluding the \$1.75 vendor fee). The Commission is currently working with the Fish and Game staff and the hunting public on these administrative details for the bonus point system. Right now, it looks like the surcharge will be less than \$6.00 and will probably fall in the \$3 or \$4 range.

Ms. Kiefer said that although this bill provides the authority to set a surcharge on controlled hunt applications, the Commission will still need to adopt a fee rule which much be approved by the Legislature in 2007. The Commission must also vote to adopt the bonus point rule set, which also will come before the Legislature in 2007. The timeline for bonus point implementation is the fall 2007 hunting season.

Ms. Kiefer said this bill only gives the Commission the authority to implement the surcharge - it does not define that - it would have to come through a fee bill to come before this body in 2007. She also said the language for this bill was similar to a previous bill, only more narrow.

Senator Langhorst inquired about the survey to sportsmen to improve odds and the \$5.00 charge. **Ms. Kiefer** said the survey indicated they objected to \$5.00. **Senator Langhorst** also inquired as to how much the odds might be improved. **Ms. Kiefer** said one of the key principles was it must improve drawing odds over the status quo.

Senator Little asked if this would generate more revenue by people applying every year in hopes of increasing their chances. **Ms. Kiefer** said they had tried to forecast that against the folks who may choose not to participate in controlled hunts because it is not that important to them. She said they are trying to stay revenue neutral.

Senator Williams said some of his constituents are concerned about the proposal that hunters who have applied and received cow moose hunts, had the understanding that they could never apply again, would now be able to apply for an antlered moose hunt. **Ms. Kiefer** said the bonus point concept does not apply to moose. **Senator Stennett** pointed out that the Statement of Purpose (SOP) lists moose, along with pronghorn antelope,

antlerless elk and deer controlled hunts, and low demand antlered elk and deer controlled hunts. **Ms. Kiefer** said that moose should not be listed. **Chairman Schroeder** said a revised copy of the SOP would be submitted to the Secretary of the Senate.

Ms. Kiefer said that the Commission has been discussing that if a person goes more than two consecutive years without any bonus point record, either a controlled hunt application or a separate bonus point application, that they would then be starting over.

Senator Cameron said that in order to improve odds for someone, then it diminishes odds for someone else. He asked if the membership understood that the implementation of a bonus point system would diminish their odds in the first three to four years. **Ms. Kiefer** said she thought the folks that are truly following the process do understand that. **Senator Cameron** then asked how the department can prevent gaming of the system where an individual applies for a high demand hunt repeatedly, then shifts to a low demand hunt to be secured of an application. **Ms. Kiefer** said it is a species-based bonus point system, not a hunt-based bonus point system. However, under the current controlled hunt system, there is nothing that precludes someone for applying for a high demand hunt every single year. **Senator Cameron** then inquired why the Commissioners want to tie it only to species and not to a specific hunt. **Ms. Kiefer** said she thought it was due to the complexity of it all.

An inquiry was made about group drawings. **Ms. Kiefer** said the Department is still working on that issue. **Senator Langhorst** said he has had experience with regards to group drawings in other states. In one of the states, if four people put in and have zero points and don't draw, everyone gets a point. Then three years later, you apply and each have three points, then you compete against people who have three points. Other states average out the bonus points of the group. **Senator Cameron** inquired if it improved a person's odds (if they have few bonus points) by applying jointly with someone who has more bonus points. **Ms. Kiefer** said she didn't think it would improve their odds.

Another inquiry was made as to the tracking of applicants and the keeping of records. **Ms. Kiefer** said the Department is looking at contracting the bonus point system with a private company and that company would implement and maintain the program.

Chairman Schroeder said it was apparent that discussion could continue much longer on this bill. He requested that Ms. Kiefer keep the committee apprised as to the Department's progress over the interim.

He stated that no one had signed up to testify on H 523. He then called for a motion. A motion was not made, so the bill remains before the committee and a motion can be made at a future meeting.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 2:45 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 22, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1:35 p.m.

He welcomed **Mr. Marc Brinkmeyer** from Laclede, Idaho who has been reappointed to the **Lake Pend Oreille Basin Commission**. His term is from July 24, 2005 and expiring July 24, 2008

Mr. Brinkmeyer is the owner of the Riley Creek Lumber Company, the largest lumber producer in Idaho. He has state of the art production facilities located in Laclede, Chilco, Moyie Springs, and Sandpoint. The annual capacity is 800 million board feet of dimension lumber sold throughout the United States. The Company also has a Land and Timber Division of approximately 52,000 acres of timberland in Washington, Idaho and Montana.

Some of Mr. Brinkmeyer's professional activities include: a member of the negotiating committee for Coalition for Fair Lumber Imports; advisory council for the School of Forestry of the University of Idaho; member of the Board of Trustees for Buena Vista University; past chairman of the Western Wood Products Association; a delegate to the European Softwood Conferences; and past president of the Intermountain Forest Industry Association.

He attended Buena Vista University and has a Bachelor Degree in Finance.

Mr. Brinkmeyer said he was glad to visit with the committee about what is going on in North Idaho. Some of the issues that are before the Commission is the Rock Creek Mine, milfoil, and the fishery on Lake Pend Oreille. He said it has been an interesting process and is pleased as to how the committee and his fellow commissioners have come together on the Rock Creek issue. One thing that he said he found that was interesting was a lot of talk about the Rock Creek Mine, but not much talk about the mine that is one-half mile away. The Mountain Ore Mine, not far from the Rock Creek Mine, is in the Kootenai drainage; however, they (the Commissioners) started looking into that mine as well. The two

mines are working together to solve their problems and how they relate to Idaho.

Mr. Brinkmeyer said that milfoil is a serious issue for Lake Pend Oreille. From a business point of view, it is pay now or pay later, and whatever they have to do to deal with it, he feels they should move as quickly as possible.

With respect to the fishery issue, he stated that everyone knows about the imbalance in Lake Pend Oreille. He said there is an economically viable fishing industry to support, as well as some commercial fishing. He wants the Commission to continue their focus on that as it is good for their economic base in North Idaho.

He said these three issues are what the Commission if focused on and they are continuing to getting organized. He also stated that it is a pleasure to serve and that he enjoys it and looks forward to serving another term.

Senator Williams inquired about the commercial fishing Mr. Brinkmeyer spoke of. **Mr. Brinkmeyer** said it has to do with the white fish, as that particular specie is commercially viable for restaurants.

Chairman Schroeder said there was a difference in the white fish caught in the lake as compared to those caught in trout streams. He asked Ms. Sharon Kiefer to explain the difference. **Ms. Kiefer** said the lake white fish is a native fish and quite bony. She also researched a question the Chairman asked a few days ago as to the oxygen and fish in Lake Pend Oreille. There is oxygen, white fish and lake trout at 1,000+ feet.

Senator Little asked Mr. Brinkmeyer if in his long term planning, does he foresee a significant demand through carbon credits on carbon sequestration.

Mr. Brinkmeyer said as they look at timber globally, there is a serious issue in Canada with the pine beetle. The epidemic there is in the millions of acres. They are finding the shelf life of timber that has been affected is much shorter than they thought. They thought it would be fifteen years, but are finding it is three to five years, and in some cases, seven. The wall of wood that they were concerned about on the Canadian side, because of this disease, that was going to come to the United States, isn't happening. The low grade component that is in this bug-killed timber is about 25-35%. Our low grade lumber in Idaho is from 3-7%. Mr. Brinkmeyer is concerned about the bugs coming to Idaho. He said it takes cold weather to hold them back. Fire is always an issue, with respect to the management of land. The state lands are the backbone of our forest products. Riley Creek has a strong presence in the state timber program in Idaho and Montana.

Senator Burtenshaw asked what the Commission is doing about milfoil and do they have a plan. **Mr. Brinkmeyer** said they are learning about it. They had a presentation about it by Bonner County and they are learning the effective ways to eradicate it. The big concern right now is to keep it

out of Priest Lake. There is some in Lake Pend Oreille and right up the road on the Clark Fork at Thompson Falls, above the dam, is a mat of milfoil that one can almost walk across. Mr. Brinkmeyer said it is just a matter of time before it starts to sluff off and go through the turbines. He stated that it is more than a Pend Oreille issue, it is the whole watershed.

Chairman Schroeder said there is a milfoil treatment program proposed in the Legislature and asked Senator Keough to respond about it.

Senator Keough said the milfoil proposal has been developed by the Department of Agriculture with input from across the state and it takes several different approaches to eradication and control. The biggest problems are in Lake Pend Oreille, Hayden Lake, but also potential problems across the state.

Chairman Schroeder thanked Mr. Brinkmeyer for appearing before the committee and said that committee consideration would be considered at the next meeting.

He then said that he would entertain a motion regarding Mr. Brent Baker's appointment. Mr. Baker appeared before the committee on Monday.

MOTION:

Senator Williams made the motion to accept the appointment of Brent Baker to the Lake Pend Oreille Basin Commission and to send it to the floor with a do pass recommendation. **Senator Brandt** seconded the motion. The motion passed by unanimous voice vote. **Senator Keough** will be the floor sponsor.

**ANNOUNCE-
MENT:**

Chairman Schroeder said that he wanted to make an announcement regarding next Monday's meeting; however, it is subject to change. The meeting will start at 1 p.m. in the Gold Room. There are several House bills to be heard, with H 800 to be heard last.

**PAGE
PRESENTA-
TION AND
RECOGNITION:**

Chairman Schroeder asked the Committee Page, Kyle Raese, to come forward. He then presented him with a letter of recommendation and recognition, signed by all the Senators on the Committee. He also presented him with a Senate watch, then asked him to tell the committee about his future plans.

Kyle said that he has been accepted at Tulane University in New Orleans, has not declared a major as yet, but is looking forward to college. He has enjoyed being a Page and especially enjoyed the interaction with the Legislators and other Pages.

REQUEST:

Senator Burtenshaw said that in talking with a friend in Fish and Game, they would like for the committee to consider H 523 (point system for controlled hunts). **Chairman Schroeder** said the bill was presented and discussed at the committee meeting on Monday, March 20 and no motions were made, so the bill is still before the committee. **Senator Stennett** requested that voting be withheld until all members of the committee are present. **Chairman Schroeder** instructed the Page to locate the missing committee members.

SPEAKER: **Chairman Schroeder** welcomed **Mr. Jim Caswell, Administrator for the Office of Species Conservation**, who will give a presentation on the “Rare and Declining Species Policy for Idaho” and also an overview of their budget.

Mr. Caswell said he would first brief the committee on federal appropriations and how those funds are used.

In the handout that Mr. Caswell provided, there were five pages devoted to the appropriations, which he referred his remarks to. One issue was personnel. There was one vacancy which he turned into a contracting position. Two audits have been conducted since OSC was established and Mr. Caswell said they passed with flying colors.

With regards to funds for species, the total funds received through fiscal year 06 is \$17,666,450. Total funds paid out is \$5,200,296. The following species are funded: aquatic, wolves, private LO/squirrels, snails, sage grouse, PCSRF, slickspot, and roadless. With regards to the roadless item, Mr. Caswell said the Governor asked him to work on this issue and it is in response to the Bush administration’s roadless rule. The bulk of the money will go to counties who have been gathering public input and making recommendations to the Governor as to how they want to see roadless areas in their particular county managed.

Chairman Schroeder inquired if there was a role for the Legislature in the roadless process. **Mr. Caswell** replied that there was no provision made for legislative input in the rules. He said they have gone to each of the counties and asked them to participate with OSC and to provide leadership at the local level, which they have done.

Senator Burtenshaw asked about the appropriation for wolves. **Mr. Caswell** said they have received to date \$2.35 million.

Following the discussion of the budget, **Mr. Caswell** presented his report on “Rare and Declining Species In Idaho”. He said that in the statute, they are required to bring to the Legislature the status of this program. He provided the committee members with a packet of information which he referred his remarks to regarding his report. Inserted into the minutes is some of that information.

1. Why this report?

The Governors Office of Species Conservation (OSC) was created within the Executive Office of the Governor in the 2000 Idaho Legislative Session with the passage of Senate Bill 1490 (67-818, Idaho Code). OSC is dedicated to planning, coordinating, and implementing the State’s actions to preserve, protect, and restore species listed as threatened or endangered under the federal Endangered Species Act (ESA). This work is done through coordination with State natural resource agencies and input of Idaho citizens, while taking into consideration the economic vitality of the State. The core functions of OSC, and the corresponding code sections, are as follows:

- 1) **Coordinate** federal ESA programs with State agencies (67-818).
- 2) **Solicit**, provide, and delegate funding for ESA programs (67-819).
- 3) **Negotiate** agreements with federal agencies concerning endangered species (67-818 2(f))
- 4) **Serve** as the State's "one-voice" on ESA policy (67-818, 2(a)).
- 5) **Provide** a mechanism for Idaho citizens to voice ESA concerns (67-818, 2(g)).
- 6) **Facilitate** collaboration between State, federal, and private stakeholders (67-818, 2(b)(c)(d)(g)).

In addition to these responsibilities, OSC is mandated to:

- 7) **Prepare** a report to the legislature recommending a plan to develop state conservation assessments and strategies for rare and declining species in the State of Idaho and submit that report and recommendation to the legislature. The report and recommendation are subject to legislative approval, amendment, or rejection by concurrent resolution (67-818, 4).

This is the first report OSC has prepared to fulfill its mandate under core function number 7. Until recently, OSC has focused on carrying out the first six of our legislative mandates. The State's concerns have been on species that were currently on, or were targeted for listing under the ESA. In Idaho there are 21 species listed as threatened or endangered, and 6 species that are candidate or potentially-listed species:

Listed Species:

Woodland Caribou (Endangered)
 Sockeye Salmon (Endangered)
 White Sturgeon (Endangered)
 Banbury Springs Limpet (snail, Endangered)
 Bruneau Hot Springsnail (Endangered)
 Desert Valvata (snail, Endangered)
 Idaho Springsnail (Endangered)
 Snake River Physa (snail, Endangered)
 Gray Wolf (Threatened / Endangered)
 Grizzly Bear (Threatened)
 Lynx (Threatened)
 Northern Idaho Ground Squirrel (Threatened)
 Bald Eagle (Threatened)
 Bull Trout (Threatened)
 Chinook Salmon (Threatened)
 Steelhead (Threatened)
 Bliss Rapids Snail (Threatened)
 MacFarlane's Four-o'clock (plant, Threatened)
 Spalding's Catchfly (plant, Threatened)
 Ute Ladies' Tresses (plant, Threatened)
 Water Howelia (plant, Threatened)

Candidate Species:

Columbia Spotted Frog
Slickspot Peppergrass (plant)
Yellow-billed Cuckoo
Southern Idaho Ground Squirrel
Christ's Indian Paintbrush (plant)
Linear Leaf Moonwort (plant)

OSC's priority has been to develop programs to conserve and restore listed species while minimizing impacts to Idahoans' way of life. As Idaho's rapid growth continues there is increasing pressure on our natural resources, including rare and declining species. The most eminent threats to Idahoans' way of life comes from listed and candidate species, as they are protected by federal law, and sanctions can occur if a listed species is taken or their habitat harmed. Indeed, the first few years of OSC's operations involved assisting Idahoans in avoiding lawsuits and restrictions on uses of their land or water while promoting conservation.

The next step was for the State to develop long-term plans for the protection of listed species as well as the protection of Idaho's land and water users and our natural resource economies. To this end OSC has been very successful in coordinating, negotiating, and facilitating the efforts of state and federal agencies, local governments, private landowners and businesses, and other interested parties to accomplish the following:

Obtained State management of the gray wolf;

Provided data to support delisting of bull trout in Idaho;

Developed water conservation program for chinook salmon and steelhead in the Clearwater / Salmon basins;

Developed agreement to prevent listing of slickspot peppergrass;

Developed statewide conservation plan for sage-grouse;

Petitioned Fish & Wildlife Service to delist Idaho springsnail; and

Secured multiple sources of funding for on-the-ground-restoration activities.

After several years of a reactive "put out the fire" strategy, the State now needs to turn its attention to other species that may be in peril -- rare and declining species. This could be called the State's proactive "prevent the next fire" strategy, or a strategy to prevent rare and declining species from being considered for ESA listing in the first place. The Idaho Legislature had the foresight to include the rare and declining species mandate into OSC's statute in 2005. For a number of years prior to the establishment of OSC, the Idaho Legislature had wrestled with the problems of the ESA

and how to avoid listings of species in the first place. This concern was combined with an understanding that all species, including fish, wildlife, and plants, should be sustained.

What about those species that may be in decline but can be recovered? How does the State prevent species getting to the point of potential listing under the ESA? How does the State gain reliable knowledge about nongame wildlife and native plants, given that species have been listed under the ESA simply because little was known about their abundance? What financial resources does Idaho have to conserve rare and declining wildlife and native plants? This report explores these questions and suggests a process whereby the Idaho Legislature can explore their policy implications.

2. Background on fish and wildlife management in Idaho, including rare and declining species

State fish and wildlife agencies, like the Idaho Department of Fish and Game (IDFG), have historically had primary responsibility for fish and wildlife conservation programs. Traditionally, most of the attention and knowledge has been focused on the “managed” or “game” species, those that are hunted, trapped, or fished. However, the number of “unmanaged” species is much larger, and much less is known about them. More than 80% of the fish and Wildlife species in Idaho are considered nongame species - 523 species including songbirds, fish, small mammals, reptiles, and amphibians.

State fish and wildlife programs have traditionally been funded by hunting, trapping, and fishing revenues and by the Federal Aid in Wildlife Restoration Act (i.e., Pittman—Robertson Act) in 1937, the Federal Aid in Sport Fish Restoration Act (i.e., Dingell—Johnson Act) in 1950, and the Aquatic Resources Trust Act (Wallop—Breaux Amendment) in 1984. These programs have provided the primary financial support for game management in Idaho and throughout the country. In Idaho these funding sources total about \$40 million per year.

Programs designed to benefit and enhance game species have benefitted many nongame species. Activities such as protecting, creating and improving habitat, enforcing wildlife laws, and protecting water quality, have benefitted all fish, wildlife, and native plants in certain areas. Although these programs have had many successes, some species have continued to decline. Additional funding sources have provided some assistance in addressing the need for support of rare and declining species. For example, the Endangered Species Act (ESA) provides a limited amount of funding to states to focus on recovery of federally listed species.

In 1981 the Idaho Legislature amended Idaho Code to create a voluntary

nongame income tax check-off. Donated monies were placed into the Fish and Game Trust Account to be used “for the purpose of management and protection of nongame species of wildlife in this state.” The Idaho Wildlife License Plate bill passed by the 1992 legislature dedicated a portion of the Bluebird Plate proceeds to the Nongame Wildlife Program. The Idaho Wildlife License Plate Bill was amended in 1998 and 2003 to add the Elk and Cutthroat Trout Plates, respectively. The formula for distribution of fees for all specialized license plates was modified in 1998, resulting in increased revenue to the Nongame Wildlife Program from wildlife license plates. Currently, the income to the nongame fund from the income tax check-off, license plates, and donations is about \$1 million per year. The Nongame Wildlife Program’s focus is three-fold: (1) species conservation, with an emphasis on those at risk of being listed as threatened or endangered, (2) watchable wildlife, and (3) conservation education.

In 2001 the U. S. Congress began to provide federal funds through a “Wildlife Grants” program for states to begin to develop a program for rare and declining wildlife species. In Idaho it has been about \$800,000 per year. These wildlife grants require a 50-50 match of non-federal funds. These grants cannot be used for plants. Nongame funds are used to match these wildlife grants, so the total funding available from these sources for nongame and rare and declining wildlife species programs in Idaho is about \$2 million per year.

Even with the development of these programs, Idaho’s (and many other states) funding of rare and declining species programs for both plants and animals is not adequate. This has resulted in efforts that are more opportunistic rather than strategic, especially for rare and declining species that are not yet listed as endangered or threatened, and for plant species. For the future of fish, wildlife, and native plants in Idaho, and to prevent future federal listings of these species, a strategic approach is needed to conserve all species.

3. The Idaho Comprehensive Wildlife Conservation Strategy

Congress was aware of the funding dilemma facing the states regarding nongame wildlife. To shed more light on the subject, Congress asked all states to develop a “Comprehensive Wildlife Conservation Strategy” (CWCS, or Strategy) in order to continue receiving wildlife grants and demonstrate the need for these grants. Each state fish and wildlife agency —here, IDFG — was to coordinate this effort in compliance with their mandates to protect and manage all of the State’s fish and wildlife resources.

Congress had the wisdom to make this program non-regulatory -- it is neither the Endangered Species Act, nor is it The Clean Water Act.

Congress clearly stated that the Strategy:

Should be developed to aid species with conservation needs before populations decline and listing under the ESA may be warranted;

Should be a strategy, not a plan;

Should be voluntary, not mandatory; and

Should be for anyone's use in conserving rare and declining wildlife in Idaho.

Early in the development of the Strategy, IDFG established a Leadership Committee to provide guidance and advice. The Leadership Committee (for membership, see Attachment 1 page 11) emphasized the importance of the points outlined above. The Idaho Strategy was developed around those concepts. Throughout the development of the document, it has been emphasized that it is a strategy, not a plan. It is not regulatory and is not prescriptive. The recommended actions in the Strategy are general, and the development of conservation plans is undertaken voluntarily by willing partners.

First and foremost the Idaho Strategy is a technical document, a source of information on rare and declining wildlife and habitat in the state. As the lead, IDFG compiled the best available scientific information on rare and declining wildlife. Existing information contained in scientific papers, reports, and databases were brought together and put in one place and organized in a format that made sense for Idaho's varied habitats and geography. A summary of the Strategy is included in Attachment 1.

The Strategy identifies 229 wildlife species of greatest conservation need — rare and declining species. For a further breakdown, please see Attachment 1, page 11. For these species, the Strategy provides the following:

provides information on the life history and habitat needs of species to aid in the consideration of conservation actions;

recommends voluntary actions to improve the population status and habitat conditions of the species;

recommends an approach for long-term monitoring to assess the success of conservation efforts and to integrate new information as it becomes available;

complements other conservation strategies, funding sources, and planning initiatives;

incorporates public participation throughout the development and implementation of any conservation planning; and

provides a clear process for reviewing and revising the Strategy to address changing conditions and new information.

The idea behind the Strategy is to bring together, and to develop in the future, the best information on rare and declining wildlife species and their habitats in Idaho. With the best available information, the public and policy makers can make more informed decisions on our native fish and wildlife. For example, with this information OSC can work with private landowners to implement voluntary on-the-ground projects to preserve rare and declining species and avoid the potential impacts of ESA listing. In Idaho, collaborative conservation efforts are coordinated through OSC. Under the auspices of the Governor, the OSC brings together the interested and affected parties to develop conservation plans, ensure that the needs of fish, wildlife, and people are taken into consideration, and ensure that the plan is implemented. This process has proven to be successful in developing conservation plans for slickspot peppergrass, Chinook salmon in the Lemhi River, Yellowstone grizzly bear, sage grouse, and gray wolf. I

The Idaho Strategy is not a policy document. It is a tool to help policy and decision makers arrive at informed decisions concerning rare and declining species at all levels from a private landowner to the Governor's office. Conserving rare and declining wildlife must be a collective endeavor of Idaho's conservation partners, including state, federal, and tribal agencies, local governments, conservation organizations, universities, industry, and private landowners.

The public has had, and will have, opportunities to be involved in the development and implementation of the Idaho Strategy. Affected publics will be involved in the development of conservation plans, a process facilitated by the OSC. Interested publics will be able to participate in on-the-ground conservation efforts, like habitat enhancement projects and inventory and monitoring. The Strategy will be continually updated as new information is collected regarding the status of the species.

OSC and IDFG are an effective team that works closely on ESA and rare and declining species issues. IDFG provides excellent technical support and assistance on the biological aspects of species conservation. OSC provides the policy and political perspective and brings together the interested and affected parties to devise solutions that meet the needs of the species and the people of the State. OSC and IDFG support the purpose and intent of the Strategy and recognize the need to develop a companion strategy for rare and declining plant species. The goal is to provide information and a framework to develop and implement plans for the benefit of rare and declining species of fish, wildlife and native plants.

4. Recommendation

Two similar but separate projects have merged as a result of their mutual goals: OSC's effort to investigate and create a dialogue for all Idahoans on a rare and declining species policy for Idaho, and IDFG's efforts to identify these species and develop an information base needed to conserve them through the Strategy. These two projects have a common goal; preserve Idaho fish and wildlife and prevent future ESA listings.

Much remains to be done. Rare and declining native plants should be added to the Strategy. A state policy and approach for conserving rare and declining wildlife and native plants needs to be developed and implemented. For any program for rare and declining species, it is essential that Idahoans, including the Idaho Legislature, have a thorough understanding of the issues, as well as the ability to provide input into conservation planning processes. A long-term policy for the State of Idaho on rare and declining species should have a thorough vetting, and a thorough understanding of the issues.

OSC Recommendation. *OSC recommends the Idaho Legislature establish a Task Force to fully explore the issues surrounding rare and declining species.*

This will allow the Legislature and their constituents, the time and capacity to thoroughly investigate the rationale for a rare and declining policy for Idaho, and how the programs of OSC and IDFG can fulfill those needs.

That concluded the presentation. Time was allowed for questions.

Chairman Schroeder thanked Mr. Caswell for the report and for the good work he has done on the wolf issue. He asked when would they be delisted so that they can be managed like cougars and bears. **Mr. Caswell** replied that they have produced a proposal from both Governors (Montana and Idaho) and have met with the Interior Department, and also have regular contact with the Acting Assistant Secretary. This proposal would delist the wolves in Idaho and Montana, but not Wyoming.

H 523

Chairman Schroeder said that Senator Burtenshaw requested that action be taken on H 523. All committee members are now in attendance, as had been requested by Senator Stennett.

Ms. Sharon Kiefer said that Senator Burtenshaw asked her to provide some additional information regarding the bill.

She said that the Fish & Game Commission has a weekly conference call as part of their legislative process. She relayed to them the outcome of Monday's meeting regarding this bill. Action on behalf of this body would give them guidance - leaving the bill hanging does not give them

guidance. She said that staff and the Commission have put a considerable amount of time in on this issue. They have a timeline for bonus point implementation. Because they are looking at contracting this out, they are hoping to have the rule set and estimated cost by July.

Senator Cameron had several questions regarding bonus points, but due to time constraints, all his questions were not answered and therefore, no action was taken on H 523.

**ADJOURN-
MENT:**

Chairman Schroeder adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 27, 2006

TIME: 1:00 p.m.

PLACE: Gold Room

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Stennett, Langhorst

MEMBERS ABSENT/ EXCUSED: None

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 1 p.m. He announced to the standing-room only audience that the committee had some items to take care of before H 800 is heard (which is the reason for the large attendance).

CONFIRMATION VOTE: The **Chairman** said a motion was in order for the approval of the Gubernatorial appointment of Marc Brinkmeyer to the Lake Pend Oreille Basin Commission. **Senator Little** made the motion for approval of Marc Brinkmeyer and recommended it be sent to the floor with a do pass recommendation. **Senator Brandt** seconded the motion. The motion passed by unanimous voice vote. **Senator Keough** will be the floor sponsor of Mr. Brinkmeyer.

H 523 **Chairman Schroeder** said this bill allows the Fish and Game Department to come up with some kind of preference points scenario for permit drawings. The Chair ruled that discussion on H 523 has ceased and said that, without objection, he would write the Department a letter explaining that the Senate Resources Committee wants to know more fully the plan for preference points for permit drawings.

MOTION: **Senator Brandt** said he agreed that a letter be written, then made the motion to hold H 523 in committee. **Senator Langhorst** seconded the motion. He then explained his position for holding the bill. He said it wasn't so much to see the program developed, but a more pressing problem is the issue of access. The motion passed by unanimous voice vote.

ANNOUNCEMENT: **Chairman Schroeder** said that with the large attendance, he wanted to lay out the plan for the afternoon. He said H 736a and 737a would be considered first, which he hopes won't take more than 30 minutes. Then H 800 will be heard. Thirty minutes will be allotted to Mr. Speaker and whoever else he designates. Time will be allowed for questions. Then, thirty minutes will be allotted to the leading opponents of the bill, plus time for questions. At this time, there are 56 people signed up to testify.

There will be two breaks for the committee - one at 3 p.m. and another at

5 p.m. The Chairman said he hoped to have a vote on the bill no later than 6 p.m.

He then invited **Chairman Stevenson from the House Resources and Conservation Committee** to speak to his bills.

H 736a

Chairman Stevenson said that last year, near the end of the legislative session, there was some legislation brought forth by the ground water districts that required people to be in a ground water district and could be assigned to be there by the Director of the Department of Water Resources. At that time there was some opposition to the bill, but the decision was made to pass it, then make corrections this legislative session. This bill allows nonirrigators who have a mitigation plan, approved by the Director, to opt out of the ground water districts. In so doing, their mitigation plan is applied to the requirements of the ground water districts. He said the items of concern in this bill have been addressed in the amendment.

Senator Little inquired about the term “replacement water”. **Chairman Stevenson** said “replacement water” apparently is not used anywhere else in the code, but is in the rules. Some objected to that being put in statute.

Senator Williams asked if this was brought about by some of the processors who want to mitigate on their own behalf. **Chairman Stevenson** said that was correct and that it was agreed last year that a bill this year would make the correction.

TESTIMONY:

Mr. Dick Rush, Legislative Advisor for Idaho Association of Commerce & Industry (IACI) said they are in support of H 736a.

TESTIMONY:

Ms. Josephine Beeman, attorney for the Water Resource Coalition, said they are in support of H 736a (and H 737a as well) and asked that her written testimony be inserted into the minutes.

I am testifying on behalf of the Water Resource Coalition and its members (Basic American Foods, ConAgra/Lamb-Weston, J. R. Simplot Company, and the City of Pocatello.

The following individuals reviewed and/or drafted the language that was sent to Legislative Services: Rep. Stevenson, Terry Uhling, Mark Dunn, Jeff Fereday, Lynn Tominaga, Elizabeth Criner, and Jo Beeman.

HB 736 is a “follow through” from ground water district legislation drafted by IGWA and introduced at the very end of the 2005 session.

As time ran out in the 2005 session, certain amendments to HB 394 were identified and reserved for this session, and Rep. Stevenson committed to introduce the legislation in 2006. HB 736a is that legislation.

1. 42-5232(7) — provides assessment credit for a non-irrigator member who has already created or established a mitigation plan.
2. 42-5244 — allows IDWR to review assessments on non member

participants for fairness. (This is consistent with purpose language of HB 394 in 2005 session.)

3. 42-5251(2) — places back into the bill the original exclusion language, however, limits it to nonirrigators. This allows DCMI players to exit a groundwater district by request. However, anyone who exits remains liable for any debt incurred prior to their exclusion. This was a critical piece of the original legislation. The provision was used to provide incentive for DCMI members to join — recognizing that they would have the right to leave a District where they will never have a substantial position on the Board. [it is not NEW language — it is the old language prior to the 2005 amendments.]

(Amendments help support DCMI users to voluntarily join ground water districts.)

HB 737 basically addresses a due process issue created in 2004 by HB 848 (passed, but never codified) which mandates ESPA ground water users [meeting certain criteria] would be put into ground water districts without any notice. HB 737 makes IDWR give notice; within 15 days, if the ground water user doesn't join a ground water district for mitigation purposes, then the Director can take any and all appropriate action.

TESTIMONY: **Mr. Johathan Parker, lobbyist for the Idaho Water Users Association,** said that IWUA is in support of this bill.

MOTION: **Senator Williams** made the motion to send H 736a to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion passed by unanimous voice vote. **Senator Williams** will be the floor sponsor of this bill.

H 737a **Chairman Stevenson** said this bill cleans up a conflict that may come at a later time. Because people cannot automatically put into a ground water district, there was no way for them to appeal. With this bill, when the Director puts them in a ground water district, they would then have 15 days to appeal. The amendment to this bill also takes out the words "replacement water".

TESTIMONY: **Chairman Schroeder** said the same three people that testified on H 736a signed up to testify on H 737a. He said, with their permission, the record would reflect their support of the bill.

Senator Stennett inquired about junior priority ground water right (on lines 31 and 32 of the bill). He asked why didn't it just say the holder of a ground water right? **Chairman Stevenson** replied that he couldn't answer his question. However, he said that he assumes it is the senior water right they are mitigating for.

MOTION: **Senator Burtenshaw** made the motion to send H 737a to the floor with a do pass recommendation. **Senator Pearce** seconded the motion. The motion passed by unanimous voice vote. **Senator Burtenshaw** will be

the floor sponsor of this bill.

H 800

Chairman Schroeder announced that there were 60+ people who have signed up to testify on H 800, and he wanted to make people aware that public testimony will probably be limited to three to five minutes. He then welcomed **Mr. Speaker (Representative Bruce Newcomb)**.

MR. SPEAKER:

What House Bill 800 does is to correct a decision that was made by the Legislature in 1994. It's been interesting to research this project because where this all started, we talked about recharge at the very beginning of the session. In fact, Representative Raybould, Representative Stevenson and I proposed such a bill, only to find out that people were negotiating on the water agreement and we wouldn't do anything about it at this point in time. So we pulled the bill back, but we did find out that the director would not be willing to divert any water until - pursuant to the bill that was passed in 1994, which was a bill that grew out of a recharge interim committee and was brought to the Legislature, but subsequently the bill this interim committee recommended had a subtle change and the bill was finally put forth to the Legislature. To put that in context, we also had many other bills that we were putting together that same year in response to adjudication decisions made by Judge Hurlbutt. I think you all have a copy of the AG's opinion. There were two questions I asked. 1.) Is aquifer recharge a use to which Idaho Power Company subordinated its hydropower water rights under the Swan Falls Agreement? 2.) If Idaho Power Company subordinated its water rights to recharge under the Swan Falls Agreement, do the provisions in Idaho Code 42-234(2) and 42-4201A(2) change the Swan Falls Agreement and create any vested rights or priorities in Idaho Power Company? The conclusions were 1.) Under the Swan Falls Agreement, Idaho Power Company subordinated its hydropower water rights in excess of the agreed-upon minimum flows, that's 3,900 cfs at the Murphy gauge summertime and 5,600 in the wintertime at the same gauge, to all "subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law," regardless of the type or kind of beneficial use. Thus, the hydropower rights referenced in the Swan Falls Agreement. So you go back and read the two code sections and it's interesting too. What this bill does then, corrects that and when you look at the session law, one of the arguments you're going to hear against this bill today, that in Swan Falls... recharge is not a beneficial use. To put this in a timeline, in 1978, there was a bill passed by the legislature who started a recharge in St. Anthony and Rexburg. 1984 was when the Swan Falls Agreement was signed and ratified. So, in 1978, the Legislature recognized recharge as a beneficial use. Even so, if you read the Swan Falls Agreement, the Swan Falls Agreement makes a statement that says... "companies water rights are subordinate to subsequent"...subsequent is the key word there... "beneficial upstream uses". So the word subsequent implies, it seems to me, any other beneficial uses the legislature might otherwise claim. So you have two arguments. First of all, I think it was recognized in 1978 that

recharge was a beneficial use because of the statute that was passed then and subsequent to '94 it was struck. But still in 1978 the Legislature recognized that the subsequent beneficial use is a key word there. So, basically what this statute says is that we're going to go back prior to where we were before 1994 and then it says to ensure that other water rights are not injured by the operations of the aquifer recharge. So then I would go back in history and I would look at the Swan Falls Agreement. I would point out I think we're fortunate the fact that we have former Senator Peavey, former Senator Noh, and Former Governor Evans who were all very much involved in this whole Swan Falls discussion and I would hope they would be given ample time to state and to give us a historical background. But I want you to look at the Attorney General's opinion and look at the dialogue that occurs between them, Senator Peavey, Senator Crapo, and Tom Nelson. This is the question asked by Senator Peavey. "When you say 'to protect the new higher minimum stream flow' you aren't saying then that the state couldn't after it had done that, re-lower that to 3,900 cfs, that would be at the state's option, would it not?" Tom Nelson: "You are right. Anything above the minimum flow the state is free to do with as it likes." Tom Nelson was chief counsel at the Idaho Power Company at that time. Let's go back. "You are right. Anything above the minimum flow the state is free to do as it likes." OK, so, let's go back and look a little bit further here. It says - here's some checks and balances. In the Swan Falls Agreement, Section 42-203 it is mentioned from all the way A, B, C, D. Here's 42-203C (2)(ii) "The economic impact the proposed use would have upon electric utility rates in the state of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact." In other words, it statedthe impact to the ratepayer in Idaho is not significant. Otherwise, you got to be fair to ameliorate then. Under Swan Falls, there is Exhibit A, so in Exhibit A it says, Exhibit 6, I mean. The minimum daily flow at the Milner gauging station shall remain at zero cfs. That is really significant. They subordinated everything above Milner and any spill that comes over Milner is an incidental benefit to the ratepayers of Idaho Power because they agreed to a zero minimum stream flow at Milner. The water we're talking about recharging here is the water that might otherwise spill over Milner. That's the only place we can really divert water at this point in time anyway. I would submit that what we're talking about here in recharge is only going to occur in about once in every ten or eleven years. That's when you get high water years. What we're talking about here is spill water, which by definition, is water that's in excess of what they can use to generate electricity and/or is more than what they need to supply the demand that is currently on the system. We're not talking about water here that would impact the ratepayers. I think there are a lot of red herrings out there and a lot of the sky is falling. But if you go into 42-203B - I'll provide a list for you, but it basically confirms that at Milner, the minimum stream flow at Milner, is at zero. So, all we're doing here is saying, first of all, that the state should not pay in this whole process, a trust agreement that was agreed to, in the water that was in

excess of the 3900 and 5600 cfs that was to be held in trust by the state to benefit everybody, including cities and including hydropower. No facet outweighed the other, they were all equal. So, I would say with that, what happens here now is that over the years we have let water flow over Milner that was an incidental benefit to the ratepayers of Idaho Power Company and nobody has ever offered to pay for that or give us compensation. The state hasn't even asked. Then we have the 427,000 to go along with the 60,000, which is about to be 487,000 has gone down on occasion. So the agreement we have with the Bureau of Reclamation, again that went through all the power plants, at no cost to Idaho Power and the ratepayers. Last year, we have started the water rights at Bell Rapids and that's about 75,000 acre feet that goes through the Hells Canyon complex and the state has not asked Idaho Power for a payment for the usage of that. When you go back and read the Swan Falls Agreement, you find out that they agreed to spread the Agreement across the pages of the journal. I'll tell you what - the Senate, and I'm really reluctant to say this, but the Senate is pretty thorough on what it does sometimes. Basically, in the Journal, they read the intent language of the Swan Falls Agreement. That's an interesting read. So, and then the Attorney General's opinion, just read the dialogue between Tom Nelson and Senator Crapo and Tom Peavey. It's really an eye-opener. So, I would just hope, and I know that you're going to hear a lot of the sky is falling or we're going to do all this, but all they're talking about, I would just tell you this much, if there is a need for this bill to pass, I have talked to a Burley, Idaho boy that I have a lot of respect for, but has something to do with this issue and whether he prevails or I prevail, we've agreed that we'd set down and figure out how to shape recharge for the future of Idaho. I think because it is a significant tool, it shouldn't go wasted because what we're doing, apparently, is the water that goes over the spillway is of no beneficial use to anybody. It just goes to the ocean and if you believe in global warming, the melting of the ice in Newfoundland is going to raise the level of the ocean, so they don't need our water. (Much laughter!) So, anyway, what we need to do is make sure we use the water that's otherwise going into the ocean that is no beneficial use to benefit Idahoans by storing it in the largest aquifer, one of the largest in the world, the size of Lake Erie, and the fact is - if you do it right, you can probably set it up so that Idaho Power could get water in the summer months when they need it most. I think with that, I'll defer to my co-sponsor. He's really the brains of this outfit.

**Chairman
Schroeder:**

Are there any questions for Mr. Speaker?

**Senator
Stennett:**

This isn't a question. I just want to make sure that we got it on the record that the Speaker's quote about the Senate being thorough.

Mr. Speaker:

Would you please strike that from the record? (Much laughter.)

Chairman

We'll probably read about it in the Statesman in the morning.

Schroeder: Representative Raybould, welcome to the Committee.

Rep. Raybould: Thank you, Chairman Schroeder. It's a pleasure for me to be here today to visit with the Senate Committee. If I might, Chairman, I would like to give you just a little bit of background about how this came about. As most of you know, and many of you were on the Interim Committee, chaired first by Senator Noh and myself two years ago, and then Senator Burtenshaw and myself this past year. We were assigned to work on these problems that were inherent with the surface and underground water in Southern and Eastern Idaho. Last year, in particular, we were charged by the Legislature to work with a plan and a method for recharge of the aquifer. We met, we discussed this and we appointed a subcommittee just on recharge that included other individuals besides members of the committee. It was the universal opinion of that subcommittee and subsequently the recommendation of our Interim Committee that we embark very quickly on a recharge program on the Eastern Snake Plain Aquifer. Probably the most important thing that we did was to authorize a recharge pilot project. That project was a branch of the North Side Canal Company, called the W Canal. The Department of Water Resources people there, their engineering staff, came to us with a proposal of where a recharge facility could be implemented. The cost of it, I think we were talking about somewhere in the neighborhood of \$800,000 to implement that recharge project. The next item of business and probably the most important was, where are we going to get the water for recharge? Once again, the Interim Committee and the subcommittee said the only real chance we've got for recharge is when we have high flows. And we referred considerably back to 1997 when millions of acre feet of water flowed out of Idaho to the ocean and none of it was recharged and recharged projects and yet all the time, the aquifer was receding. And so, legislation was prepared because of those committee meetings last summer and was ready to go, as the Speaker has said, early in the Session this bill was prepared and been in my desk for quite sometime, but we were asked to refrain from introducing this legislation simply because of an ongoing settlement agreement, or mediation, between the surface water users and the underground water users, to see if they couldn't come up with some kind of a plan that would, in fact, settle this problem so that they could go forward. But still, with the understanding, that if they couldn't find replacement water for mitigation purposes that we would have to go back to recharge. The recharge program was probably most beneficial to the spring water users, those down in Hagerman, those in the Twin Falls Valley, city of Twin Falls in particular who gets much of their drinking water from springs on the north side of the canyon and, of course, other cities in the Snake River Plain that do draw their drinking domestic water and other DCMI (domestic, commercial, municipal, industrial) purposes from the aquifer. Knowing that the aquifer was going down each year, and not just the pumpers that was causing the aquifer to go down, but also the springs. Back in 1902, the springs at Hagerman were flowing at about 4,200 cfs. Through

irrigation, throughout Southern and Eastern Idaho that was flood irrigation at the time, which about 90% of that water went percolated directly into the aquifer. The aquifer rose to where the springs in the 1960's were flowing at 6,800 cfs, a rise of that much, that much more pressure. And it was at this time that many of the aqua culture industry and cities did get their water rights for wells and spring use at that high flow, while since the 1970's and early 80's, that aquifer has diminished. Springs are flowing now at Hagerman at somewhere around 5,200 - 5,300 cfs. So you can see that even curtailing some pumping, those springs are going down because the spring flows themselves are draining the aquifer. And so we need to do something to stabilize the aquifer. While this bill is legislation to facilitate the diversion of these expected high flows in the years when we have them, so that we can get that aquifer stabilized. This bill takes out about four lines of language that includes the water rights for power purposes that may otherwise be subordinated by the Swan Falls Agreement. This was a taking of the trust water that was given to the state of Idaho and agreed upon in the Swan Falls Agreement. The state of Idaho had possession of all the water above the minimum flows that were established by that agreement, 3,900 in the summer and 5,600 in the winter, that was agreed upon by the Power Company and the state of Idaho and the balance of that water was subordinated to the state as trust waters for future upstream beneficial uses, which recharge is an upstream beneficial use. Because we've got to do the recharge up above Milner, in the Upper Valley, so that the aquifer then can percolate down through and replace the springs around American Falls Reservoir that our Lower Valley canals depend on for their natural flow water and also the springs down at Hagerman and in the valley or canyon there at Twin Falls to satisfy those spring users rights. The Speaker had told you that we did have an Attorney General's opinion, many of you have it in front of you. I won't go into reciting all of it, but there are some parts of it that I think should be noted and that's on page 4 where it talks about the subordination provision in the agreement. It says "The subordination provision established certain minimum flows and provided that water accruing to Idaho Power's hydropower water rights above these minimum flows would be held in trust by the State of Idaho for 'subsequent beneficial upstream uses'." Then it says "The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use".... That does not entitle the Company to excess flows that go by those facilities over and above the ability of the Company to divert that water through its generators. Then it says "...but such rights in excess of the [minimum flow] amounts stated in 7(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law".... Upstream uses from Milner. The last statement is my own, the last few words. It says "The subordination language is straightforward. The Agreement expressly provides for subordination to 'subsequent' beneficial upstream uses 'upon approval of such uses by the State'. These terms explicitly require subordination to beneficial uses approved after the execution of the

Agreement.” That would be the Swan Falls Agreement. Another provision and I believe the Speaker talked about this a little bit, it talks about Idaho Power Company’s agreement on stream flows. Then it says specifically, “Idaho Power Company is not the sole beneficiary of the trust, however. Future appropriators, as persons on whose behalf the trust waters are held, may seek to appropriate the trust waters in conformance with State law. The State acts as trustee in their behalf as well. At such time as a future appropriator is granted a water right in the trust waters, Idaho Power Company’s rights in such appropriated water become subordinated.” The minute the State grants someone else the opportunity to use that trust water, Idaho Power’s rights to that trust water above their minimum flows they agreed upon is subordinated water. It’s the state’s right to allocate that water to whoever they would. “Thus, the State, as trustee, holds legal title to the hydropower water rights referenced in the Swan Falls Agreement to the extent they exceed the agreed-upon minimum flows, and has the authority to manage the trust water for the benefit of the people of the State of Idaho and Idaho Power.” Under the Agreement and the implementing legislation, Idaho Power surrendered its legal title and control of the water rights above the minimum flows.

And then I think this paragraph, and this is the last I’ll do in the Attorney General’s opinion on page 8, right in the middle. It says “This agreement is contingent upon certain enactments of law by the State and action by the Idaho Water Resource Board [which was approval of the Swan Falls Agreement]. Thus, within this Agreement, reference is made to state law in defining respective rights and obligations of the parties. Therefore, upon implementation of the condition as contained in paragraph 13, any subsequent final order by a court of competent jurisdiction, legislative enactment or administrative ruling shall not affect the validity of this Agreement.” That, I think, clarifies the whole thing.

The conclusion of this is: The plain terms of the Swan Falls Agreement, as well as the facts and circumstances surrounding the 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. Well, that’s the issue. Are we going to try to stabilize the aquifer or are we going to try to maintain the economic viability for that section of the country? There’s a statute, I won’t go into it, Title 42-4203B, which is the Swan Falls Agreement, definitely subordinates these water rights from power purposes to upstream uses. There is one other thing I would like to quote, though, and is - if I can find it here quickly - is the 1978, which preceded the Swan Falls Agreement, the 1978 statute that declared water recharge a beneficial use. And this is 42-234. “It is the policy of the State of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state. The Legislature deems it essential therefore that water projects be assigned to advance this policy be given maximum support. The Legislature hereby

declares that the appropriation and underground storage of water for the purposes of ground water recharge in the vicinity of St. Anthony and Rexburg, Idaho shall constitute a beneficial use and hereby authorizes the Department of Water Resource to issue to the authorities responsible for the implementation and expansion of this recharge project a permit for the appropriation and underground storage of unappropriated water in the areas of recharge. Any rights so granted shall be subject to depletion for surface storage or direct uses after a period of use sufficient to amortize the investment of the appropriator.” We had in the statute ground water recharge prior to the Swan Falls Agreement. Swan Falls Agreement just substantiated the statutes that gave us that declaration. Well, members of the committee, I won’t go any further at this time, I believe the Attorney General’s opinion, the need for water, the need for us helping the ground water users, the cities that are involved there, and I might just list those cities. Besides Twin Falls that gets their water out of the springs on the northside of the canyon, two years ago, a call was made by the spring users in Hagerman against the underground water users, dairies, processing plants, and these cities - American Falls, Chubbuck, Idaho Falls, Pocatello, Roberts, Burley, Hazelton, Heyburn, Jerome, Paul, Richfield, and Rupert were all listed in that call. Those cities’ water supplies were in jeopardy. Now a lot of people think that city water supply is domestic use - they are not. Those city wells are municipal wells. A portion of that water in those wells can be classified as domestic, but the cities would then have to implement a distribution system that would limit the use of those wells only to domestic use. Cooking, drinking, toiletry purposes. And any kind of manufacturing or any kind of business use, city use - washing the streets, car wash and all that would be prohibited from using that water. Domestic water would be that priority. The rest of that water of the city’s that I just outlined under that call was in jeopardy. This is serious business. Our Interim Committee realized the seriousness of it and they directed us, as legislators, to see what we could do to provide the water necessary. We went to the Department of Water Resources and then’s when this thing came up. They said you have legislation that puts a cloud over whether we can allow those canals to open up and start recharging during the late months after November 1st in the fall, and before April 1st when the irrigation rights come on. We’ve got to do something about it. With that, Mr. Chairman, I appreciate the time and I would stand for questions.

Chairman Schroeder: Any questions for Representative Raybould? (No indication of any questions.) All right. Thank you, sir.

Rep. Raybould: Thank you.

Chairman Schroeder: At this time, Idaho Power - who do you want to represent you? You have a half-hour for two or more speakers, as you choose. Welcome to the Committee.

Greg Panter: Thank you, Mr. Chairman. My name is Greg Panter. I am vice president

of Public Affairs for the Idaho Power Company. I've been involved or associated with Idaho Power Company in one capacity or another since 1976. In fact, I was employed by the predecessor organization to the Idaho Association of Commerce and Industry from 1974 to 1976 which goes back to the real onset of this dispute which is carried forward to this day.I gave you that history because I think a lot of you are aware of it and I do want to raise one issue with respect from a historical perspective. That is, and I think what gets lost in this debate, is the fact that in 1982 or '83 the members of the Supreme Court issued a decision that said Idaho Power had an unsubordinated water right at Swan Falls of 8,400 second feet. At that time, there were approximately 7,500 ground water pumpers who found themselves junior in priority to the company. And there are a lot of similarities between what went on back in the 80's and what's going on today. Back in the 80's, the company said we recognize this is a huge economic significance to the state of Idaho and in our contracts, we want to help resolve that issue. In the response that we received, from at least part of the Legislature, was - the way we're going to resolve it is - we're just going to take your water. And so we had to fight that battle out and at the end of the day when the state finally concluded that they couldn't take our water from us, they actually came to the table and we, in effect, reached an agreement that accommodated all parties on all sides and we accommodated those 7,500 water users and it came at considerable expense to our customers and to the future hydro production that we have enjoyed on the Snake River. And what we did, and you've heard that referred to, we took that 8,400 right and we subordinated it to those 7,500 people and essentially ended up with a flow of 39 and 56 and there's some obviously contractual dispute as to the nature of that agreement with respect to recharge, but I'll reserve that to our legal counsel. But I think it's important to bring that up, only in the context that we haven't always been, nor have we ever been, in our view, anti- agriculture and we believe that the company has made a significant contribution back in the 80's to the economic viability of agriculture in the state of Idaho. Then you fast forward to today and we have to ask - the same similarity. We were approached by various interests three or four weeks ago, primarily by senior party surface water right holders and said is there some way - is there some avenue that we can go down where we can fix some recharge issues and the company said yes, we can negotiate recharge. The question is - who's going to pay for it? And I would submit to you that that is what House Bill 800 is all about. I agree, it's probably about recharge but when you get right down to the essence of the issue, the issue is - who's going to pay for the recharge program? Is it going to be the parties who are currently pumping out of the aquifer or are you going to shift that financial burden on to the ratepayers of Idaho Power Company who had no role whatsoever in creating that problem, but now are being asked by the adoption of this bill to pay for it. But frankly, we don't think that's fair and we don't think that's right and obviously, that's why we're taking such a strong position against that bill. There has been a lot of rhetoric in the news media and otherwise about rate impacts associated with House Bill

800, but there are rate impacts associated with it and they are real. I noted that in the Statesman over the weekend, Mr. Reading estimated those impacts to be \$6 million. Our estimate is obviously significantly higher. It's more in the neighborhood of \$80 to \$120 million. But it all involves the assumptions that you make - when you make those forecasts. But the assumption that we're making, and I think we have to make because we're responsible to provide the energy, that this is something more than just we're going to take a little bit of water every eight or ten years. There are no sideboards on this legislation. I think what this legislation really says is - we're going to take that river down to 3,900 cfs in the summer and 5,600 cfs in the winter and if we can stop every drop at Milner, we're going to do it. Well, if that in fact is what is accomplished, then that \$80 to \$120 million number is what comes into play.

The other issue that is associated with this when you start dealing with company or individual property rights, it has other consequences as well. We were notified this morning by Standard and Poor's that our credit rating has been downgraded. We've gone from stable - let me get these words right - we've gone from stable to negative. So that, in effect, is going to cause an immediate increase in the cost of capital when the company has to go out and acquire to help keep up with the growing demand for electricity that we're all experiencing in our service territory. There has been some discussion here earlier about Idaho Power is wasting water, we're spilling water, we're only going to take water that is going down the river to the ocean. Nothing could be further from the truth. Idaho Power isn't wasting water and if you look at the actual generation on our system for the month of March. I chose the month of March because in our estimation, it is not feasible because of icing and freeze-up and other issues. To realistically talk about recharge before that time, to look at our system in toll for the month of March, there wasn't any spill at all in any of our projects, starting in American Falls down the system until you get to Hells Canyon. Zero spill, with the exception of Shoshone Falls and there is an esthetic spill that we make there. It is part of our agreement with the license and part of the understanding we have with the city. Shoshone Falls also has, I think it's the plant that probably has the least amount of hydraulic capacity on our system. Every other plant was producing energy. If you want to know how the hydrology of the system really works, let me give you these numbers. The average flow past Milner since March 1 has been 2,900 cfs. The average flows at Swan Falls is 10,000 cfs. To put that in perspective, hydraulic capacity of Swan Falls is 20,000 cfs. So you can see, we're just barely at half at Swan Falls and the inflow to Brownlee Reservoir is 31,000 cfs. And that 31,000 cfs. number is largely due to the fact that there are six rivers that are downstream from Swan Falls that contribute to that inflow to Brownlee. Those are the Boise, the Payette, the Malheur in Oregon, the Owyhee, the Weiser, and the Powder River. Obviously, to take the numbers associated with what's coming out of those tributaries and

suggest that it's wasted water that we can recharge with is nonsense, unless somebody can figure out a way to build a pipeline from the discharge at Hells Canyon and pipe the water back upstream above Milner because that's the only area where you can divert water for recharge that I know of. Are we spilling at Hells Canyon? Absolutely. And that's an annual phenomenon and it varies every year and we have no control over it and those spills are dictated by the Army Corps of Engineers. It's one of our license articles to operate the Hells Canyon project and it's all part of the Lower Snake and Columbia River flood control. Like I say, that varies year-to-year. They tell us how far down we have to go in elevation and they tell us how quick we can refill the reservoir. I heard a number of 300,000 acre feet thrown out as the amount of water we are wasting. For the life of me, I've had our people try to figure out where that number came from. All we can conclude is that they've had to of added the totals of the spill at Brownlee, Oxbow, and Hells Canyon. The only number that has any merit with respect to that is the spill at Hells Canyon because that's the farthest dam downstream. During the month of March, there was a spill at Hells Canyon in the neighborhood of about 104,000 to 105,000 acre feet of water. So, with respect to that argument, I think you can see that Idaho Power, in fact, is utilizing every drop of water that's been allowed to come by Milner, down through the system and once it gets to Hells Canyon, it's not available for recharge.

Mr. Chairman and members of the Committee, those are essentially all the comments I wanted to make today. Mr. Tucker, one of our senior attorney's is here and he would like to address the legal issues.

- Chairman Schroeder:** Just one comment for those of you who have written testimony, you can leave a copy with us. Now, questions for Mr. Panter.
- Senator Cameron:** Thank you, Mr. Chairman. A couple of questions for Greg - Mr. Panter. You articulated the issue as to who is going to pay. Is it Idaho Power's position - I'm having trouble hearing myself think with that window open (truck noise from the street). Mr. Chairman and Mr. Panter, when you indicated who's going to pay the issue, is it Idaho Power's position that we are sending, there is as much water flowing right now as there was last year?
- Mr. Panter:** I've not looked at the numbers, but my assumption would be that there's probably more water coming down this year than last year, just based on the water year that we're having.
- Senator Cameron:** Since you're a public utility and you have to go before the PUC for a rate increase, if I and the rest of the members of the legislature showed up at the Public Utility Commission said not to grant a rate increase, then who would pay?
- Mr. Panter:** I'm not sure I can answer that. I suspect that would come down by

decision by the Commission. If you all went to the Commission and suggested that Idaho Power not be granted a rate increase, and on the record we were entitled to that rate increase, I suspect they may differ with you. In the event they didn't, then I think, obviously, you can carry that out, where company would have an issue of confiscation of property or whatever entitlement you're entitled to under the law and we can take it on to appeal to the courts.

**Senator
Cameron:**

Has the company calculated the benefit that it would receive, that the ratepayers would receive, when we purchased Bell Rapids last year and when we spent - and we're planning on spending an additional \$5 million this year to set aside 100,000 acres. Has the company calculated a financial gain to the company or to the ratepayers because of those events?

Mr. Panter:

No, we have not and let me explain why. Why did you raise that issue? Because it is one that keeps coming up and up. One thing that concerns us, concerns me as management of the company, is the singling out of our ratepayers as if they are separate and apart and they're not taxpayers too. The fact of the matter is, those purchases were, such as they occurred, were assisted at least in part by tax dollars that came from our ratepayers. We're not some evil empire over here, separate and apart from the rest of the state of Idaho. We do have water rights and that water right entitles us to flows, natural flow coming down the river from whatever source. Now with respect to the Bell Rapids issue, I can tell you that we lost money initially by taking that project off-line because we had property invested to serve those loads that were no longer used and useful, so we ate those costs. And I can also tell you that there was a significant amount of that water that was already in the river that hadn't been used. And so to say that we had derived the benefit for the purchase of that entire amount of that water right is just not the way that whole water purchase came down. Part of that water was already in the river and hadn't been diverted.

**Senator
Cameron:**

First of all, we didn't bring up the issue of ratepayers. You guys did. You brought that argument to us. So, it's a little bit, I suppose you need to either accept part of the equation or not and with regards to the CREP program (Conservation Reserve Enhancement Program), should we take 100,000 acres out of production or not, that's water that's not being pumped out of the aquifer. Wouldn't you admit that stronger spring flows benefit Idaho Power?

Mr. Panter:

Absolutely. And I would also, if I may, just add to that. I would also tell you that Idaho Power probably has a greater interest in the health of that aquifer as does anybody sitting in this room. The fact of the matter is, about three or four years ago, the state dropped below the Swan Falls minimum. If that trend line continues, I've heard people say we're not after the Swan Falls minimum, we're going to guarantee the Swan Falls minimum, so I'm not sure you can. Even if you want to, I'm not sure you

can, if collectively we don't solve that Eastern Snake Plain Aquifer issue. I don't think the company is not negative towards resolving the issue, the position of the company is - if it's a matter of statewide importance, and obviously it is, then why the effort to single out only one group of taxpayers and/or customers of Idaho Power Company to shoulder the entire financial burden? They didn't create the problem. Idaho Power Company didn't issue those water permits.

**Senator
Cameron:**

Mr. Panter, to use your own words, if you are asking the state to pick up that, then it's the same taxpayers that are your ratepayers. So again, your argument is a little bit duplicitous. But I want to go to your point. The one thing is I go home and talk to my constituents that aren't really a party to the argument and they're hearing Idaho Power's ads and they're seeing the comments in the news media. The one thing I want to come back to - my constituents ask, "Why doesn't Idaho Power care about the aquifer? Why doesn't Idaho Power want the aquifer restored? Why isn't the company concerned?"

Mr. Panter:

We, in fact, had worked out a program with senior priority users and with the Governor of the state of Idaho to come up with a recharge program and quite frankly, that program has gone by the wayside now, but it was probably the only shot we had for any kind of meaningful recharge in this particular year and it would have answered a lot of unanswered questions. I've heard it said, well, Idaho Power, the water is going to come back to us, so it may be a benefit and maybe it is. But we don't know that and there isn't anybody that I know that can grant those assurances. And so what our intent was, with respect to working with those different interests, is let's put something together and we can go forward and see if we can't come up with some answers to these questions and then we'll know. We'll know whether that water comes back. And the company was not looking for any unjust enrichment as a result of that program. We agreed that within the first six months, any water that came back into the system, we would back out and any amounts of money that might be otherwise payable to the company. In response to the question about wasted water, we also agreed that if in fact we were spilling, which we're not, that any of those projects down through the Thousand Springs system, we would back that generation out. We would have a six month tune-up period where we would look back between March 15 and April 1 and calculate what the actual cost of energy was during those 15 days. We could look over the six month period of time at how much of that water actually came back. There was no dispute as to how we would make those calculations. We wanted to make sure that our ratepayers were protected. And our estimate was, and it was an estimate, the maximum, it was approximately \$1.6 million. That was based on the price of energy at that point in time. I can tell you that the number would have been somewhat less than that, how much less than that, I don't know. But we left it up to the Public Utilities Commission to actually verify those numbers and certify to the state what

were the actual costs to the ratepayers. So, in response to your question, and that's a long-winded answer, Senator Cameron, the company has tried this year, just as we tried back in '84 when we were trying to stay on the Swan Falls Agreement to try to affect something positive.

**Senator
Cameron:**

Just one last question. Would you not agree that if we're going to do recharge, time is of the essence? And we need to do it now, rather than study and go through negotiations? And the second part of that question, I think you said that the ratepayers weren't paying, but wasn't your actual communication with the Second Floor was, in essence, a buyout from the state of Idaho paying Idaho Power money so that we could do recharge? Why should the state be forced to do that when we hold that water in trust?

Mr. Panter:

Mr. Tucker will get into that whole issue, holding that water in trust. It's clearly a difference of opinion.

Help me with the first part of your question.

**Senator
Cameron:**

Wouldn't you agree that if we're going to do recharge, now's the time to do it, rather than in the sixth of the last seven years with the type of water that we've had?

Mr. Panter:

Absolutely. That's why we were attempting to get something done prior to March 15. The fact of the matter is, the opportunity for recharge is gone. I've also been advised that irrigation season starts on April 1, where the canals are going to put water into their systems, charge them up and that doesn't lend itself to recharge. So, as far as we can see, I don't think there's going to be a drop of recharge done this year and I think you only gain with the contract we were trying to put together with the Governor.

**Senator
Stennett:**

Referring back to Exhibit 6 on the Swan Falls Agreement. I have a question here that is intriguing to me. The first item in that says that the minimum daily flow at the Murphy gauging station should be increased to 3,900 cfs. That implies to me that whatever reason before the deal was signed, it wasn't decreasing as your testimony seemed to say, but it was actually increasing to 3,900, rather than decreasing from 8,400. Can you square that up for me? I just don't understand why. The wording is "should be increased to 3,900 cfs."

Mr. Panter:

I'm not familiar, obviously, with the document that you're reading from.

**Senator
Stennett:**

It's the Swan Falls Agreement, Exhibit 6, Item 1.

Mr. Panter:

What I can tell you, if I may, relative that all – if you go back in time...in fact, there were enough pending applications on file, the whole river - if everything would have been followed through on, the whole river would have gone dry. With respect to the trust water, and I think we're mixing apples and oranges and trying to construe trust water in two different contexts. Trust water is ground water. In the way trust water was derived

at is, and this gets, I think, to part of your question, the lowest flow on record at that time, when we were negotiating that agreement is 4,500 cfs. When we agreed to subordinate our water rights down to 3,900 cfs, 600 cfs was what was set aside and held in trust for future beneficial uses. There was approximately 450 cfs, as I recall, set aside for agriculture, and there was some indications placed on it and another 150 cfs set aside.

Senator Stennett:

I think I'll put that question to Governor Evans and some of the other guys, cause I think that's intriguing that it appeared to me that the folks around the table said that we should increase, rather than decrease to 3,900 cfs. So, we'll talk about that. The next - Number 2 in Exhibit 6, states "the minimum flow at the Murphy gauging station" - it doesn't say should be, but says "shall remain at zero cfs." What's your interpretation of that? If the interpretation was worded as shall remain at zero cfs, it would seem to say that all the water could be diverted at any time all day long. Zero - shall - flow over the Murphy gauging station.

Mr. Panter:

I'm going to bring my attorney, in the back of the room,I practiced law though for years, but I am going to defer in part to Mr. Tucker, if I may, because of the aspect of testimony that he's going to provide. But I can tell you with respect to the uses of the subordinated events, beneficial uses there's no dispute on the part of the company and the state doesn't have the right to take those flows down to that level. We didn't give up any rights that we had at all, we retained all of our water rights. What we did was allow the state take those rights down to those certain minimum levels as against those other things.

Chairman Schroeder:

Further questions from the Committee?

Senator Williams:

Just a followup on Senator Cameron's question. In the CREP program that we have tried to initiate and hope we would get initiated in the next year, hopefully, the rates that Idaho Power charges to underground water pumpers compared to those rates charged to industrial and commercial and some of the residential users, if in fact we shut off 100,000 or thereabouts acres of pumper water, and you're able to use that for residential and commercial, will that be a plus or a minus for Idaho Power if that block of power is available for you to use for your customers?

Mr. Panter:

I don't know that it would be either. I think it would come in the context of our integrated resource plan. How much of that energy, when it's going to back, what investment we have that we have to write off against what we have out there. As a general observation, when you talk about the rates that are in existence on our system, the fact of the matter is that agriculture currently is staying about 76 percent of the actual cost of the service, the cost to the company to provide that service to them and most other ratepayer classifications are paying in excess of 100 percent to make up that difference. So, it comes back as a benefit to the company, and it may very well come back as a benefit to the company during that

period of time, it may be that we won't have to purchase power. There are a lot of different scenarios. That all figures into the mix and under the power cost adjustment clause with the Commission, it could end up having a favorable result or a favorable impact. If that's the case, 90 percent of those benefits could go to the ratepayers.

- Senator Williams:** If, in fact they're paying 75 or 76, whatever the figure happens to be, the actual cost, and the others are paying over 100 percent, then it looks like there is a little bit of spread there. Plus, is it not true that Idaho Power has a program in effect that will pay you, if you're an irrigator, to shut down your pumps during peak periods during summer months so that more power is available for your distribution to other areas?
- Mr. Panter:** That's correct.
- Senator Burtenshaw:** Maybe you can help me understand this a little better. I have a flow chart here from your website from March 2nd on through to the 15th. As I understand, the 5,600 cfs is the winter right. Is that correct?
- Mr. Panter:** That's correct.
- Senator Burtenshaw:** On your flow chart, it shows from 8,960 to 10,900; 11,200; one day, 14,200 cfs. The water above the 56 to these figures that I have here, would you explain to me, what water is that?
- Mr. Panter:** Where are you looking at those numbers? Where are those numbers coming from? Which project? Are you looking at....
- Senator Burtenshaw:** This is at the Murphy Gauge.
- Mr. Panter:** Oh, at the Murphy Gauge. So, the nature of your question is - what flows that are relative to the 56?
- Senator Burtenshaw:** Above the 56. Everyone of them is way above it. What water right are you using there?
- Mr. Panter:** The water right that we are using there is the right that we have to use the natural flow coming down the river to the maximum extent of the hydraulic capacity of each of the facilities. That right, the 5,600 right and the 3,900 right, and that's part of the essence of this debate, it's the company's contention we did not subordinate the recharge, so maybe to put it in clearest terms possible, the largest plant we have on the mid Snake system, actually is above the Murphy Gauge, it's the Lower Salmon and the hydraulic capacity of the Lower Salmon project is 17,200. When the flows for recharge, flows coming downstream exceed that amount, then there's no dispute from the company that you can take every drop. Until the flows exceed that amount, we believe that we have an unsubordinated water right to utilize that water.
- Senator Burtenshaw:** So then, you believe that everything over the minimum stream flow belongs to your company, the rights.

Mr. Panter: No, Senator Burtenshaw, that isn't what I mean. What I mean, as it relates to recharge, that is what I mean. As it relates to those other beneficial uses - agriculture, municipal, etc., that we subordinated ourselves to at Swan Falls, not asserting those rights against those uses. Those uses take us down to those levels. There's no dispute from the company. This is a fairly new argument of contract interpretation involving, basically, aquifer recharge what was intended in the original contract and what was intended in the '94 legislation. But I would rather defer that to our attorney and I think he's getting nervous over there as it is.

Chairman Any further questions?

Schroeder: All right. Let's get the attorney up here.

James Tucker: I'm James Tucker. I'm an attorney with the Idaho Power Company. To put things in context, a little bit if I can, to start off with, a little bit of history of who I am. I have been working with Idaho Power for about five years as what's called senior attorney. Brought in principally to deal with Hells Canyon projects, do licensing and other resource issues. Also represented Idaho Power Company for twenty some years with the firm of Nelson, Rosholt, Robertson and Tucker. Tom Nelson was with that firm before he took the bench.

I came to Idaho in 1977. I was born in Pocatello, but went back East with my family, went to school on the East Coast. Practiced law back there for about five years and came to Idaho in 1977 and took the Bar. It was interesting though when I came to Idaho because when I took the Bar, I had to study up on water law. They didn't teach water law in the East. That's something that East Coast schools didn't pay much attention to. I learned two primary things when I studied for the Bar in Idaho. Number one - water in Idaho is a property interest. Number two - there is an importance when you talk about water in Idaho with a respect to priority base. And I think that's something here that's really being lost in the noise, if you will.

What we're talking about here is Idaho Power's water rights. I have here on the desk before me a booklet of Idaho Power's hydropower records, a license, and decreed rights that Idaho Power has claimed in the SRVA, licensed rights by the state, all fully vested, all claimed in the SRVA. The state of Idaho has not claimed any rights in the SRVA that belonged to Idaho Power. In other words, they haven't claimed any portion of those rights. Idaho Power has water rights like any other people in this room have and they are property rights, they are property interest, they have a value, they can be sold, they can be transferred - subject to state regulation obviously, but they are certainly property interest like any other water right in the state. What we're talking about here is the interpretation of a contract that was entered into between Idaho Power Company and the state in 1984 which certainly affects Idaho Power's water rights.

There is no question with respect to property interests that you can subordinate it, you can condition it by contract and the company did that. There is no question they did in 1984.

A little history about what happened in 1984 and why. As Mr. Panter said, there's a lot of similarities here and why Idaho Power again finds itself somewhat of a reluctant participant here, and hopefully not a reluctant litigant. I say that because in 1984 what really started this whole process and I was with the firm of Parry, Robertson, Daly and Larsen at that time, Nelson and Rosholt in 1977, when this process started. What started the process was an action by ratepayers against Idaho Power Company for failing to protect its water rights. For failing to protect its property interests on the Middle Snake, an allegation that by doing so, that its rates were being artificially raised because of the failure of the company to protect its hydro resource. Idaho Power Company had previously considered that the upstream pumping of water that it was likely subordinated to the Hells Canyon subordination provision. And it went to court and found out, and I say reluctantly because I think it was a bit of surprise when it went to court, but it found out from the Idaho Supreme Court that its water rights on the Middle Snake were not subordinated. It found itself in the situation where it had to bring an action to protect its ratepayers and its stockholders. It had to bring an action not any different than what we find the surface water users today have brought a call against junior groundwater users - to protect its interests. And assets were being dissipated. It had the Supreme Court that said - you have a water right and a company as a corporation, had to protect that asset, so it sued 7500 people, reluctantly. It did not like doing that and I know that because I helped draft the complaint. Well, hopefully, that was worked out.

But what's happening here, I think is very similar in that context. We have a contract dispute now of what the Swan Falls Agreement means. And there are certain places that you can take care of water rights disputes. We have the SRVA Court and we file claims in that court where if we have a dispute of what a water right is, it can be litigated there. And there are certain places that you can resolve contract disputes. I don't think that's before the Legislature. I'm speaking as a lawyer. I think contract disputes should be resolved in a court of law. Now we can argue today about what the Swan Falls Agreement means, whether or not the Swan Falls Agreement talks about the beneficial uses and what that entails. I can tell you from the company's position that we have a very different view than what Speaker Newcomb has indicated. Subsequent beneficial uses in the contacts of the Swan Falls Agreement was considered to be consumptive uses, approved by law, it was approved in the courts of the Swan Falls legislation which set aside 600 cfs for subsequent beneficial uses of trust water. Concept also in Swan Falls - consumptive uses. The reason I say that is because when you look back at the Hells Canyon subordination, and you look at the subordination at the C.J. Strike project,

each of those projects when they were originally licensed had subordination clauses. The upstream consumptive uses, the irrigation. As Greg said, Idaho Power is cognizant of the fact that irrigated agriculture is a very important entity in the state and its subordinated irrigated agriculture.

In 1984 when it entered the Swan Falls Agreement, recharge was a very good thing. We've heard today some reference to the statutes that were in place in 1977 and 78. One of those statutes granted a recharge permit to two small canal companies' irrigation districts in the Upper Valley. If you go back and look at that legislation in 1978, it calls that, and that was a pin-point, it was specifically tailored to grant legislatively a permit for recharge to those two districts and referred to in a 1978 legislation as those being pilot projects. There was another statute that was in place, I believe in the 1977-78 era, that talked about recharge being allowable for irrigation districts and recharge districts. To go back and look at that legislation, it's very specific and it says that recharge permits to those two entities or types of entities would be subordinate to hydropower rights - to all hydropower rights. It's very clear. In 1984, when these agreements were entered into, beneficial use was not a recognized beneficial use in the state, where you or I or another person on the street could go into the Department of Water Resources, make application, and receive a permit for recharge. The only way it could be done was through those two statutes, one of which subordinated recharge through hydropower and the other of which was a very specific pilot project in the Upper Snake River. Now, you also can go back and look at the record with respect to Swan Falls, and I made this point in the House. We've got to be cautious here of trying to determine what the intent of the parties was by looking at the four corners of about an eight or nine page agreement. I understand that the law says if you can determine what the intent is, then it's not ambiguous. But that agreement resolved one of the most complex water issues in the state of Idaho. As you can see, it didn't resolve it all, cause we're here some 20 years later and we're still trying to interpret and still trying to argue what that Agreement means. But if you look at some of the things that surround the Swan Falls Agreement, one of which was the framework for the Agreement, it came out about 20 days to 30 days before the Agreement was signed. It talks about recharge. But it talks about recharge in the context of future, major, it might be considered, might be studied, in the context of trying to resolve some of the severe water property issues that the state is facing. So surely, recharge must be looked at in the future. Swan Falls Agreement interpreters really thought that was the case. But that doesn't say that when we subordinated in 1984 that we subordinated recharge.

If you roll forward another 10 years, 1994, there were specific committees that were commissioned to look at recharge and met during the months of 1993, prior to the 1994 Legislature. That committee was participated - there was participation by the Department of Water Resources, by the

Bureau of Reclamation, by the Idaho Water Users, pretty broad-based water user participation in that committee. The 1994 legislation came out of that. And if you look back at the record in 1994, back what they did was they took out the general representation, or subordination language, that was in 42-4201A, they took it out. That language read that recharge in irrigation districts and the recharge districts would be subordinate to all hydropower rights. They took that out and they specifically referred to the Swan Falls Agreement and said it would be subordinate to Swan Falls. I submit to you, they knew what they were doing. It wasn't a mistake. And it was actual legislation that was carried by the Idaho Water Users and it was carried by - one piece of legislation was - and the other piece was carried by the Idaho Department of Water Resources.

My point of all this is - we're in the last stage of this legislative session. We're dealing with one of the most complex, as you can see from the number of the people in the room, one of the most volatile issues I think that has faced the state of Idaho is the last twenty some years. And we're trying to solve it too quickly. And we're solving issues that really have ramifications for claimed water rights that Idaho Power has and SRVA, and a contract that Idaho Power Company has with the state of Idaho. If there is a dispute, and I say "if", because I'm not sure if there's a dispute with the state of Idaho as to what that means. We do have the Attorney General's opinion which we disagree with. But we have not heard formally from the state of Idaho that there's a dispute as to what that contract means. If there's a dispute, I think you heard from Mr. Panter that the Power Company is ready to sit down and try to resolve that dispute. If we can't resolve it, the place to resolve a contract dispute, I submit, is for the court to tell us what it means, not the Legislature to interpret the contract and perhaps impact vested water rights that Idaho Power Company has.

Now, I'll get back to the reluctant litigant issue that I brought up earlier. Idaho Power Company does not want to be in a position, like it was in Swan Falls, where it finds itself that it has to move forward with some litigation. That's not where it wants to be. But as you can see, because it has vested water rights, the 1994 Legislature said and interpreted, we think correctly the Swan Falls Agreement, if that is changed abruptly, we may be in a position to where we have no choice but to bring an action. And we have no choice because again we find our self in that situation where we have ratepayers, we have the PUC, we have the FERC (Federal Energy Regulatory Commission), which we're going through licensing now in Hells Canyon, where we have an obligation under our licenses to protect our assets and water rights are an asset. Water rights determine the value of property in Idaho. There isn't a piece of property in Idaho that its value isn't determined on the basis of its water right. That's what brings value to Idaho land. Idaho Power finds itself in that position, unfortunately. And again, I bring that out. I think I've hit the points I wanted to hit. I'm down to a minute and four seconds, so it's getting close

to my time. I would be happy to answer questions.

**Chairman
Schroeder:**

Questions?

**Senator
Cameron:**

Were you here in 1994 in front of this committee or a witness, if you will, or participant in the Interim Committee in 1993?

Mr. Tucker:

Yes, I was. I don't recall whether I testified in 1993 or 1994, but I recall that I was involved in that process.

**Senator
Cameron:**

As a committee member that was here in 1994 and served on the Interim Committee, I can tell you that Idaho Power did not testify at any point, either during the Interim Committee or in front of the committee. And, Mr. Tucker, I will also affirm for you that I and along with Representative Bell made the motion from the Interim Committee to amend the law, amend Section 42-4201A and did not include the asserted language that is now being used to un subordinate the water right.

Mr. Tucker:

I don't know how to answer your question. Is that a question or statement?

**Senator
Cameron:**

A statement.

Mr. Tucker:

As I say, I don't recall whether I testified or not. I was over at the Legislature and I remember when the Legislature passed that legislation.

**Senator
Cameron:**

Again, probably not a question. I'm just stating for the record, for your information, because I don't believe we understood that that language was put in there to somehow un subordinate our rights, our trust rights. It's my understanding that that language was inserted at the request of Idaho Power with the water users, unbeknownst really to the legislators, and in between when the Interim Committee met and when Representative Bell and I made the motion. I seconded her motion to amend 42-4201 and subsequent when the language came forward before the committee. There was no testimony. I reviewed my minutes, reviewed our motions, and seen nothing that reflects that any testimony was given to the fact as you stated - that we knew what we were doing, that we purposely chose to un subordinate our rights.

**Chairman
Schroeder:**

Further questions? Senator Langhorst.

**Senator
Langhorst:**

I just want to make sure I understood one of the things that you said. My question has to do with the law that was passed in 1994 and I believe you said that prior to that there was an existing statute which also had held that recharge was subordinated to our production. Did I hear you correctly?

Mr. Tucker:

Yes, that is correct. There were two statutes on the books as I recall, and as I understand it, prior to 1994. It was 42-234, I believe, and 42-4201A.

The first statute, 234, dealt with a specific granting of a permit in the St. Anthony's area for recharge. That was referred to in 1978 as a pilot project. 4201A granted to irrigation districts and recharge districts the ability to get water rights for recharge. And there was specific language in that section that said that those water rights for recharge were subordinate to all hydropower purposes.

**Senator
Langhorst:**

If the 1994 law did not exist and we were arguing this issue under the previous existing statute, I think it was 1982, would this discussion be the same? In other words, is the contention that the 1994 legislation was a mistake?

Mr. Tucker:

I believe it is. It's not controlling. To me, the controlling issue is what was intended by the parties in 1984. The 1994 legislation, in my view, was something that was there that I think illustrates that in 1994, contrary to what Senator Cameron may have said, that in 1994 the Legislature validated what the company said was the intent in 1984.

**Senator
Stennett:**

I appreciate you talking about the importance of the contract, as it is central to what this issue is. Politically, this is - there's cross-currents going on here that doesn't make any sense for any of the members of this committee. So I think we all have to go back to the contract and I'm going to ask you, under Exhibit 6, since you were there in the room - you're not a signatory to this but you were representing the Company at that time, what in your mind, is the word "shall remain at zero" pertaining to the flows at Milner. What does that mean?

Mr. Tucker:

First of all, this was 30 years ago and I was sitting in the back of the room, but my recollection of that event, that Exhibit that you're talking about, was specific to how the State Water Plan was intended to be changed. You brought up in an earlier question about raising the minimum flow to 39. The minimum flow at that time under the State Water Plan, for planning purposes was 3,300 cfs, and the raising to 39 was what was intended. The zero flow was the intent to manage Milner for zero flow. Now that said, I think everyone realized that it would not necessarily be zero flow, but the management mind-set was to manage - the State would say - if it gets to be zero at Milner, that's fine with us. That's what they were saying.

**Senator
Stennett:**

Thank you. I appreciate the interpretation on the 3,300. I recall reading that somewhere else. It makes more sense than why the language would say it should be increased under Item 1. Let's go back to Item 2. Both parties, the Power company and the state signed the Agreement that regardless of what the interpretations are, whatever it means shall remain at zero and the word "shall", it doesn't say "should". Should is a qualifier in every one of these documents, everyone - one through six, except for two, in which it says "shall". So is this the interpretation of the Power Company at that time that the state could shut off Milner and use the water however they chose to above Milner?

Mr. Tucker: I'm pausing because I'm not sure the Power Company considered that. I don't know for sure. My sense, when you qualify your question or having your question that the state use the water for whatever purpose, I would have to say no. The Power Company, if it had been the intent of that Agreement, the Power Company would subordinate its water rights for all purposes down to 3,956, they just as well had said, all you get is 3,956 and don't come back and darken our door again. That's not what occurred. There was the setting aside of a specific amount where at least trust water, over and above the 3,956, that was to be used for subsequent purposes as envisioned by the contractor and as envisioned by the later legislation that went in place. I might say, that subsequent use, was also have a component that what its impact might have upon hydropower. If you look at the IDWR regulations, the allocation of trust waters has a hydropower component. In other words, the state was not blind to the fact that it had the most forward and looked at potential impacts these types of reductions might have on hydropower. But the Company's presumption was is that they were subordinating irrigated agriculture, those that were in place and those that might come into place later that might want to use this block of water that was set aside. I can tell you the Company was not contemplating a total subordination for all purposes and just walk away and forget about it.

Senator Stennett: I appreciate your interpretation; however, it is telling in the Exhibits, under the qualifiers that the zero flow at Milner Gauging Station remain at zero and says shall. The Company saw that and shall is a term of art in the legal profession as it is around here, and when we put shall in the statute it means something.

Mr. Tucker: I appreciate that comment, but I don't know that it changes my mind. But I understand what you're saying. It does say shall.

Senator Little: I'm reading the minutes of March 11, 1994 of this committee and Mr. Chapman's testimony on Senate Bill 1574 and there's some language by Mr. Chapman and some by Norm Young. They're talking about incidental recharge and artificial recharge. Is it your position that there's a difference between incidental recharge and artificial recharge?

Mr. Tucker: Yes, Senator Little, there is. As I recall I've read that same portion of the minutes. There was some concern at the time when the 1994 legislation went in that, I think, Mr. Higginson, the administrator of IDWR, was concerned that we shouldn't be creating in the context of talking about recharge generically, that someone could come in and claim a water right in the SRVA for an incidental recharge. In other words, for irrigating and the fact that you do irrigation, if incidentally recharges the aquifer, that is not a recognized use. So it was specific, the intent was to allow people to go get a permit for recharge, primary purpose for recharge. Incidental recharge was recognized as being beneficial to the state in that legislation. It was recognized by that committee as being important.

Senator Little: The last line of Mr. Chapman's testimony said that Chapman noted that language was added and referring to privately owned electrical generating companies to protect and verify the Agreement of Swan Falls. Does Mr. Chapman's testimony on Senate Bill 1574, obviously it's meant to verify the Swan Falls Agreement, but is your interpretation that it basically says recharge is subordinate to everything what's agreed upon, the DCMI language and the trust water of the Swan Falls Agreement. Is that your position?

Mr. Tucker: Yes, it is. If you go back and look at some of the minutes of the meetings just prior to when Mr. Chapman made that statement. The Idaho Water Users proposed a certain piece of legislation or policy on recharge and as I recall, in that piece of legislation, they didn't say anything about subordination. The Department of Water Resources in commenting on that policy said we have to say one thing or the other here about whether it's subordinate that hydropower and subordinate to Idaho Power's rights or not. It was changed, at least in the minutes, it looks like that change was made to validate or to verify or whatever the language.

Chairman Schroeder: Further questions? All right. Thank you.

Chairman Stevenson, would you like to make some comments on this piece of legislation?

Chairman Stevenson: Mr. Chairman, I think you'll hear lots of testimony on this and I decline.

Chairman Schroeder: Governor Evans, would you like to speak? And Committee, Governor Evans has provided us with two handouts that are in your blue folder.

Governor John Evans: Thank you very much, Mr. Chairman, and it's a pleasure for me to be here today and listen to the very complicated debate in relation to the Swan Falls Agreement of which I was a party to. Fortunately during those days, we had some excellent attorneys - Tom Nelson, Jim Jones, Pat Kole, Pat Costello - they would negotiate all the way through to come up with the Agreement.

It is a pleasure to be here to report my recollection of the negotiation of the Swan Falls agreement which the State of Idaho and Idaho Power signed almost twenty two years ago. I hope my testimony will help to clarify the issues before you.

The issues of major concern to Idaho Power in 1984 were the water priorities, the minimum flows of 3,900 second feet in the summer and 5,600 second feet in the winter. Aquifer recharge was not an issue in 1984, as we negotiated the agreement.

As for the allocations of the surplus water above the agreed upon minimum flows, former Senator Ray Rigby, an eminent eastern Idaho

water attorney and former Attorney General and now Supreme Court Justice Jim Jones, developed the concept of the Trust Doctrine for the surplus water. They recommended that the surplus water would be held in trust by the State and then be allocated to the future beneficial uses. Although Idaho Power has received the benefit of those trust waters over the years until the Legislature would determine the future beneficial uses, in my opinion they gave up their water rights of those trust waters for power generation in the Swan Falls Agreement.

I have read the Attorney General's Opinion 06-2 of March 9, 2006 and agree with the opinion. It appears to me that Idaho Power recognizes they cannot win the aquifer recharge issue in the courts so they are trying to win in the political arena.

I am quite surprised that Idaho Power is not being the good citizen they were when they signed the Swan Falls agreement and are now objecting to the aquifer recharge plan. If the recharge works as we envision, in time the increased flows back into the river from the Thousand Springs and other springs along the river plus the Bell Rapids water buy out of 75,000 acre feet plus the water from the planned Conservation Reserve Enhancement Program of 200,000 acre feet, Idaho Power will receive an abundance of additional water to run through their generators. They should be very pleased with the results

Let me urge you to support Speaker Newcomb's H800, The Aquifer Recharge Bill.

{Governor Evans handed out a document that was prepared for the Swan Falls negotiations by Assistant Attorney General Pat Kole and the Governor's Attorney, Pat Costello in 1985. }

It's a very interesting story of what their interpretation was of the Swan Falls Agreement. On page 17, I thought it was most interesting, of course they were talking about the recognized beneficial uses that the state could allocate water for and they are listed there in the first paragraph on the left hand side of that document. The second paragraph says "The parties agreed that the State would be free to change these factors in the future as deemed necessary by the State. The final agreement divided the power company's water right into three parts: (a) the subordinated as to all existing uses developed as of the date of the agreement; (b) the company's remaining right in excess of the state's minimum flow is initially unsubordinated but held in trust by the state to be allocated to meet future uses which conform with state law; as each such right is approved, the power company water right is automatically subordinated to that new right; (c) the company's right to use the amount of water protected by the state's minimum flow (3,900 cfs summer, 5,600 cfs winter) is permanently unsubordinated."

This document is put together by two young, bright attorneys that worked all the way through the Swan Falls Agreement and I think it is a document that you all should study very carefully and I think it very clearly indicates that Idaho Power gave up those rights to those surplus waters and now when they're coming back around after the '94 agreement, that was obviously to me was a huge mistake and I ask the Speaker - what happened? Why would you place that kind of a document in the code to give Idaho Power those higher priorities on that surplus water? He said we were dead on our feet. We just weren't watching it closely enough. That's about what you said, wasn't it?

If there are any questions, I'd be very happy to answer them.

**Chairman
Schroeder:**

Any questions for Governor Evans?

**Senator
Stennett:**

Thank you very much for being here and I appreciate having someone who has actually signed the document. I have a question about trust water. Twenty-five hundred was the recognized minimum flow at one point in time, apparently. That's where everybody came with 4,500 cfs. The Company agreed to go to 3,900 cfs since the minimum standard flow and the 600 cfs to be held in trust. I think that's clear, everybody seems to understand that. I think what is at issue is the water that was in excess of the trust, every day water that comes down. The interpretation that you have is - did Idaho Power subordinate all the water or just 600 cfs? That's the question that remains in my mind about this agreement. It isn't clear.

**Governor
Evans:**

In my interpretation of the Agreement and the negotiations, that's exactly what they were doing. Their emphasis was we need to protect our interest for the minimum flow. You do that and we'll subordinate our rights to the trust water.

**Senator
Stennett:**

The trust water - is it everything above 3,900 cfs or is it just 600 cfs between 39 and 45?

**Governor
Evans:**

I'm not sure. I'm not sure about that, Senator.

Senator Little:

Governor, this document by Kole and Costello. Was that a part of the Agreement or was that – the thing that gives me a little interest about it is on the page that you were quoting, page 17, that said “the State would be free to change these factors in the future as deemed necessary by the State”. If the state determined that American Falls Reservoir had to be kept full, all reservoirs kept full, I can't imagine Idaho Power would agree in 1984 to say we're going to leave all the reservoirs full for fishing and any other use that would come up after the Swan Falls Agreement would have been okay. Was this document part of the Agreement or was this an analysis done by those two for some legal.....

Governor

You're absolutely right. This was their personal consideration of the

Evans: historical review as prepared by the Assistant Attorney General and the Governor's attorney. I thought it was good to bring it to your attention and it hasn't been published for many years and it's something you can use as a document because it's what they had concluded the Agreement was all about.

Chairman Schroeder: Further questions?

Thank you, Governor.

(Former) Senator Laird Noh: It's nice to be with you this afternoon, I guess. My recollection of the last hearing on the Swan Falls legislation after the lawsuits was, we sat down, as I recall, about 1 o'clock in the afternoon and didn't even have a formal break until 2 a.m. in the morning. So, you have a long ways to go here. (Much laughter.)

I did feel an obligation as Chair of the Committee at that time to be at least available for questions and to share with you a little bit about the information I may have and raise two or three points that have not been given, perhaps, adequate attention. I hope you will, at least it's easier for me, to analyze this issue in two fairly separate components. One is the issue of whether it is good public policy to use the trust water for recharge or to use it for hydropower generation. That, I think, is a legitimate policy issue for the legislature to decide. The separate issue, of course, is whether Idaho Power, in fact, has priority over you as trustees for the trust water, to make that determination and anything other than the political process. Do they have a right and if so, where and how should that right be determined.

Now to back up a little bit. Speaker Newcomb said this probably was going to be the testimony of the dinosaurs, but a little bit of history. One of the reasons why you do have such a good record of the Swan Falls hearing is because you could see there was a lot of pretty good lawyering going on. At that time there was a very bright, young fellow not too long out of Harvard Law School named Mike Crapo. You will see that in reading the Attorney General's opinion, the record weighs very heavily. We take all of those hearings, all of those hours of hearings, a very dedicated, bearing in mind this is "typewriter years", the committee secretary named Bev Mullins who still lives here in Boise, who transcribed the minutes directly from the tapes because of concerns that we would at some point be back in the same situation that we confront today.

Senator Crapo was particularly actively involved in this process. It is very unusual that statements of legislative intent and the statement of purpose of legislation be in the official records of the Senate. Senator Crapo insisted upon that. He wrote the statement of purpose which you will see in the Attorney General's opinion and the very extensive, perhaps the all-time record, of statement of legislative intent. He stood on the floor of the

Senate and read that verbiage into the record, realizing that an accurate record, for better or worse, would probably be important in future situations, such as this.

A couple of points that may need a little talking about - one is these specific water rights or recharge held by the Water Resource Board, not some general open-ended fall to recharge, but only that we could define in minimum flow water rights held by the Idaho Water Resource Board. Secondly, I also served as an active member of the Facility Deregulation Interim Committee a number of years ago. Senator John Hansen was Senate co-chair of that committee; now Treasurer Ron Crane was the House co-chair of that committee; Senator Lee was also involved. It was at the time Idaho Power was just commencing the re-licensing of the Hells Canyon project and Joe Marshall was president and CEO of Idaho Power. Idaho Power was then concerned about public support and political support for the re-licensing project and how that might affect litigation under the Hells Canyon re-licensing process. No one was sure at that point what Congress would do, and I'm not sure that we're still sure today, whether a complete deregulation of electrical energy removing it totally from the authority of the state Public Utility Commissions. We were invited, and we did, sit down and negotiated for a period of over two years with the executives of Idaho Power over how the ratepayers of Idaho, in fact, might be able to benefit contractually from the Hells Canyon and other hydro projects if deregulation occurs. Envisioning it for us exactly what happened in the state of Montana when, at Montana Power's request, and heavy lobbying, the legislature did fully deregulate the senior water rights along with the generating projects were sold to an international Pennsylvania company and now there are thousands of junior water rights which are situated similar to those water rights junior to Idaho Power's at Swan Falls which are now far beyond the reach of the Montana Legislature or the Montana court.

There are similar water rights similarly situated with Avista at the Post Falls Power Plant which are senior to the minimum lake level of Lake Coeur d'Alene, held by the state of Idaho and many upstream on the Clark Fork River and other commercial, industrial, and other water rights. There were similar water rights on the Bear River. Those were protected by contract at the time through the Idaho Public Utilities Commission, the Attorney General's Office and the Department of Water Resources. When Utah Power and Light was sold to Scottish Power, then it became Pacific Corp, those junior water rights were also protected in the agreements with the PUC. Mr. Buffet and Mr. Hathaway recently, when Scottish Power sold that entity and those water rights to Berkshire Hathaway, which is a private - not a publically registered company. The point I want to make here is that we don't know on in the future what will happen in terms of the status of public utilities regulated by the Public Utilities Commission. We hope that continues, but there still are very large pressures to fully deregulate electrical energy. I think it's imperative

upon the Legislature to be particularly diligent as they deal with hydro water rights and how they might be affected by changes in ownership or changes in federal law at some future date. Those negotiations with Idaho Power didn't resolve with any agreements and negotiations were terminated.

When I read in the newspaper that the Governor was negotiating with Idaho Power to use taxpayers money, \$1.6 million I believe, to compensate Idaho Power for what I believe to be trust water. Now obviously, that may be a position of contention for debate in the adjudication court or other courts. From my understanding of what occurred in Swan Falls, the Legislature are serving as the trustees and assisting the state over that trust water have a trust obligation, and there would be no compensation due and no other non-trust water rights in any kind of risk under this legislation or other legislation. But I do raise the issue, and you know this issue of compensation almost came to pass for water rights which in my opinion Idaho Power probably doesn't own, was almost an accomplished situation.

So, I might summarize by saying that Idaho Power's water rights are currently under determination before the adjudication court. That may result in litigation or the nature of the Swan Falls contract, contracts in non-adjudication courts- must certainly- the two must come together. I did become alarmed from learning the Governor and Idaho Power had tried to negotiate that Idaho's taxpayers would pay \$1.6 million to Idaho Power for these trust waters, which the taxpayers, I believe, already own.

Now, in '94, there's been a lot of discussion about that. It appears to me, at least from what I know, that the Legislature was within its authority to make that determination at that time of the trust water and it is within its authority today to reverse that decision within the bounds of other Idaho law. There may be litigation to determine that, but I don't believe it should constitute the taking of the rights of Idaho Power. If there are any legal issues, they should be settled in the adjudication or other courts and those decisions should not be affected by taxpayer compensation to Idaho Power or by abdication of legislation to the court. Thank you.

**Chairman
Schroeder:**

Questions for Senator Noh.

**Senator
Williams:**

Welcome to the Committee. It's good to see you. In your words, Senator Noh, what was the intent of the legislation that was passed in 1994 by the Legislature at that time?

Senator Noh:

I was not a co-chair nor a member of the recharge committee. I have not gone back through the minutes from the interim or resources committees in that regard, so I am giving you my recollection. My recollection is that there was a group of people who were very interested in recharge. My

own opinion is that recharge is only one component of what would be necessary to address the aquifer problem. I recognize that Idaho Power is a very formidable political player. When the advocates for [the 1994] legislation drafted the bill, they wanted to be able to be subordinated to Idaho Power's hydro rights but felt they probably could not get the votes. In order to get the bill passed, it was necessary to add that provision.

- Senator Williams:** Senator Noh, have you read the statement made by Senator Crapo ... [in the Senate] journal?
- Senator Noh:** Yes, I have.
- Senator Williams:** What is your opinion of it?
- Senator Noh:** I think the interplay in the minutes between Senator Crapo, Idaho Power's attorney, and Senator Peavey was very important. Senator Crapo was very careful and deliberative in putting that together.
- Senator Little:** In S 1575 from 1994, section 1, the language before 1994 said, "the legislature hereby declares that the appropriation of underground storage water for purposes of water recharge," and then it said, "in the vicinity of St. Anthony and Rexburg." That was stricken in 1994, "shall constitute a beneficial use" (I'm returning to the old language). Prior to 1994, the legislature said recharge is a beneficial use in this pilot project. Help me if I'm getting this right: in 1978, recharge, as a beneficial use, was to pilot a project. In 1994, they struck out any reference to the pilot project and said at that point in time that recharge is a beneficial use categorically. The document Governor Evans gave us contains discussion in which two attorneys talked about how the parties to Swan Falls agreed to change these factors in the future, as deemed necessary by the state. Do you think that Idaho Power, when they negotiated Swan Falls, would have given its full trust to the legislature to deem whatever it wants as a beneficial use, and thus causing Idaho Power to subordinate its water rights? Do you think that was their intent?
- Senator Noh:** A 68-year old shepherd may be able to read the mind of a sheep, somewhat, but not Idaho Power's.
- Senator Stennett:** If I go back to the Senate Journal, the vote was not unanimous on the floor, and there were six who voted against it, including former Governor Batt. It is telling, though, that the statement of legislative intent was read, and in this case, was read by unanimous consent without objection. So there was obviously some deference given to the interpretation of Senator Crapo as to what the agreement meant at that time. I'm still grappling with how, politically, this doesn't make any sense for anybody, so I'm trying to figure out what the contract said. You were there.

I'll go back to one paragraph in the Senate Journal on page 59, where Senator Crapo wrote. I'll read this to you and ask the question of whether the trust water that Idaho Power gave up is the 600 cfs or if it exceeds the 600 cfs. Here's what Senator Crapo had written in the Senate Journal: "Thus, the existing hydropower rights, which have not been affected or subordinated, shall not be subject to depletion below any applicable minimum stream flows established by the state." It goes on to say, "Hydropower rights in excess of such flows will be held in trust by the state and are subject to subordination and to depletion by lawful beneficial uses." Going back to the question I asked Governor Evans, again, was the 600 cfs all we held in trust water, or did we hold in trust all water in excess of 3,900 and 5,600 cfs?

Senator Noh: From my perspective, it is very clear, not only from the statement of legislative intent, but also from the committee minutes and a number of other documents, that all of the water – all future water – above the minimum flows [is included].

**(Former)
Senator John
Peavey:** I'd like to go back just a little bit before 1984 to the 1970s, when this all got started. Back then, there was a proposal to build a 1,000 megawatt coal-fired plant and the power company was promoting this. They clearly told us that the demand for power would literally pump every drop of water out of the Snake River south of Boise. The power company had the dams – 11 of them, I think – in the rate base, a guaranteed return on that investment, and they were going to get a billion dollar investment on the 1,000 megawatt plant in addition to pumping water away from their dams to develop another half million acres of farm ground. Now, I was an irrigator, a pumper, north of Rupert and at one of the hearings, I asked the president of the Company what that would do to the power rates. I suggested it would result in a 10-15% bump. He said, "No, Senator. Triple the rates."

Well, it was pretty obvious to me that [tripling the rates would cause us to] lose our farm and go out of business. So, I came to the legislature and tried very hard to get a one-year moratorium – that's as long as I could muster support for – on taking water out of the Snake River. Believe me, every water user group, Farm Bureau, Idaho Power, everybody was against stopping that development.

My grandparents on both sides arrived in Idaho about 100 years ago and we all developed that desert – and we did a whale of a job. But at some point about mid-century, we had more farm ground than we had water. I got 12 votes on that moratorium and immediately afterward, in August of 1976, a woman ran against me and Idaho Power gave her \$3,000 to run. I lost that Republican primary and I might point out that I was the last Republican senator from Senator Stennett's district. You don't like to lose an election, and I was struggling with how I could get the development of

that river shut down. I ran into a guy named Matt Mullaney who had been defeated for a position on the Public Utilities Commission (PUC). So, Matt was highly-motivated, as was I, and he figured out that if he could file a complaint with the PUC saying that we thought the stockholders ought to pay for the generosity in not defending this water right and not the ratepayers. The complaint went to the Supreme Court and... the Supreme Court said it was the one water right on the river that was not subordinated. That changed Idaho Power's promotional pro-development push to develop the desert, to irrigate, [and to] take every drop of water. "Use it or lose it" was the theme of the day. And so, there are a lot of people caught cross-current. There are irrigators – I'm one of them – who aren't irrigating all of their ground. But the power company was definitely in a pro-development stance. They wanted to literally dry that river up. The Supreme Court decision on the Swan Falls complaint made some real businessmen... and they're doing a whale of a job defending their water rights.

With the 1994 bill, what the legislature giveth, the legislature can take back, unless it's a contract. And I'd ask you to help unscramble this situation and let us do some recharge in these big, big water years. It would be tragic to let all that water go down the river. I'd certainly stand for questions. This thing started before 1984.

Senator Cameron: Good to see you, John. Senator Peavey was a member of the interim committee in 1993, along with myself and other members. And you were a member of the Resources Committee in 1994, were you not?

Senator Peavey: I certainly was, yes.

Senator Cameron: Do you recall the language that was brought forward to the interim committee with regard to amending 42-4201 as amended?

Senator Peavey: You'll have to refresh my memory.

Senator Cameron: Have you had a chance to review the minutes on the language between the interim committee and the Senate committee?

Senator Peavey: In 1994? I have not.

Senator Stennett: Senator Peavey, on February 1, 1985 – 21 years ago in this committee – you asked Tom Nelson, who was lead council for Idaho Power involved in the Swan Falls agreement, "When you say 'to protect the new higher minimum flow,'" which I am assuming that was then up to 3,900 cfs from the 3,300 which had been earlier established by the water resources board, "you aren't saying then that the state couldn't after it had done that, re-lower that to 3,900, that would be the state's option, would it not?" Then Tom Nelson said, "you are right. Anything above the minimum flow the state is free to do [with] as it likes." So, I'll refer back to you, what

does that question mean? Does that mean that anything above 3,900 cfs is free for the state to do with as it wants?

Senator Peavey: I assume that those were trust waters and that the state had control of that water. With everybody on the same page, I didn't think we were going to go out and develop a lot of farm ground. The North Side Canal Company, the Twin Falls Canal Company, they're players now and everybody's up to speed on the fact that we don't have unlimited water, but the state needed to have some leeway – Governor Evans was a big proponent of that – and that was the agreement we came to. In my mind, above that 3,900 was trust water.

Senator Stennett: The final question is about the zero cfs at Milner. "Shall" is in the document, versus "should." What does that mean?

Senator Peavey: I think that is very significant that waters diverted above Milner are recharged, [and] the state should be free to do that. It's really important to get as many people whole in this situation as we can. We forced the power company to actually change position. Greg is a whole lot better friend than enemy, but that trust water is for the water board to decide what to do with.

Chairman Schroeder: Committee, we're going to take a five minute break, as I promised.

[The committee took a break, and when they returned, the Chairman addressed some sound control issues. The meeting then proceeded. With 60 people to testify, the Chairman allotted three minutes to each person.]

Jerry Rigby: Thank you. I appreciate the opportunity to address this body this afternoon. Not only am I speaking on behalf of myself, I also have a written statement. Ray Rigby, who is here with me this afternoon, is one of the authors of this and one of the authors of the trust agreement itself and therefore, I will read this with you. I just have to give you a little bit of history as to the trust itself and how it came up. The agreement was struck, but the biggest problem with the agreement was who would hold the water. Therefore, Dad, who had just gotten into a trust with a child... thought that it would be a good idea to use a trust concept and hold the water in trust. Therefore, you heard the comments today that the water right is still held by Idaho Power – it is. But the actual 600 consumptive cfs was placed in a trust and held by the state. So in other words, Idaho Power still owns its water right, but the excess water was held in trust by the state. It's your water; it's not their water, and because of that... it is up to the state to determine where [that water] should go.

As an attorney, I have to say, I have read this and to me it is so clear that the document itself speaks for itself. Whenever we deal with contracts

and agreements, you go to the terms of the agreement itself. If this water was taken, in essence, from the water holders and put into the trust, then you go to the terms of the trust. I won't go into all the issues because of the time limitation..., but I want to point out a couple of things [about] the trust agreement itself. Number one, you've heard it before, but it was subordinated to subsequent beneficial upstream uses. Now again, Idaho Power has said, "well, but we didn't contemplate this." It existed at the time and it didn't say consumptive uses, as Mr. Tucker said. It [says] "subsequent beneficial uses as determined by the state." Who is the state? That's you, making statutes whereby you can effectuate this.

The other issue that you need to understand, and Representative Raybould pointed this out: in paragraph 13 of the agreement, it clearly says that any subsequent final order by a court of competent jurisdiction, legislative enactment, or administrative ruling shall not affect the validity of the agreement. In other words, you go back to the trust agreement itself. We're not necessarily concerned about the state laws anymore. We're concerned about an agreement that lives and dies by the words in the agreement. And that agreement says even if you made a decision in 1994,... policy-wise, you are going to subordinate a right. That's a policy decision. That does not, by the agreement itself, allow you to change the terms of the agreement. That's what was decided in 1984.

Answering Senator Stennett's question as to the 600 cfs over and above, it is my understanding that the 600 consumptive use – now that doesn't mean the whole flow, but the consumptive portion – is the balance of the water right that was subordinated. So in other words, it's all of what Idaho Power had anyway. If there is something beyond that, Idaho Power didn't have a right to it in the first place because it goes beyond their water right. The 600 cfs was an attempt to quantify the balance of that right.

Answering a couple more questions, Mr. Panter said the Supreme Court granted them an unsubordinated right, and therefore it almost sounds as though Idaho Power came back and said, "we'll work with you on this." Remember, the Supreme Court remanded it back to the State Court to determine if they'd lost their rights anyway by abandonment and forfeiture. That's why they came to the table, because they could have lost it all. They didn't win the case; they won an issue in the case and that was it. And for that reason, a policy decision by this legislative body and the state in 1994 can be changed thereafter. It can be and it should be because these are trust waters for the state of Idaho. Again, remember, this doesn't say "subsequent consumptive use;" it talks about beneficial uses. Idaho Power knew that there were beneficial uses of recharge going on then, so they knew that the state could make those in the future. For them to fail to put this into the agreement is their problem, not the state's; that's not what was contemplated and we've heard that here. In fact, the whole Swan Falls agreement came as a result of even Idaho Power believing

that their water right was subordinated up above because rate payers that brought an action [in court]. Idaho Power was surprised when the Supreme Court said, "no, your water right isn't subordinated." So, we talk about misunderstandings or what people contemplate – that's not the issue here. The fact of the matter is that recharge is a beneficial use. The four corners of the trust agreement very clearly state that [Idaho Power's rights] can be subordinated... to these trust waters. For them to then say it isn't is disingenuous.

Another issue that I'm involved with, because I'm a member of the Water Resources Board, is the zero flow at Milner. That's the state plan promulgated by the Water Board and it passed by this legislative body. Zero flow is what it says; it's absolutely zero. Nothing below that is entitled to anyone. The only issue involved, and it was said very clearly in the Senate record, is the issue that as long as the 3,900 and the 5,600 cfs were met, nothing else need be done.

Finally, the legislative history says, "in such times as a future appropriator is granted a water right in the trust waters, Idaho Power Company's right in such unappropriated water becomes subordinated." The point is that because this trust held [the water], who benefitted from it initially? Obviously Idaho Power [did] because there were no other rights at that particular time. Every right that was there at that time was already subordinated because of the grandfather clause. So anything subsequent [holds its] benefit until it is actually appropriated. [By] who[m]? By the Department of Water Resources. Once that's appropriated through another beneficial use – recharge – then that right lowers. And therefore, it's so disingenuous to listen to the arguments that [H 800 is] taking [Idaho Power's] water right. It's very disingenuous because they subordinated it to begin with. They knew that their water use right was going to be decreased because the trust water was going to be appropriated up to the entire balance of their water right. For that reason,... I think too much is being made of what the legislature did in 1994. Yes, it was a mistake, in my opinion. But it did not grant them a right that they can now bootstrap in and say, "we have more than Swan Falls." If they believe Swan Falls is still in existence, remove this part of the statute and let's test Swan Falls because to me, the language is clear and unambiguous. And I stand for questions.

Robert Murdock: My name is Robert Murdock and I'm from Blackfoot, Idaho. My family has been in Blackfoot, for 117 years. I'm a 5th generation farmer. My whole life depends on the aquifer. This is where we get all our water. I would like to agree with Speaker Newcomb, Representative Raybould, Governor Evans, Senator Noh, and Mr. Rigby with what has been said.

A lot of people have asked me how we were going to do this recharge. Some people have asked if we were going to drill wells. It seems like

there has been a lot of misperception as to how we were going to [recharge] this water. I want it clear to everybody that we're just talking about letting the water seep through the canal bottoms. We're not necessarily dumping it on the desert, like I've read. We're just taking it out and running it through the canal systems that already exist. Water flows downhill. I want it clear that – the first rule in Idaho water law says that all waters belong to the state, and I think that this is something that they tried in the Swan Falls agreement. I support what Governor Evans has said to us today, that he wants Idaho to be the state's water master. I agree. I want Idaho to be the state's water master. This is a complicated issue for everyone, and you, as a legislature, are the only ones who can resolve this issue. This is too complicated and too far-reaching of an issue to leave to the courts. The aquifer is so unique that current laws which are set up to manage surface water can't even begin to fairly manage the ground water. The Governor and the Department of Water Resources can't seem to manage the resource in a sensible way. I think the common sense needed to handle this can only be found here with you, and while you're at it, maybe you should start thinking about ways to protect the air we breathe. Before you know it, someone will be filing rights to it and claiming someone else is breathing their share.

No one seems to want to recognize that we've had a really bad drought these last seven years, and with all the scare tactics that we've seen in the newspaper and advertisements, in my opinion, Idaho Power seems to want to extort Idaho's water and money in a similar way that the oil companies did with gas prices after Hurricane Katrina. Idaho Power is not going broke. They reported a rise in operating income of 39.1% over last year. I would certainly welcome that kind of profit on my farm in a drought year. Thank you.

**Chairman
Schroeder:**

Committee, you have received three papers which Mr. Howser has prepared for us.

Steven Howser:

Thank you, Mr. Chairman. With the papers that I've passed out, if you'd refer to the map and the graph that's on the back of the written statement, that might help as we go along.

Inserted into the minutes is Mr. Howser's testimony.

My name is Steven T. Howser and I am General Manager of Aberdeen-Springfield Canal Company. I have been working in Natural Resources research and management since 1987 and have been General Manager of Aberdeen-Springfield Canal Company since 1998. Aberdeen-Springfield Canal Company's system has been identified by the Idaho Department of Water Resources as one of two systems where significant recharge can be accomplished.

The Committee will no doubt hear testimony today about the Swan Falls Agreement and the subsequent change to the Agreement accomplished with the 1994 legislation. I suspect that all of you have read the Attorney General's opinion. So rather than take my time to repeat what our finest legal minds will present in their testimonies, I would like to take my time to provide all of you some historical information about Aberdeen-Springfield Canal Company, to provide you with some data that will give you an idea of the scale of the currently proposed recharge effort, and speak to the reasoning behind recharge from a water manager's point of view.

Aberdeen-Springfield Canal Company was the first Carey Act project in Idaho and provides irrigation water to approximately 62,000 acres in Southeastern Idaho. We have natural flow rights of 1,172.1 cfs with a priority date of February 6, 1895 and 230 cfs with a priority date of April 1, 1939. In addition, Aberdeen-Springfield Canal Company has, storage contracts in American Falls, Palisades, and Jackson reservoirs for nearly 280,000 acre-feet of space. We divert our water from the Snake River about 12 miles upstream of Blackfoot and deliver it through nearly 200 miles of canals and laterals; stretching from our head works on the western bank of the River nearly 70 miles to the end of our Main Canal about 5 miles downstream of the American Falls Dam.

Deliveries to lands within the system began in 1896 and the entire system was completed in 1910. In the 1950's irrigation on the Aberdeen-Springfield system began to change from flood to sprinkler and by the early 1970's more than 90% of our system was being irrigated by sprinkler. Currently we are approximately 99% sprinkler irrigation. The primary effect of this conversion from flood to sprinkler irrigation was to decrease the amount of water applied to the field, resulting in less run-off water entering drains and less water entering the local, perched aquifer through infiltration. However, because the system was designed for gravity flow, our actual yearly diversion remained substantially unchanged. In fact, the decrease in water delivered through headgates resulted in the Company spilling more water from its control structures and lateral ends. Throughout the history of the system, our consistent loss from the canal has been one of our primary maintenance and management difficulties. We know that our minimum daily loss is on the order of 600 cfs. That is, it takes a diversion of 600 cfs just to keep the canal wet all the way to the end, with no deliveries or spills. For reference I would remind you that one cfs over a 24 hour period equals 1.98 acre-feet so our minimum loss is approximately 1,200 acre-feet per day. As our diversion increases, we see an increase in our loss due to increased head pressure and an increase in wetted surface. At our typical peak diversion of 1,250 cfs we estimate that as much as 675 cfs is transmission loss.

This 'lost' water, along with our operational spills and water arising in our

system drains, returns to the Snake River in the Blackfoot to Neeley reach and becomes part of the 'reach gain*' of the River. This reach gain water is 'natural flow*' that helps to fill water rights for surface water users downstream. In order to give you an idea of the scale of these contributions, I would like to present to you some broad calculations based on our Company records.

Since the early 1950 * Aberdeen-Springfield Canal Company has diverted an average 330,000 acre-feet between April 1st and October 31st. Of that, we deliver approximately 120,000 acre-feet through Company controlled headgates, we spill approximately 34,000 acre-feet, and lose about 2,000 acre-feet to evaporation. We estimate that of the 120,000 acre-feet that are delivered, approximately 24,000 acre-feet is not consumptively used by crops and enters the aquifer through infiltration. We also estimate that approximately 6,000 acre-feet of that delivery enters the Company drain system from field run-off and through-the-headgate spills (water that runs through the headgate but is not applied to the field). Thus our calculated transmission loss to the aquifer is our diversion minus our deliveries, spills, and evaporation loss, or 174,000 acre-feet. Add to that the 24,000 acre-feet of water that is not consumed by crops and the total contribution to the ground water through Company operations is 198,000 acre-feet per year. The total amount of water that we add to the reach gain through our spills and drains is 40,000 acre-feet (which are indistinguishable from spring flows in River accounting). If we assume that all of our loss (excepting evaporation) returns to the reach through springs within one year we can calculate that our yearly operations contribute 238,000 acre-feet of water to the River each year.

However, starting in 2001 and extending through the 2005 irrigation season, Aberdeen-Springfield Canal Company experienced significant shortages in our water supply due to the drought. These shortages necessitated fallowing acres and drastically changing our management procedures. Without boring you with more numbers, our calculations indicate that on average the Company*s operations during the drought years contributed approximately 65,000 acre-feet less water to the reach gain than during normal years.

At this point you may be asking how I can assume that all of the water lost from our system into the ground returns to the River within one year. For 50 years, 1942 until 1992, the Management of the Company measured the depth to water in 80 wells within the system*s service area on a monthly basis. This data clearly shows that within a few days of turning water into the system there is a response in the ground water levels. Ground water levels rise six to ten feet and hit their peak in mid-August (Attachment A), about two weeks after we start decreasing diversion after grain harvest. The ground water level then begins to decrease at a more gradual rate until it hits its minimum at the beginning of the next irrigation season.

This data shows very clearly that virtually all of the water that is lost from the Company's canals and laterals returns to the Snake River in the Blackfoot to Neeley reach within a year. We estimate that some 5% of our loss actually enters the Eastern Snake Plain Aquifer and is eventually returned to the River at Thousand Springs. This gradual release of water from the Aberdeen perched aquifer sustains spring flows into the Blackfoot to Neeley reach of the River well past the end of the irrigation season. These spring flows, which I might add are unmeasured on the western side of the River, are the basis for natural flow water rights that surface water users such as Twin Falls Canal Company depend upon. In fact, the only spring that is measured in the Blackfoot to Neeley reach of the River is Spring Creek, and that spring is located on the opposite side of the River from Aberdeen-Springfield Canal Company's system.

Ground-water pumping within the Company's system boundary has not changed since the moratorium of the 1980's. I believe that all of this evidence clearly indicates that the aquifer has not been over-allocated, but rather that most of the shortages of surface water supplies to users downstream is attributable to the operational changes made by Aberdeen-Springfield Canal Company in response to the drought.

In my mind there is no question that recharge 'works', all of the historical data collected by the Company shows that as incontrovertible. Certainly the pilot project that is being currently considered, that is a recharge effort of 10,000 acre-feet through the Aberdeen-Springfield system, is small in comparison to the total incidental loss incurred by the system each year. Nonetheless, data collected by the Department of Water Resources during the pilot project will help to refine the Department's ground water model for aquifer flows in the Blackfoot to Neeley reach of the River. Beginning the recharge of the aquifer by managed means early in the season should result in an earlier peak of spring flows into the reach and should help sustain those flows further into the irrigation season. Sustained spring flows should result in sufficient natural flows to serve the water rights of the surface water users downstream, thus removing the need for priority calls.

As a water manager, I view recharge as essentially no different than storing water behind a dam. Water used to recharge our aquifers is not lost or wasted, but rather is stored for release at a future time. The only difference between storing water in our aquifers and storing water behind a dam is that with a dam, we control the time of release by opening gates. Within an aquifer, the time of release is determined by the location of recharge and that location's particular hydrology. Since we have a pretty good idea of the amount of time recharged water takes to re-enter the River system by use of the Department of Water Resources' ground water model, the timing of recharge efforts gives us essentially the same control of time of release as we have with dams, though perhaps not quite as

precise. In years such as this, with excess flows running down the river to the ocean and leaving state control, without being used for irrigation, or generating power, or being stored behind dams, I believe it is incumbent upon us to make every effort we can to store that excess flow in our aquifers so that it returns to the River at some later date to be used for irrigation, recreation, municipal and industrial uses, and of course power generation, for the benefit of all the citizens of Idaho.

Lon Harrington: I would like to make just one comment. A lot of my thoughts have already been touched on. I think Senator Cameron hit it right on the head: time is of issue here.

Chairman Schroeder: Could you tell us where you're from?

Mr. Harrington: I'm actually from the Blackfoot area. Time is of essence. I've spoken to three canal companies with us today, and if they were given the okay, they could start diverting the water very quickly and start recharging the aquifer. I'll stand for any questions.

Senator Langhorst: Will these three canal companies start running water through their canals on April 1 anyway?

Mr. Harrington: They haven't had clearance to start running the water. They would be prepared to start running the water if given the clearance that it wouldn't subordinate their natural flow waters by going in ahead of time.

Steve Bair: My name is Steve Bair and I stand here today to testify in behalf of approving H 800. I'm from Blackfoot, Idaho, and my brother, father, and I have owned and operated about 3,000 acres, all of which are irrigated from deep wells. Therefore, it hits right to my very heart, this topic of the aquifer and how to fill it back full. I think the important thing here is that we look at the aquifer as a giant reservoir that needs to be refilled every bit as much as Palisades Reservoir, American Falls Reservoir, and other reservoirs in our system. A failure to do so will ultimately cost farmers in the Southeast desert an economic loss. It wouldn't take long to put us out of business without water. I would encourage you to vote for this bill.

Don Hale: My name is Don Hale. I'm from the Blackfoot area. I am a member of the Committee of Nine, which is basically the Board of Directors for Water District #1. I served as one of the helpers on the Recharge Committee. We [have] studied recharge for many years now and we are told that we don't necessarily know where that water is going. Idaho Power was willing to do a study this spring through both the North Side and Aberdeen Springfield Canal Companies to demonstrate where that water comes from. I have here before you today (and I'll give this to the committee), [a report called] "Feasibility of Large-Scale Managed Recharge of the East Snake Plain Aquifer System." This was put out in 1999 by the

Department of Water Resources in connection with the Bureau of Reclamation. It, in detail, tells you where the water's going.

We know recharge works and we know how to do it. As the Committee of Nine, we met last week to discuss a recharge plan for District #1 and I'm here to tell you today that there are canal companies ready and willing to start diverting water on April 1. We feel on our own water rights – we're not going to say "recharge" because we don't want to get the bad graces of Idaho Power, but we're going to "wet our systems down." We believe we should be able to put about 2,000 acre-feet of water in our systems and percolate it through the aquifer. Normally in a year such as this, the canals which I work with wouldn't be turning in until the end of April. If we could get two, three, or four weeks worth of recharge – percolation, wetting ourselves down – I believe that will help. And this is at no cost to the state of Idaho. I repeat: at no cost to the state of Idaho. Every one of you is going to be affected by recharge. If you get your water from a well, this is your issue, I don't care if you're in the Moscow aquifer, the Rathdrum Prairie aquifer, the Boise aquifer, or the East Snake Plain aquifer. Anytime you allow a for-profit corporation to control a resource, it affects you and your future development. And I want you to remember that. Thank you.

Kim Cox:

I appreciate the opportunity to be here. I've submitted a written statement and because time is of the essence, I'll forego my time.

Inserted into the minutes is a copy of Kim Cox's testimony.

Mr. Chairman, Mr. Vice Chairman, members of this Senate of the Great State of Idaho and fellow citizens and water users. Thank you for this opportunity to speak to you this day concerning this critical bill. I am a citizen of this state, having been born and raised in the Blackfoot area. I also am co-founder and president of Swiss Mill Dairy, Inc. an Idaho corporation. I am major stockholder, chief executive officer, technician, chief cook and bottle washer and only full time employee of Swiss Mill Dairy, Inc. We are a really small company. We are groundwater users as well as surface water users and have been for many years. I have many points I would like to make but time restraints require me to focus on only one. I along with all other customers received a letter from Idaho Power Co. stating their opposition to bill #800 and laying claim to all the water in question in this bill. As I understand it, this bill only refers to unappropriated flood waters in the Snake River. Idacorp, the umbrella company of Idaho Power Co. claims a bill passed in 1994 gives them ownership of this water. If you all recall, 1997 was the first year this flood water appeared since that bill passed. The existing surface water reservoirs were unable to contain all of the runoff resulting in serious flooding in the Blackfoot area. Since Idaho Power has claimed ownership of this water, I took the liberty of calling a few of my friends who were affected, some

severely by this water. I asked them two questions: 1) Were you or do you know anyone who suffered damage due to the excess unappropriated flood water occurring in 1997. Of those who answered in the affirmative, I asked the second question. 2) Did you receive or were you offered any compensation by Idaho Power Co. for the damages caused by said flood waters or do you know of anyone who did? I suspect you all can imagine the answers I received. They ranged from "You're joking, right?" to raucous laughter followed by "of course not" to shocked silence. Obviously they were wondering how anyone with such diminished brain function would be allowed to be let out at night. I don't know what you are accustomed to where you live, but in my hometown if a rancher goes out and claims all the unmarked cattle on the range and these cattle subsequently crash through my fence and destroy my haystack, I would expect him to compensate me for the loss, or deny claim to the cattle. If he were an honorable person he would do no less. In point of fact, I own the right to use waters of the state to irrigate my land. If that water leaves my land for any reason, not only am I liable for the damage it causes, I am also in danger of incurring fines or suspension from the Idaho Department of Water Resources. I am a corporation just like Idaho Power. Since they have not been held responsible to pay for damages in the case of the 1997 flooding, it is only logical to conclude that they do not have right to this water as they claim. Idaho Power it seems only wants claim to the water when it is of economic benefit to them. In fact, they have offered this water to the groundwater users for the same recharge this bill proposes but at a fee that would be paid to them. The fact that they are unwilling to accept the responsibility of "ownership" should in and of itself deny them the "right" of ownership. The economic strength of this great state is tied directly to its ability to manage its water and it only makes sense that decisions concerning that water remain with the citizens of that state through you, their elected officials, rather than in a corporate boardroom where the only criteria is profit margin.. I urge you to keep the resources of the state under state control and allow us to store this unappropriated flood water in the largest reservoir we have available to us for all of the citizens of this state to use. Vote to send this bill to the floor with a "do pass" recommendation. We will all be watching closely all senators and their votes on this bill and remind you, as you are all aware, you work for the citizens of the state, and we are they.

L. Dewey Stander:

My name is Dewey Stander, from Blackfoot, Idaho. I'm representing Stander Farms, Inc. As farmers on the Snake River Plain, the aquifer and deep wells are very important to us. [We need] to have water back in the storage system under our ground. In the saving of time, I'd just like to say I'm for H 800, and I'll leave it at that.

Jim Williams:

My name is Jim Williams. I am from the Pingree, Idaho area, which is close to the Blackfoot area. I'm also a many-generation farmer, and I am here in support of H 800. A lot of things I wanted to say have already

been mentioned so I won't waste our time. Any questions?

Brian Murdock: My name is Brian Murdock. I farm in Blackfoot, Idaho with my brother, Robert Murdock. I'm grateful and honored that my testimony has been given my House Speaker Newcomb, Representative Raybould, Governor Evans, former Senator Noh, and former Senator Peavey. I couldn't ask for better men to give my report, so I will submit it later on anyway. But I guess with somebody else giving [my] speech, it gives me time to look you folks in the eye and have a little heart-to-heart with you.

We are all farmers here – most of us in this room. And we have had a long history with Idaho Power. We were the beautiful wife that Idaho Power married back in the 1950s when irrigation pumping was started. They unfortunately divorced us during the early 1980s in what we call the Swan Falls agreement, and they have yet to get over that divorce, I feel. They're still trying to get back at the ex-wife for various issues, and this is another one of those issues. I guess I'm going to plead to you: do not lose control of Idaho's water because it's our lifeblood. You can manufacture power in many other ways, but you cannot manufacture plants without water. That is our only source of making things grow. I love the fact that I'm in Idaho – not Colorado, not Montana, not other places in which the state law says that the state does not own the water. The first law, as you well know,... is that the state owns the water. The state is in control of it. And I want to see that happen because you're my only protection from big corporations.

Granted, farmers aren't perfect. We make mistakes. We have to learn from the everyday routine about the various things that happen in life. We have droughts. We have all had to suffer because of those droughts. We have to get along as best we can, especially in East Idaho in which we have held the higher line by not calling on our most junior users. We have not forced people out of business because we were in a drought.

Unfortunately, when your brother [speaks] before you, he steals your best lines. My last closing comment was going to be... Governor Evans'... famous line: I want Idaho to be the water master of the water in the Snake River, not Idaho Power. So, from Idaho Power's own book, I will read my next-best line. And it was from Senator Laird Noh: "The most important long-term question in the Swan Falls controversy is who shall control the destiny of our state: a single public utility that gained an unexpected windfall from a Supreme Court decision or the people of the state of Idaho?"

Larry Kerbs: My name is Larry Kerbs. I live in Fremont County. I am a member of the Committee of Nine and also am a farmer in that area. I [see] these big canals go for miles and miles. Up in our area we have smaller canals, a large artery of them, around 100, but we have the same situation with

recharge. If we just had permission to put water in the whole artery of canals, [we could recharge the aquifer]. We lose 20-30% of water that does not go in the ground or in the aquifer. I feel like we need to replace the reservoir that sits beneath us and not forget that it's important. I'd say other things but they've already been said so they'd just be a waste of your time.

Bill Newman: My name is Bill Newman, I own a ranch in St. Anthony, Idaho which is where most of [Idaho's] water comes from – part of it anyway. I accept and vote for this measure that has been proposed. The last six or seven years, our water, and mine particularly, has been cut to 30% of what was allocated, and needless to say this has had a definite effect on [my] crop land. It's my opinion that this is a matter of control. I'd like to make an analogy to the beef industry. There are three [entities] that control the industry, and this is what will happen with water. Water is what made the west and this desert, in particular. Thank you.

Greg Edgar: I grew up in the Milner area and Milner Dam was a great place to go play at, fish, boat, etc. But we also have deep wells. I have farmed [throughout] my life. I am currently an accounting manager for Spudnik Equipment. We employ 160 members in Bingham County. Our livelihood at Spudnik [depends on water] – we're not farming, but we produce potato equipment. Last spring, my parents' well went dry, as did [the wells of] many workers at Spudnik. They had to go punch down another 20 or 30 feet to get to water because we were in a substantial drought.

This isn't an issue between farmers and big business, being Idaho Power. This is Idaho. I lived in Illinois where I was on a drainage water district in which the issue wasn't putting water in, but getting water off the fields. I understand the issues going both ways – both parties – but it's not an issue of who's right or who's wrong. [The issue is] what is in the best interest for the great state of Idaho. With that, I support H 800. The time is now. We don't have time for further committees to do further study. We need to react now with the surplus we've been given.

Stan Clark: My name is Stan Clark and I live in Ashton, Idaho. I served on the Committee of Nine for about ten years, and then I served on water policy for the governor for a few years. [I also worked] out of the Water Resources Department for a while. I'm here to support H 800. [We should re-allot] natural recharge in the aquifer this year because of the wet winter. However, it would take several years of high water to get us back to where we were. With the use of some of the surface water above Milner, we can speed that process and help to mitigate some of the problems in some areas. According to the model, we can expect a large percentage of the water to find its way back to the river through the Thousand Springs and other spring systems, keeping the whole aquifer higher and with very little impact to Idaho Power. Therefore I'd urge you

to pass this legislation out of committee with a do pass recommendation. Thank you.

Roy B. Thomsen:

I am Roy Thomsen. I'm from the Blackfoot area. I represent a small irrigation company and I am in favor of this recharge bill. As has been said many times, if we had the opportunity, we could put water in our canals and it would percolate into the aquifer. From April 15 to November 1, we have to shut our water off [due to] a contract with the Palisades and the Island Park water build-up. We have some runoff water we can use but we can't get it into our system legally until April 15. Thank you.

Ed Clark:

I live in the Ashton area and divert water out of a canal system. This is a year in which we have the opportunity to do a lot of good for the economy in the state of Idaho, in my estimation. In the Island Park area, we have in excess of six feet of snow. Our reservoir there will fill rapidly. The ground is saturated. There's going to be a lot of water come off – not immediately, but it will come off – and we need the opportunity to divert this excess water. We don't want to take anyone's water rights. We don't want to jeopardize anyone's water rights. We know how dear and precious they are. I would encourage you to pass H 800 out of this committee and give it a do pass recommendation for the full Senate.

Senator Little:

What's the normal date that you fill your canals?

Mr. Clark:

In Ashton, [it is] somewhere between the 15th of May and the 25th of June.

Senator Little:

How much earlier could you fill them if this legislation was enabled?

Mr. Clark:

This year, not any earlier. But in the St. Anthony area – which is part of the Fremont-Madison distribution system – they could go immediately.

Senator Stennett:

That's quite a spread between the middle of May to the end of June. Is it just when the call comes? When everybody needs the water?

Mr. Clark:

That's the policy. Right now, our canals are full of snow and will [continue to] be until sometime in the latter part of April.

Ron Murdock:

I think most of the points that I had have already been mentioned. I was glad to hear mentioned that this issue isn't just about irrigators. We're talking about a lot of people who draw domestic water out of wells and about a lot of cities. I just feel that in this year of plenty, it's prudent that we work on filling the aquifer.

Brock Driscoll:

I'm from the American Falls area. [I am a] fourth generation farmer there. I appreciate what Governor Evans, Senator Noh, and others have said. [I would like to point out] one thing: in 1997 when we had the flood, I took my family down to Shoshone Falls and everybody was "ooing" and "awing" about how great it was to see. It was a spectacular thing to see,

but I had a pit in the bottom of my stomach. They were flushing the water, some of it, down the creek and we'll never see it again. We don't have the abilities in our society right now, I don't think, to build other dams and make other reservoirs, but we do have a reservoir underneath the ground. I'm for H 800. I hope that you would approve it. The Lord has blessed us with a lot of things this year. We've had a long drought but right now we have the capability to see what we saw in 1997.

Michael Bamberger:

My name is Michael Bamberger. I am the CEO of Spudnik out of Blackfoot, Idaho. On behalf of Spudnik's employees, I want to express our strong support for H 800. We have a pretty simple view on this issue. We believe that, especially in times of drought, the aquifer is really essential for our well-being in Idaho for its people, its farmers, everybody. Therefore we also believe that in times of plenty, it's our natural obligation to replenish this resource. The bottom line is: we think we could live with higher energy prices; we can't live without water. Thank you.

Scott Kirwan:

I'm Scott Kirwan from the Blackfoot, Idaho area. Actually, I just live down the road from Senator Williams, and we've known each other all our lives. I work at Rocky Mountain Machinery Company [which is] a family-owned business out of Blackfoot, Idaho. I'm the local John Deere dealer. Obviously... we have a vested interest in the aquifer and the agriculture industry and ag business. I also have had many neighbors who have had to dig their wells deeper. I am grateful, particularly today, to be a part of this great American government that we have, to have the opportunity to stand here and talk to my elected officials. I would appreciate your vote in response to H800 in the affirmative. I think it will be a benefit to the entire state of Idaho. Also, I am grateful that you have the opportunity to manage the water in the state of Idaho, rather than a corporation. Thank you.

Louis Thiel:

My name is Louis Thiel and I am from just west of Idaho Falls. I'm the director of the New Sweden Irrigation District four. Most of our district uses surface water, but I strongly support H 800 and I urge you to do the same. I think we would be very amiss if we don't take the opportunity this year to recharge the underground aquifer. We've been in this terrible drought for seven, eight years and I think we'd be much amiss if we didn't grab hold of this opportunity. We have a canal system we can recharge the aquifer through, and we would be willing to do that. All we need is the green light.

Paul Berggren:

My name is Paul Berggren. I'm the Senior Director of the New Sweden Irrigation District. I've been there [for] 28 years. I also sit on the Committee of Nine and I've been there for 23 years. On the Committee of Nine, I represent the water users between Lorenzo and Shelley. I'm here in support of this bill. I think we would really be remiss if we fail to do this. I have a real a problem with the letter I received in the mail from Idaho

Power. I am an Idaho Power customer. I've been in the livestock and farming business all my life. [The letter] didn't actually say it was going to raise rates, but it alluded to it. But my question is that in the last five or six years, they've never received the water they're talking about. Because of the drought, there hasn't been any storable water that has gone past Milner. The only water that's gone past Milner is water that's been their own [under their] water right. And they're talking about raising the rates if they don't get the flux water? We haven't had any since 1997. If recharging takes place, it'll only take a little of the water. They'll still get a lot of it. But my problem is - how in the world they can justify scaring the pants off everybody about raising rates when they're talking about something they haven't even had in the last five or six years?

I appreciate the chance to talk to you folks. I was just going to turn my time over to someone else but we've heard so much good testimony already today.

**Neil Morgan and
Jim Marriott:**

[Someone in attendance announced that Neil Morgan and Jim Marriott had to leave due to a traffic accident.]

Vince Alberdi:

My name is Vince Alberdi and I'm the general manager of the Twin Falls Canal Company. The Twin Falls Canal Company, by way of reference, irrigates some 200,000 acres, and we have a senior water right. It is 3,000 cfs below Blackfoot which is diverted from Milner. So when we talk about recharge, recharge is very important to the Twin Falls Canal Company because the natural flow that we're talking about this afternoon is fed by recharge, and that recharge comes to us when water comes into the aquifer. We're very dependent on that water in the latter part of the season – anytime after runoff [ceases] during the months of July and August, in particular.

But after a lot of serious soul-searching, I have to tell you that we cannot support H 800, and the reason we can't support it is because of the water right issue and not the recharge issue. It's the water right issue that's at stake here. In 1994, when the Swan Falls agreement was reaffirmed by the legislature, I have to tell you that in my opinion, I think that was a very intelligent legislature, just like 2006. To be able to take a water right and change it is a pretty slippery slope. I don't think this legislature wants to get into the business of changing water rights. When I look at your agenda, the agenda today on H 800 tells the whole thing: "Water rights, priorities revised." Now, the Twin Falls Canal Company could not stand nor be in operation if our priorities were revised because we depend upon that natural flow right to provide water for our users.

I urge you to reconsider H 800. Don't get on the slippery slope just because you think you might be doing something right, because 12 years from now, the next legislature might change it again. Water rights are

going to have to change, but we have a process in place [to do so]: the adjudication process. Water rights need to be changed; that's the format. That's what adjudication's all about.

Senator Burtenshaw: Vince, what's your understanding of this trust water we're talking about?

Mr. Alberdi: I wish I could understand – I understand the Swan Falls agreement fairly well, but I think this whole trust water agreement was put into place for further development. I don't know nor have I heard today from all the testimony we've heard how much of the trust water's ever been used. I know that agreement came into place in 1984 and the moratorium came about in 1992. I don't even know if there is any trust water left. I don't know how much of that was developed or where it went.

Senator Burtenshaw: That seems to be the crutch of what we're trying to [decide]. If, say, that there was trust water, do you think that using it for recharge would be good?

Mr. Alberdi: Perhaps the constitution of the state tells us that we have prior appropriation, and the legislature has some responsibility determining where and how these waters are going to be used. But it's in the midst of this adjudication that there is so much controversy. I think we should slow down, we should let the adjudication courts – where every other water right is going to be tested – determine where, in fact, that water right is. I don't think it's for the legislature – and please don't misunderstand this, because I do respect you very much – to mingle in water rights. I don't think that's probably a good topic for you all to take under consideration.

Senator Burtenshaw: Say we can identify the trust waters. Don't you think that's a valid water right?

Mr. Alberdi: I think that's a valid water right.

Senator Stennett: Vince, then, if it is a valid water right, basically all they have to do is define the trust, and Governor Evans, Senator Noh, and Senator Peavey, said that the trust water is anything over 3,900 cfs. Isn't all that trust water for the state of Idaho? Do you disagree that it's trust water for the state of Idaho?

Mr. Alberdi: I do.

Senator Stennett: Then help me with the Swan Falls agreement, if you can find anything that will lend credibility to [your] answer.

Mr. Alberdi: The only thing that I lend credibility to my answer was that the 1994 legislature reaffirmed the water right, and now 12 years later, here we are debating that water right again. I think the water right needs to be

protected.

Senator Cameron: Obviously one of the key elements of the Swan Falls agreement was subordination. I think that was the crux of the issue. Why do you think the 1994 legislature would overturn, in (I think) a unanimous vote, that subordination? Why would they un subordinate? What would be your opinion of that?

Mr. Alberdi: You know, I wasn't... here in the 1994 session, even though we were water users. But you were, and you might have a better answer than I do.

Senator Cameron: I guess the trouble that I have with this [is that] I sat through those committee hearings. We wanted recharge. The whole motive behind that piece of legislation... was recharge. We approved language in the interim committee for recharge. When that language was brought forward to the main body, it was adjusted. It was stated in the germane committee that this was done in accordance with the Swan Falls agreement and in collaboration with Idaho Power, and so the legislature ratified what they believed was an effort to try to obtain recharge. And yet, what we really did was shoot ourselves in the foot. If, in fact, my portrayal is accurate, would your testimony and Twin Falls Canal Company's perceptions remain the same?

Mr. Alberdi: My testimony is that somebody in 1994 did a lot of thinking in regards to what legislation was passed or ratified by the Swan Falls agreement. I don't think we can discount that. I think that has to be tested through the adjudication courts to find out what the meaning of the Swan Falls agreement is.

Senator Cameron: Do you give more weight to the 1994 legislature and its activity than you do to the original agreement? Do you believe the 1994 legislature knew what they were doing more than the original signers of the Swan Falls agreement did?

Mr. Alberdi: I haven't pondered that, but obviously they gave it a lot of thought.

Senator Cameron: I would submit to you that I think a lot more thought went into the Swan Falls agreement than what took place at all in 1994. I am embarrassed that I was a party to it and nobody caught on.

One last question: Would the Twin Falls Canal Company benefit from a restored aquifer?

Mr. Alberdi: Of course.

Gerald Tews: My name is Gerald Tews. I'm a rancher/farmer from Filer, Idaho. I serve on the Canal Board, but these thoughts are mine. First, to pull the rug out in the middle of the stream in three days... isn't fair to Idaho Power. Why

couldn't we have sat down and come to an agreement? That's what bothers me, and I believe that's one of their main issues. It's ridiculous that we're in this squabble – fighting in the newspapers and what not.

...We've been talking recharge for years and years and years because it's to our benefit to fill our springs. But the main part of the water that we got this year will come out probably in May. By then, the canals will be full with irrigation water and we will receive that incidental water just like we always have. Where we fail as a state, all of us, is that we do not have recharge [locations] where we can [put] this big amount of water... to go into aquifer recharge. Right now, we're just depending on these canals, and we appreciate that and realize that they do a lot of good. But the big block of water that will come this year will go down the river. So we need to look forward. We need to step up as a state and get some recharge sites [where we can] put large blocks of water, when it's available.

Recharge is just one of the tools [to fix] the problem that we have, and to me, one of the ways to correct it is going to take money. The state traded this, in my mind, by over-allocating the resource. It was there forever and we could just drill, drill, drill, water out, water out. We all drink water, we all get up in the morning and do our things, washing, whatever we do – everybody in the state. So these aquifers are more important to us than we realize. Boise valley is on the verge of the same problem we [have], and so is Mountain Home, Bear River, and Sun Valley.... They're going to have problems to address.

My solution to it is to take one-fourth of 1% in sales tax and put it in a fund for these problems. We're all willing to pay \$8.00 per gallon for drinking water and think nothing of it, so why can't we build a fund to the future where our grandkids won't look back and say, "Dad what were you thinking?" like we're doing now. These are some of the things and ideas we should be thinking about. It takes money to do these things.

**Senator
Burtenshaw:**

Do you realize [that] all the way up the Snake River, there are gravel pits, Jensen's Grove, and all of those places? ...You made the statement that we can't take advantage of this water. I'm asking you if we have permission to do it. I'm saying that we could [take advantage of the water] because we could divert water into [those places]. ...In 1997, we had a lot of water come down the creek. I went to my cabin in Henry's Lake Flat and the only thing I could see was the roof. I mean, there's snow up there like I've never seen before. Do you disagree that if we get a big flush of water and we are able to put it in those places I'm talking about, it'd help the aquifer?

Jeff Raybould:

My name is Jeff Raybould. I'm the Chairman of the Fremont-Madison Irrigation District. I'm also a member of the Board of Directors of Egin Canals. I'd like to talk to you about aquifer recharge on Egin Bench.

Egin Bench Canals has practiced aquifer recharge for about 120 years. When settlers went out on Egin Bench, the first thing they did was to build canals. When they put water in the canals, it sank. A lot of water sank on Egin Bench. Recharging the aquifer on Egin Bench and holding the water table within a few inches of the ground was how they irrigated for almost 100 years. They did a really good job of irrigating that way until the 1980s when Egin Bench was converted to sprinkler irrigation. Even then, it became necessary to continue to run water in the canals as much as possible to maintain the aquifer for domestic wells and other purposes.

Egin Bench Canals participated in the state-sponsored aquifer recharge program from 1995-2000. During that period of time, we recharged 220,369 acre-feet of water, varying from 8,972 acre-feet in 1995 to a little over 69,000 acre-feet in 1998. This program was operated through our ordinary canal system. There are some structures designed specifically for recharge on Egin Bench, specifically the Egin Lakes project. It works really well there because the soil is well-suited to take water in.

The question's been asked how much can you recharge and how soon can you start it. I think we need to keep our eye on the ball and look at the full picture. Recharge can be accomplished with the system we have in place. Realize that the components are there and add to them over time [by taking] advantage of the water when it's available. I think the question is how are we going to deal with the future growth of Idaho, not just [how we will] deal with the immediate needs. Where is the water going to come from and where are we going to store it?... The aquifer is a place where we can put water and utilize it in the future. I appreciate you supporting this legislation.

Dick Rush:

My name is Dick Rush. I'm the Vice President for Natural Resources for the Idaho Association of Commerce and Industry (IACI). We are a statewide business association. We represent members of all types and sizes throughout the state of Idaho.

Our members are extremely aware of the need for a consistent supply of electrical energy to fuel Idaho's economy and provide jobs for its citizens.... There are many of our members who are appreciative to Idaho Power for standing up for their water rights because the generation of power and the opportunity to reduce power rates when we have additional water is valuable to many of our members.

The statement of purpose on H 800 says the legislation is to facilitate diversion of expected flood flows in the spring of 2006 in the upper Snake River Basin. However, there is no sunset provision in the bill, and there's nothing in the bill that limits recharge to flood waters. The bill specifically puts the use of water for recharge ahead of use of water for electrical purposes. I've heard a lot of testimony as to whether the state has the

authority to do this. I'm not going to argue that [point], but there was one thing that Senator Noh mentioned that I thought was the heart of the issue: To look at policy. Is the decision before you good policy for the state of Idaho, regardless of all the legal issues surrounding it? Do we know [whether] this is good policy for the state of Idaho? Do we have enough information? Are we sure that recharging the aquifer for the purpose of sustaining or increasing pumping is better for Idaho's citizens and our economy than producing the maximum electricity to fuel our homes, our farms, our businesses, and our factories? Have we thoroughly considered the changes in Idaho's economy including the unprecedented growth in population and the new houses and businesses that need power? Do we know the impact on power costs of decreased power production? Do we know where we will obtain new power because of reduced hydro production?

This legislature has spent a great deal of time discussing Idaho's need for electrical power this year, and there are still unanswered questions. There's going to be an interim committee to look at power generation, where we can [obtain] it, and what is the best path forward. I believe... we should postpone action on H 800 and review the relative benefits of hydropower versus other uses of water.

IACI will always consider the sponsors of H800 our friends. They are the supporters of business in Idaho. Everyone here has good intentions and is making their case, but I think we should take a strong stand against H 800. It will raise electrical rates for businesses, farmers, residents, and government. I don't think it's good for Idaho. Our association supports recharge provided that it recognizes and protects prior ground and surface water rights. Please oppose H 800. Thank you.

Senator Stennett:

I think it is important that we get this on the record. I want to make sure I heard you say this. In your testimony, you said that power production should take priority over other uses of Idaho's water. Is that the position of IACI?

Mr. Rush:

I think the position of IACI is very specifically that we support existing state law [which says] power production takes precedence (if you want to put it in those terms) over recharge. I think that's the point I made.

Senator Stennett:

And is it your position that Idaho Power has a water right in excess of 3,900 cfs in the summertime and 5,600 cfs wintertime?

Mr. Rush:

I heard prominent attorneys speak on both sides of the issue, and I certainly don't know the answer to that question. But I can read state law, and it is very clear that groundwater recharge is subordinate to power production. We support that law. We don't think it ought to be changed, and that's why we oppose H 800.

Senator Stennett: The position of IACI is that the statute passed in 1994 has more... weight than a contract between the power company, the governor of the state of Idaho, and the attorney general of the state of Idaho, and that the statute supersedes the contract?

Mr. Rush: Did I say all that? I don't remember making those comments, but I specifically recall saying that there was a discussion in this legislature 11 years ago or so. I've heard a lot of comment that some folks wished they hadn't voted for that, but we think it was good legislation. We think there are a [lot of people] in Idaho that support it, and all I can say is that if it takes a law to change the use of water, there must be some right out there. In this case, it's a water right. If that's not the case, I don't think we'd be here discussing this legislation.

Randy MacMillan: My name is Randy MacMillan. I am the Vice President of Research and Environmental Affairs for Clear Springs Foods in Buhl, Idaho. Clear Springs is a 400-plus employee-owned company. It also happens to be the world's largest producer of Rainbow Trout. For the record, and with all due respect, we dispute some of Representative Raybould's characterizations of spring flows in the Thousand Springs area. The issue of how water got into the aquifer is irrelevant prior to its appropriations. I might add that much of the groundwater pumping that goes on now occurs because of the same water that the springs have benefitted from.

Clear Springs Foods was not a party to the Swan Falls agreement, and if it is the intent of the state to drain down the aquifer..., there will be significant repercussions not only to Clear Springs but to groundwater pumpers in the region, and there will be an issue of takings. I share the responsibility of protecting the assets of Clear Springs Foods, and one of our most important assets is our water rights.... Our use of water is not consumptive, but over the past 30 years, our water flows have declined 20-30%. In the last ten years, we've been injured in excess of \$15 million due to the mining of water in the East Snake River Plain aquifer by junior right holders. It's our belief, and that of a variety of hydrologic experts, that the [water] has been over-appropriated. The Director of the Department of Water Resources calls it over-allocated. Over-appropriation has contributed significantly to a water crisis that threatens the long-term economic fiber of the region, jeopardizing not only our water rights, [and the water rights of] existing businesses, but also those who might otherwise choose to join our communities.

Clear Springs Foods has been working for over the past five years on a short- and long- term management plan which would stabilize and enhance the aquifer for the benefit of everyone. Will H 800 help solve the water crisis in the region? Will there be substantive recharge to the aquifer? Make no mistake: Clear Springs does support aquifer recharge

as one of several tools that must be implemented, along with decreased depletions and reduced demand. Unfortunately, the type of recharge contemplated in H 800... comes along only once every ten to eleven years, if history repeats itself.

Here are some of the other problems we see with H 800: Idaho Power Company's rights have not been adjudicated; we do not know if H 800 would take the Company's water rights; there is considerable disagreement regarding the attorney general's opinion; we believe the adjudication court is the best place to sort the Company's water rights out, not in the legislature; if H 800 becomes law, additional court time should be anticipated; and there's no accounting for how much of the so-called trust water is unappropriated. We believe it is all appropriated, and in fact, we believe it is over-appropriated. We believe all of the water resources in the region are over-appropriated. Hence H 800 is largely futile when it comes to making substantive improvements to the aquifer.

From Clear Springs Food's perspective, H 800 [will cause] all parties to suffer, and as a result, the region's economic viability will become even less secure if it passes. For these reasons, Clear Springs opposes H 800, but we support reinvigorated efforts to craft an aquifer recovery program. We need to capture the energy present [in this meeting] and put it to real beneficial use in developing a sound aquifer improvement plan. I was encouraged by Speaker Newcomb's comment that he and a respected associate will help develop recharge as an important component of a solid aquifer program. If there's anything the legislature can do this session it would be to give us the resources we need to make the aquifer stabilization and recovery happen. We need statesmanship to bring this to pass.

Randy Polatis:

My name is Randy Polatis. I'm a third generation farmer from Bingham County. I represent Polatis farms which irrigates 8,000 acres, [using] mostly underground water and some surface water. We have many employees who raise our crops. I am also an avid skier and on Grand Targhee website's snow report, it says they've gotten just under 500 inches of snow since September 1. They're having a phenomenal year. Jackson Hole is ahead of them, which is very rare. So the mountains are full of snow, and as we saw in 1997, ...sometimes the runoff comes down pretty fast. I believe we can put it into our aquifer system.

I also represent the Bingham Groundwater District. I've been a board member for ten years and I've never been able to make an agreement with the Twin Falls Canal Company. We started talk of recharge ten years ago. I think this is a great opportunity and I would ask that you support H 800. I'm also a neighbor farmer of Senator Williams, and as we drive up and down our county roads in the summer, it's beautiful to see these green crops growing. It provides a lot of money and a lot of work for

the community. Agriculture is one of our biggest assets. Thank you.

**Dennis
Tanikuni:**

The Farm Bureau supports H 800.

Renee Puschen:

I'm Renee Puschen. I'm representing Puschen Farms. We came to Idaho from Utah 40 years ago... because of the aquifer. In Utah, we saw that there was not a good water future and we thought that this aquifer was better. The aquifer is very important to us. We farm about 9,000 acres, counting our ranches, and we irrigate over 2,000 acres with deep wells. We've had ranches from Kilgore to Fort Hall Reservation. It's very interesting to observe what happens when you have a drought.... When there's no water, there's no water. It doesn't matter what your water right is. That's why it is so important that we take care of our aquifer, and I think that recharging the aquifer when we have water is the thing to do. That's how we take care of it. There are gravel pits, Jensen's Grove, plenty of places we can put the water. The principle that we need to observe is when there's water, keep it as high as you can to be prudent in your use of the water. I support H 800.

**(Former)
Senator George
Katseanes:**

My name is George Katseanes. I'm just west of Blackfoot. I'm a 79-year old sheep herder, farmer, and geologist. I'm here today to testify in favor of passing this legislation. I believe that if we allow Idaho Power to control our groundwater that sometime in the not-too-distant future, it will create an economic disaster and a demise for Idaho agriculture. I certainly support the passage of this legislation.

**Chairman
Schroeder:**

Senator Williams informs me that you are a former member of this body, so welcome Senator and thank you for your testimony.

Don Hales:

My name is Don Hales and I've been a farmer in Idaho for the past six years. I support my family through this operation. From what I have learned in listening to both sides of this discussion, it reminds of the words which Benjamin Franklin said: "If you trade your freedom for security, you'll have neither one." From what I have gathered here, water belongs to the state of Idaho, and I've heard contrary to that. But my opinion is I favor H 800 and encourage you to vote for it.

Dale Rockwood:

I submitted testimony from nine counties in Eastern Idaho to Senator Davis, and you can go through that testimony when you get a chance

**Chairman
Schroeder:**

Mr. Rockwood has indicated that they're in favor of H 800.

Blair Furniss:

My name is Blair Furniss. I am a farmer from Bingham County. I'm in support of H 800 for the [purpose] of storing water in the aquifer, and I would appreciate your support.

Adam Hales: My name is Adam Hales. I am from Blackfoot, Idaho, and I am in favor of H 800. I feel that at this time, we have a prime opportunity to take advantage of the abundance of water that we were blessed with this year. I am a young man, a farmer just beginning, and I would like to continue farming in that area where we irrigate with wells. I would appreciate your support on H 800 and passing it so that me and many other people throughout the state can continue farming.

John Thompson: My name is John Thompson and I'm representing Thompson Farms of Blackfoot, Idaho. I farm with six of my brothers and we support about 12 families. We farm north of Pocatello, to Blackfoot, the Fort Hall area, and out to the Aberdeen area. We have surface water and [wells]. I hope that you will support this bill, and I'm truly in favor of it.... I remember one time when we were hoeing beets, my dad said, "I want you guys to get a good education. Farming's not very good." As it turned out, each of my brothers and I [returned] to the farm. We feel like that's where we need to be.

Layne Polatis: My name is Layne Polatis and I'm with Polatis Farms. I just want to give my two cents here. I'm a new farmer. I'm on the People's Canal Board, just appointed recently, and I want to make these points quick. I hope we can be good stewards in this good water year and recharge our aquifer. It's beneficial more than just to agriculture, but [also] to homeowners and everyone else. I think [legislators] can allocate it in times of need better than a court can. Courts are slow, and I think time is of the essence.

Keith Esplin: My name is Keith Esplin and I'm from Blackfoot, Idaho. I'm wearing a couple of hats today. First, I'm the executive director of the Potato Growers of Idaho. A few weeks ago, I was over here appearing before some of you in the Transportation Committee asking to keep the Famous Potatoes on the license plates to help us sell potatoes, and now we're asking you to help us keep our water so we can raise them. I do want to affirm that Potato Growers of Idaho supports H 800. I have a letter here from our President I'll leave with you.

Also today, I'm an 18-year Canal Board member. Recently our canal merged with another, [forming] United Canal. Mr. Morgan, president of the other canal company, had to leave earlier so I'll make a couple points for him. One thing that he pointed out is that with aquifer recharge, the water in the ground is higher and it takes less energy to pump it out. That [translates into] less strain on Idaho Power's system and more benefit to the irrigator. I also want to point out something that I think often gets lost in our water debates, [which] is that all the water that [drains] into the Snake River eventually ends up going [down] the Snake River. The only things reservoirs and aquifers do is change the timing of it. So nobody's going to get shorted any water. The only way you can actually get more water is to dry up crop land permanently so the water will go down the river and will turn turbines. [This will] just change the timing.

I did want to point out one other thing: In 1997, I was farming full-time and I had over 200 acres of ground that was under water for two weeks, as did others. We would much rather [have used] that water [for] recharge than [have it] on our farms recharging because we didn't get paid for the recharge and our crops didn't do too well either. As Senator Burtenshaw mentioned, I think H 800 could go a long way to set up ways we can get the water out to where it should be so that it doesn't end up flooding us. I'm getting nervous [as I] hear about all the water up above. In closing, it's always been my understanding that the state controls the waters of Idaho, and I hope that we continue to have the state control them.

Klarin Koompin: My name is Klarin Koompin. I farm with my brother in the American Falls area and we're served not only by surface water [but also groundwater]. We have 2,000 acres under surface water and about 6,000 acres under deep wells, so we're affected by both. Falls Irrigation is very interested in recharge and [is] for it. I have an explanation for what happened in 1994.... It may have been a case of "just happens." Idaho Power is very formidable. I was here a few years ago working on a transmission line bill that looked like it would take some [difficulty to] get used to. It got through the House but when it got to the Senate, they sine died the committee before we could testify.

Mr. Rush is a very fine guy that does a great job, but the IACI decision to not support this did not go to the vote of the whole committee. It was done by the executive committee [which] I believe shows that Idaho Power's still the same way. I love Idaho Power. I have an uncle that worked for them for 42 years, and they've treated our family very well.... But this is about a water right, about what's good for the state of Idaho which will ultimately be good for Idaho Power. There are no losers in recharge. Idaho Power will receive all the [recharge] water sooner or later; all the studies we've done shows it will happen. Twin Falls has to know that will happen, and so does Clear Springs, because that's what all this money we spent shows. There are no losers, only all winners in H 800. I urge you to vote for it.

Raymond Matsuura: My name is Raymond Matsuura. I'm a third generation farmer from Blackfoot. My grandparents migrated from Japan in the early 1900s and started farming in the Rexburg area. In 1953, they moved to Blackfoot and started farming just north of Blackfoot. My father and his brothers farmed together. Idaho Power played an important role... in the growth of Matsuura Brothers Farms, and it was a good partnership. Many acres were brought into production because of the electricity provided by Idaho Power to run our pump which drew water from the aquifer. I now farm my dad's share of the farm with my brother, and we produce about 300 acres of potatoes. I concur with all that has been said in favor of this bill. We have always been pleased with the service of Idaho Power, and its employees are the greatest in the Blackfoot area. However, the ongoing

actions of Idaho Power have despaired and upset me. The threatened rate hikes, announcements of rate decreases this summer, the barrage of misinformation through media outlets have all been calculated moves based on power, money, and political positioning to control Idaho's water this year and in future years. It will set a bad precedence to let them have their way.

I'm a farmer who just wants to have a voice on how Idaho's excess water can be used, and Idaho Power seems to want to take that away from me by claiming that the excess water is theirs to decide. Thank you for your time.

**Michael
Creamer:**

Mr. Creamer provided a six page handout that was prepared by Charles M. Brendecke, PhD, PE on behalf of Idaho Ground Water Appropriators, Inc.

Pages 1, 2, and 3 are inserted into the minutes, prior to Mr. Creamer's oral testimony. Pages 4, 5, and 6 are graphs that show "Recharge Diversions Compared to Flow Passing Milner", "Locations of Return Flows from Recharge via North Side Canal", and "Monthly Pattern of Recharge and Return Flows over First 15 Years", which Mr. Creamer refers to in his testimony.

According to the U.S. Geological Survey, more than 24 million acre-feet of water was added to the Eastern Snake Plain Aquifer (ESPA) between 1880 and 1950 as incidental recharge associated with the development of large surface water irrigation projects. This additional aquifer storage raised ground water levels across the Plain and increased the flows of springs that discharge from the ESPA to the Snake River. These increased spring flows augmented the supplies of surface water users and supported the development of a large aquiculture industry. The increased water levels also facilitated the development of ground water-supplied irrigation projects.

Starting in the late 1950s, changes in surface water irrigation practices began to reduce the amount of this incidental recharge. These changes included the transition from flood irrigation methods to sprinklers and the cessation of winter diversions to enable the filling of the new Palisades Reservoir. These changes probably reduced incidental recharge to the ESPA by roughly a million acre-feet per year. At about the same time, ground water pumping for irrigation was expanding. The result of all these trends has been a reduction in water levels and spring flows in portions of the ESPA.

Managed recharge could reverse these trends by using the State's largest reservoir—the ESPA—to store surplus river flows in wet years. The Idaho Department of Water Resources (IDWR) has studied extensively the

potential for large-scale managed recharge. In 2004 IDWR developed a modest recharge proposal that is based on the following considerations:

Water diverted for recharge would be derived from excess natural flows in the spring and fall of wet years.

The maximum combined rate of diversion for recharge would be 1200 cfs, which is the amount of the Idaho Water Resource Board's water right for recharge.

No water would be diverted for recharge until a minimum of 750 cfs had been left in the river at Milner.

Water would be recharged using existing canal systems, mainly the North Side Canal, the Milner-Gooding Canal and the Aberdeen-Springfield Canal, in the spring and fall when those canals had excess capacity available.

Figure 1 shows how the amount of water available for managed recharge would vary, relative to the total flow passing Mimer Dam, over the period used by the IDWR in its analysis. On average, about 171,000 acre-feet per year would be available for recharge. In dry years there would be little water available, but in wet years the amount would exceed the average value. By putting the high flows in the aquifer, water supplies for all users connected to the aquifer could be enhanced in the dry years.

The benefits of managed recharge would be almost immediately apparent in increased spring flows and aquifer water levels. And over time, because recharge is not itself a consumptive use, all the water diverted to recharge would re-emerge as spring flow back to the river. A 2004 analysis by the Idaho Water Resources Research Institute, using the new ESPA model, examined the effects of managed recharge using the North Side Canal. Figure 2, which is derived from this 2004 study, shows schematically the distribution of spring flows that would ultimately result from this managed recharge. Use of other canals further upstream would cause more of the increased spring flows to occur higher in the system. For example, almost all of the increased spring flows from recharge via the Aberdeen-Springfield Canal return to the river above Mimer.

The Idaho Power Company (IPC) has raised objections to managed recharge on the basis that diversions to recharge would reduce the amount of water available to their hydroelectric plants on the Snake River downstream of Mimer. The IPC is the licensee or joint licensee of several run-of-the-river hydroelectric plants between Mimer and King Hill, which are also shown on Figure 2. Figure 2 shows that more than 90% of the spring flows resulting from managed recharge via the North Side Canal would accrue to the Snake River above IPC's Upper Salmon Falls plant,

and that more than 99% would accrue above its Lower Salmon Falls and Malad River plants. All of the spring flows from managed recharge directed to improve spring flows in the Thousand Springs would accrue to the river above the C.J. Strike plant, the Swan Falls plant and the Hells Canyon complex (which alone accounts for 2/3 of IPC generation). Only the Mimer, Twin Falls and Shoshone Falls plants could be significantly affected by recharge diversions into the North Side Canal, and the 750 cfs bypass assumed in the IDWR recharge proposal would nearly fill the capacity of the Shoshone Falls plant.

Diversions to recharge would occur mainly in the spring of wet years when power prices are low and when the hydraulic capacity of IPC's hydroelectric plants may already be exceeded—which is the case this year (IPC has spilled more than 400,000 acre-feet so far this year at Hells Canyon). The enhanced spring flows resulting from recharge would occur on a more firm, year-around basis, increasing river flows in the summer and winter periods when power prices are high. Consequently, managed recharge has the potential to actually improve revenue production from hydropower.

In its media campaign against HB800, the IPC has implied that more than 1.6 million acre-feet per year could be lost from their system as a result of recharge. This amount is nearly ten times what the IDWR has determined could practically be diverted for recharge, and assumes that none of the water diverted for recharge would ever return to the river. IPC's assumptions and conclusions on this score are entirely false.

Furthermore, other actions by the State of Idaho and upper Snake River basin water users already have put more water into the Snake River during the high-power-value summer months than would be diverted in the spring for recharge, and at no cost to IPC. The State's purchase of the Bell Rapids irrigation water right, as part of the Nez Perce agreement, now leaves an additional 74,000 acre-feet per year in the river above the Lower Salmon Falls plant. And since 1991, upper basin water users have leased an average of 150,000 acre-feet per year to the Bureau of Reclamation as salmon flow augmentation. This addition of approximately a quarter of a million acre-feet of augmentation water now flows in the summer through all of the IPC plants.

To be sure, some portion of the initial diversions to recharge will go to increased storage in the ESPA and not to increased spring flows or river flows below Mimer. This is inevitable, and is analogous to "priming the pump." Using the new ESPA model, I have prepared an analysis of the temporal effects of a managed recharge scenario consistent with the IDWR proposal. This scenario assumes recharge via the North Side and Aberdeen-Springfield canal systems. The analysis was carried out on a daily basis for a period of 15 years. The results of this model run are

displayed in Figure 3, which shows the temporal patterns of recharge diversions and increased spring flows. Figure 3 shows that return flows above Milner, which can pass through all of the IPC plants, approach their steady state value in just a few years. Return flows below Milner take slightly longer to build up to this value. But in both cases the returns from spring and fall recharge diversions are distributed throughout the year, to the benefit of water users and IPC. (End of Mr. Brendecke's document.)

**Mr. Creamer's
testimony:**

You've heard a lot of important testimony by a lot of very sincere people. A lot of discussion has been in favor of recharge, and certainly this bill has to do with recharge, but I would submit to this committee that H 800 is a bill whereby the legislature in the state of Idaho reasserts its trust responsibility for the water that was granted through the trust agreement with the power company for allocating subsequent beneficial uses for the benefit of the people of the state of Idaho. That's what this bill is about. Mr. Tucker would tell you that this is a matter of contract interpretation. I think Mr. Rigby made a very strong case that the contract doesn't need interpretation. One of the first rules of contract [that] I learned in the first year of law school is that the plain language of the agreement describes the terms. You don't need to look outside of the document for an interpretation. You don't need to ask Governor Evans what was intended. But isn't it great that we have a legislative record to tell us in case some party to the agreement would like to dispute what the plain language means? Isn't it great that we had the record that was created by Senator Crapo at the time? And what does that tell us? It tells us that we had a trust water right and this state is responsible for administering it.

Interesting, the 1994 legislation was of such importance that the legislature saw fit to put the full intent and purpose of the legislation in record. There isn't anything in the record about how the language that unsubordinated a portion of those water rights Idaho Power got into it. People would say that there was a lot of deliberation, but I don't see that from the record; I don't hear that from the legislators here who were part of that interim committee or voted on the matter.

H 800 gives the legislature an opportunity to reverse the mistake that was made in 1994 and reassert the state's trust responsibility.... I have provided to the committee a report that was prepared by a consultant for the Idaho Groundwater Appropriators, whom I represent. [The report] looks at a scenario prepared by the Department of Water Resources showing how much water could actually be diverted, given the constraints of the Water Resource Board, limitations in canal capacity, and water availability. [It was] applied to a scenario over the period from 1983-2000. You can see in the first figure how much of the water which flows past Milner could be diverted for recharge, [and it is] not the massive amounts that Idaho Power has represented to generate significant impact to their rate payers.

Where do the current flows for recharge appear? In Figure 2, Mr. Brendecke has shown that 90% of the recharge... which accrues below Milner [eventually] runs through Idaho Power's plant. Ninety-nine percent of those flows will run through the upper Salmon Falls and lower Salmon Falls power plants, to the benefit of Idaho Power Company. In Figure 3, this report demonstrates that [if the scenario were used,] 170,000 acre-feet on an average annual basis would be diverted. In the bottom graph, we can see how much water would be diverted in any given month in the spring and fall. Then we see when that returns to the river both above and below Milner. This chart shows that [within] 15 years, we approach an almost steady condition where the majority of that water is coming back to the river above and below Milner. The waters that come in below Milner provide a more firm supply for Idaho Power Company and for spring users.

I hope that you will vote in favor of H 800 and I hope it will come out of this committee with a do pass recommendation. [I hope] you will share with other senators the information from this meeting.

Senator Langhorst: In the second paragraph, ... it says, "These changes probably reduce incidental recharge to the ESPA by roughly a million acre-feet per year. At about the same time, ground water pumping for irrigation was expanding." Do you know how many acre-feet come out of the aquifer every year?

Mr. Creamer: [By] simply using the irrigation component of groundwater use, not counting municipal and domestic uses, there would be approximately two million acre-feet [per year].

Senator Langhorst: Do you know what the level of the aquifer is today compared to what it was in 1880?

Mr. Creamer: Compared to the turn of the century, I'm not aware of any information that would describe what those numbers are. The level rose from the early 1900s to the mid-1950s then began to decline thereafter. We know from a mass measurement made by the Department of Water Resources in 2001 that the water level in 2001 was comparable to the water levels in the aquifer when they were last mass-measured in 1980. In the vast majority of the aquifer, there were no statistically significant changes in the aquifer over that period.

Senator Langhorst: Since 2001 – I don't know if you know factually or anecdotally – I've heard that people [who own wells north of the river] are having to extend them deeper. Do you know how much the aquifer is dropping in a given year? Is there any amount of recharge that you think we could do that would stop the decrease?

Mr. Creamer: I do not have information on the rate [of decline] in the Eastern Snake River Plain Aquifer. We do see a noticeable trend of decline since 2001. I don't have any information I can share with you about how that reflects in aquifer levels. It is a fact that there are areas in the aquifer that wells had to be deepened, particularly since 2001.

Senator Little: In your interpretation of the Swan Falls agreement, if the legislature came up with a new beneficial use tomorrow – to have every reservoir full for swan habitat – would that new beneficial use subordinate Idaho Power's rights?

Mr. Creamer: I think that may be a debatable question. Certainly the statute clearly says, "subsequent beneficial upstream uses."

Senator Little: So in your interpretation of Swan Falls, it is not the current beneficial uses that existed then, but [beneficial uses which] we make up [and thereby] subordinate their water right.

Mr. Creamer: I hadn't said that, Senator. I said that's a debatable question. My position, based on a reading of the statute, is that the legislature has a trust responsibility.... I think it is an appropriate assertion of the trust responsibility to [allow] the state to determine what beneficial uses are.

Senator Little: So, you're saying that the trust isn't only for beneficial uses [in existence at that time, as well as] for the 600 cfs, but we also have a trust responsibility to come up with any new beneficial use. Could we eliminate a beneficial use?

Mr. Creamer: I think that's a different question. If you could eliminate an existing beneficial use – let's say irrigation. Is that your question?

Senator Little: Your interpretation of the trust is that we not only have the 600 cfs to use for designated beneficial uses [in existence] at that time of the Swan Falls agreement, but we also have a trust responsibility to make up or adopt new beneficial uses?

Mr. Creamer: My position, Senator, would be that Idaho Power Company agreed to subordinate all of its water rights at Swan Falls and its hydro plants below Milner down to the 3,900 and 5,600 cfs, and the state is free to allocate for beneficial uses all flow in excess, pursuant to the trust agreement. I think there's room for the state to say, "we think that fish and wildlife enhancement, we think that recreation, we think that in-spring flows, we think that aquifer recharge, are certainly appropriate beneficial uses of the state's water right." Idaho Power Company has agreed, and presumably they made the analysis in 1984 [as to] what are the potential impacts on power production by subordinating their water right to 3900 and 5600. Certainly the state would be free to make those decisions without impinging on the deal or on the benefits of Idaho Power.

- Senator Little:** So, not only the volume, but any new uses over the existing uses is your interpretation?
- Mr. Creamer:** If it is consistent with the state's trust responsibility.
- Senator Pearce:** You indicated 2.2 million acre-feet are presently pumped out of the aquifer per year for agricultural use. Do you have any idea what the municipal and domestic approximation is?
- Mr. Creamer:** The Department traditionally has considered those uses [to be] de minimus: municipal, domestic, commercial, industrial. I think by de minimus, they must be less than 5%.
- Timothy Deeg:** I am the President of the Idaho Groundwater Appropriators. You've heard from many of the constituents that Idaho Groundwater Appropriators represents. I think one point that needs to be made is that most of the water users in Southeastern Idaho, up to Mud Lake, are all for H 800.... They're concerned about pumping levels; they're concerned about the aquifer. One of the other things [which is] important to look at is that we always look at reservoirs we can touch and feel. But one [reservoir] we don't really know is the aquifer. How is it doing? We've used it over the past years to help accommodate through the drought and now it's time to put something back into it. It's an important step that we can take right now. I thought the Speaker did well in taking on this task. It's a huge effort, and I would hope that this committee would consider moving forward and pass H 800.
- Former Senator Lynn Tominaga:** My name is Lynn Tominaga. I'm the Executive Director of the Idaho Groundwater Appropriators. I wanted to bring up a couple of issues that haven't been touched on. It was rather surprising to me to find out that IACI had taken a position opposing H 800 when the Groundwater Appropriators are members. We have never discussed H 800 in IACI.
- The second point is that I can shed some light on H 1574. I was in the Senate when the Swan Falls agreement went through the legislature. I worked for the Idaho Water Users Association in 1994, and I'm presently here on this issue. What happened in 1994 was that the legislative committee for the Idaho Water Users Association met very late, and the drafting of the bill recommended by the interim committee did not get approval from the Water Users legislative committee until late in the session because the bill was not drafted. [Then,] Idaho Power came to the Water Users committee and said, "If you don't add this sentence to the legislation, we will fight you and we will try to kill recharge as a beneficial use." In 1994, there was a lot of legislation that was going on that dealt with the SRBA, and there was some question about whether recharge was a beneficial use, even though people had been recharging for over 100 years. So, there were a lot of questions about whether the

adjudication court would allow it unless the legislature came in and did something. When it came before the committee, both sides, they explained it and then said, "Anybody object?" Nobody did because the Water Users Association and a lot of attorneys agreed that it was better to have recharge recognized as a beneficial use than to have a fight over it. It slid by because nobody opposed it. Now we realize, ten years later, that was maybe a policy mistake. Now is the time to take a look and decide if we should change the policy.

The last thing I would like to stress is that with this issue, is it better to have a discussion here in the legislature about a policy change we believe is beneficial to the state, or do we believe it should be made in the board room at Idaho Power? Is it better for the state to decide what to do with the trust water, or is it better for Idaho Power to make that decision? The list that I've given you is a list of over 90 entities (cities, counties, groundwater districts, irrigation districts) [that support the bill. From the time H 800 passed in the House, I've been calling folks trying to get endorsements. If you give us more time, we'd give you more names too.

Craig Evans:

I'm Craig Evans from Blackfoot, Idaho. I represent Bingham Groundwater District. I have two points: 1) I think it is really lucky to have people who were the original debaters and signatories of the Swan Falls agreement here to interpret it for us.... 2) I think that we need to restore the integrity of the Swan Falls agreement. The legislation in 1994 clouded that agreement and we need to restore its original integrity. We are very much in support of H 800.

There was discussion on how long recharge has been considered a beneficial use. I have one report here from the Idaho Department of Reclamation, titled "Artificial Recharge of the Snake Plain Aquifer, Evaluation of Potential and Effect," and dated August 1969. Another one is "Idaho Water Resource Board Snake Recharge Project, Fiscal Year 1980 Report." So it's been around quite a while.

Matt Yost:

My name's Matt Yost. I'm from Rupert, Idaho, but I now reside in Boise. I represent the Idaho Steelhead and Salmon Unlimited organization and I'm here to testify on H 800 as well as to comment on Idaho's publicly-owned water resources. I learned something today that canals can be recharge vessels. I thought canals were recreational opportunities.

Inserted into the minutes is his formal testimony.

I am Matt Yost, Director of Idaho Steelhead and Salmon Unlimited. I am before you today to testify on HB 800 and to make comment on the use of Idaho's publicly owned water resource.

ISSU does not often support the hydro-power industry as it is the hydro-

power industry that effectively kills 80 to 90% of Idaho's out migrating juvenile salmon and steelhead smolt on the way to the ocean. None of which is caused by Idaho Power dams.

ISSU's membership is made up of many farmers. ISSU supports the idea of recharge and wishes to protect all Idaho agricultural interests when possible.

That said, ISSU has trouble with HR 800.

- HB 800 does nothing to address the problem of how the Snake River Plain Aquifer became depleted. It is our opinion any good legislation designed to be effective should address the question of how the aquifer became depleted.
- As representatives of the people of Idaho, ISSU believes legislators should not be willing to place the state in front of a legal train wreck unless all other options have been explored. And, we do not believe all options have been explored.
- The Senate Resources Committee has had opportunities in the past to re-water the Big Wood and Lost Rivers, with legislation brought by Senator Stennett. Had the state acted on such proposed legislation - some aquifer recharge would have occurred benefitting farmers.
- Yet another example, there still remains High Lift pumpers who are willing to sell or lease their water long term to the state. Like the Bell Rapid buyout, these waters could be contracted and transferred up stream to use as re-charge when needed.
- If the state of Idaho is truly worried about protecting Idaho water the state should take a different position on the four Lower Snake River Dams in Washington State. These out of state dams provide very little for Idaho other than uncertainty, by continuing to protect out of state interests by giving Idaho water away is foolish. Properly dealt with, flow augmentation for salmon and steelhead could become unnecessary; we could insure regional growth, jobs, abundant wild salmon and steelhead populations in harvestable self-sustaining numbers and federally secure our hydropower facilities within Idaho.

Thank You. Your continued support of Idaho's wild fish runs is appreciated.

Mike Telford:

I farm and live east of Shoshone in Senator Stennett's area.... We've heard a lot of wonderful testimony. I have what I hope is some homespun wisdom on this. There's a law that supersedes all these laws, ...and this is the law of unintended consequences. When our pioneer forefathers came and started to bring water out to the ground, they didn't have any idea what they were doing. So for 50 years they ran water through the canals so that the milk cow could have some water. They chopped holes in the ice to do it. Looking back, you can see what happened to the

spring flows and the aquifer. It filled it up. [Those were] unintended consequences.

In 1950, when they made the agreement to put water in Palisades, everybody had a domestic well by then and they didn't need water in the canals all winter long. So for the next 50 years, the aquifer declined. They didn't see the law of unintended consequences. Then later, when we all decided we needed to make better use of the water, when you guys should have come up with a program to pay us to keep the surface irrigated, we all put in sprinklers which depleted it even further. Ninety-five percent of us in the state depend on the aquifer for drinking water, and if we don't do something, it's going to return to its natural state. I've had two domestic wells go dry. It's going down, there's no doubt about it.

I hope you would remember the law of unintended consequences and realize if we don't do something, it's just going to go back to nature. This is your opportunity to make the first right step. I have great confidence in you. We can't ignore the greatest reservoir in the state. The farmers are stepping up and doing their part. I'd like to see what Idaho Power would think about putting part of their productive capacity aside. That's what farmers are already doing, and we support it because we realize how important it is. We need to look at the big picture.

Wayne Hurst:

My name is Wayne Hurst. I farm in the Burley area. I use surface and well water. I am also the President of the Idaho Grain Producers Association. We're a statewide organization representing the majority of counties in the state of Idaho. We recently held a conference call with our director, and the decision was unanimous to support H 800. It is important that Idaho chooses the destiny of its own resources. We don't feel this is a taking of any water right.

Senator Chuck Coiner:

I'm Senator Coiner, District 24. Historically, I was the counterpart to Mr. Deeg. He represented the groundwater users [while] I represented the surface water users in conjunctive management. So, we've been talking about these issues for a long time.

One of the comments I heard earlier was about the sources of water for recharge. There are two sources: Natural flow (which we're talking about today) and storage water. If we go back to the Swan Falls agreement, [part of the agreement] was to set up the adjudication, which we've done. The other one was to set up a water bank with which to market the water.

Right now in Water District One, we have water bank procedures – willing buyer, willing seller – so we can get water most years at a cost. What we need is a funding source to pay for the water so we have a willing buyer. The willing sellers would be available. Water would be available both fall and spring, not just spring. The cost would be about \$5 in years like this,

and if we had a full reservoir, it would be cheaper. Drought years would be more expensive.

As far as starting adjudication goes, there are two scenarios: if this bill fails, in 30 days the directors will have their recommendations on Idaho Power's water right in the adjudication court; [there will be] 120 days for objections then 60 days for responses,... 60 days for a trial date, and then issues about the trust could be heard. If we pass this legislation, the other scenario [will go] in front of the adjudication court and it'll be a little slower, but my comment is that it's exactly the same scenario.

The policy issue is a different issue. I think it's going to adjudication court, and that is where it belongs because 105 legislators should not be interpreting the Swan Falls contract. I think the 1994 legislation is a perfect example of why it belongs in court. The Senate voted 35:0. Of the senators that are here who were there then, 100% of them voted for it in 1994. One attributed it to some excess activities that caused people to make that determination. In the House, [it passed] 68:0:2. To me, that is a perfect example of why the legislature should not be looking at this issue. It belongs in court.

**Gerald
Fleischman:**

My name is Gerald Fleischman. I work for Idaho Energy Division on wind power development. I just want to point out that there are substitutes for power generation whereas there are fewer substitutes for agriculture. We have tremendous wind power resources. I support H 800.

**Richard
Williams:**

This has been a good hearing. There is one thing that I wanted to bring up at the close of the meeting, and that's a song that said, "From a distance, God is watching over all of us." I remember last spring, we were praying for water and our prayers were answered, and they're still being answered. I am grateful for that. I want to remind you of a scripture that says the earth is the Lord's and the fullness thereof and they that dwell therein. It behooves all of us to appreciate that we need each other and that we need to work together to try and solve these problems in a righteous manner. These things do not need to be litigated. We need to sit down at a table to solve these problems.

**Former Senator
Dane Watkins:**

My name is Dane Watkins. I'm here in a couple of capacities today, one as Chairman of the Jefferson Groundwater District which supports this legislation. I go back to 1984. I happened to be at that session of the legislature that passed that Swan Falls agreement, and anything I could add to that is the fact that we had bipartisan support. I think this committee should look at a bipartisan effort here. We have a cloud in that agreement.

I can tell you my impression of what we were passing in 1984. Swan Falls wanted minimum stream flows, and they got it, [set at] 3900 and

5600 cfs. But they subordinated their water rights. That's what I hope you see happened. I know in the legislature, things happen. On the 1994 legislation: Nobody voted against it, but I can tell you of an example in the 1970s when we passed the Equal Rights Amendment in the state of Idaho on the last day of the session. They stood up on the floor and said, "Just pass this legislation. Pass it. We're running out of time." We passed it. The next session, we rescinded it. I was chairman of the Agriculture Committee, and what did that committee have to do with it? But it just happens.... We rescinded it, and we can do the same thing here today. I know the intent of the legislature in 1984. I'm here to ask for your support for this legislation. Recharge is important for all of us.

**Chairman
Schroeder:**

A lot of people have traveled a long way for this. I want to make sure there is no one we've missed. No one? Alright. I'm going to allow Idaho Power to wrap up and then Mr. Speaker to wrap up. Then the committee will entertain some motions.

Greg Panter:

I simply would urge you to vote "no" on this legislation. It's the right way to go for small businesses and rate payers throughout the state. I have nothing more to add.

**Speaker
Newcomb:**

I would like to defer to my cosponsor.

**Representative
Raybould:**

I know it's been a long afternoon and there have been a number of questions that have been brought up during the debate that need answered. One dealt with the timing which put H 800 on the table. This bill was heard by the Ways and Means Committee in the House on March 14th and went to the House Resources Committee, which voted on it on the 15th. It came out of the House to the Senate on the 17th. There have been a lot of things going on that have delayed today's hearing, but the biggest delay was caused by negotiations between the surface water users and groundwater users. The mediator explicitly asked us not to do anything until they had a chance to come to an agreement.

One of the things that Mr. Panter said which really troubles me is that Idaho Power's credit rating has diminished. Idaho Power is a great company. They've done great things for Idaho. They have a great workforce here. They are a good company and I hate to see that rating drop down. But I don't believe that rating dropping down was caused by H 800. If there's anything that caused it, it was probably the management decision to put out a lot of negative advertizing and media reports, and especially letters to over 400,000 of their rate payers. If anyone caused the drop in their credit rating, it was probably the management of Idaho Power shooting their shareholders in the foot with their negative comments. I don't think this bill had anything to do with it.

As has been stated here, the water for recharge is needed above Milner, not below Milner, and water going down for Idaho Power's facilities has been plenty. We need to talk about what's going past Milner Dam. Another misstatement, or at least a statement which I need to review, is the Thousand Springs flow. I can tell you the numbers that I quoted here came directly from Idaho Department of Water Resource records. And they are the numbers that are being used in the present, updated model of the aquifer that determine cause and effect and what's happened over the years. If there is a discrepancy in those numbers, I would appreciate those who have different number letting us know.

Another statement that was made was that the Attorney General's Office said there would be a lawsuit on the takings issue. I can tell you the exact question that was asked, which was, "Would there be a takings lawsuit?" And the answer from the Attorney General's Office at that time was, "Anybody can file a lawsuit." I think the Attorney General's opinion that you've seen here puts that issue to rest. The lawsuit would be lost on the merits of the Swan Falls agreement and the merits of the case.

I think it would be well for the committee to have the exact language of what was said in the state water plan. This was passed by the State Water Board right after the Swan Falls agreement. The same state water plan is still in effect today, and this is its language: "It is the policy of Idaho that the groundwater and surface water of the basin be managed to meet or exceed a minimum average daily flow of zero, measured at the Milner gauging station; 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31, measured at the Murphy gauging station; and 4,750 measured at the Weiser gauging station." That's the state water plan. It was never modified. The same thing held in 1994. Here's the important part: "Waters held in trust by the state in accordance with policy 32(a) shall be allocated according to the criteria established by Idaho Code. Minimum flows established for the Snake River at the Murphy and Weiser gauging stations are measurements, management constraints. They further ensure that minimum flow levels of the Snake River water will be available for hydro power, fish, wildlife, and recreational purposes. The establishment of a zero minimum flow at the Milner station allows for existing uses to be continued and for new uses above Milner. The zero flow established at Milner means that river-flows downstream from that point to Swan Falls dam may consist almost entirely of groundwater discharge during portions of low water years. The Snake River Plain Aquifer which provides this water must therefore be managed as an integral part of the river system." That was written right after the Swan Falls agreement.

Concerning the state water plan's trust water held by the state, the agreement between Idaho and Idaho Power Company dated October 25, 1984 provides that Idaho Power's claimed water right of 8,400 cfs at the

Swan Falls Dam may be reduced to 3,900 cfs if the claimed water right of 8,400 cfs is deemed appropriated and the amount above the minimum flow established in policy 32 (which was at 3,900).... The 8,400 claimed right is reduced to the flow available after satisfying all applications or claims that demonstrate water was beneficially used prior to October 1, 1984, even if such uses would violate the minimum flow established in Policy 32. Had there been rights that would have diminished that flow below 3,900, those rights were still recognized. Any remaining water above these minimum flows may be reallocated to new uses by the state, providing such uses satisfy existing Idaho law plus criteria the legislature establishes. It's the policy of Idaho that appropriated water held in trust by the state pursuant to Policy 32(a), less the amount of water necessary to provide for present and future DCMI uses, shall be available for reallocation to meet new and supplemental irrigation requirements which conform to Idaho Code.

Now let's talk a little bit about those flows. In a 21-day period, the flows past Milner averaged 3,787 cfs above the zero flow that the state calls for. That provided, in those 21 days, excess flows past Milner were 159,080 acre-feet of water. The Murphy gauge: In 23 days, it had averaged 4,936 cfs daily average above the 5,600 cfs minimum flow, from February 20 to March 14. That's 227,000 acre-feet of water. I don't think anyone's contesting this here because we weren't going to recharge between Milner and Murphy, but those excess flows indicate that Idaho Power is not short of water. Of that water, 159,000 acre-feet could have been recharged, had the canals been filled up, depending on the condition of the canals and the weather. It shows you that there's more going past Murphy than would be necessary if we took all the 159,000 out and kept the zero flow at Milner. At Hells Canyon: if Idaho Power's numbers are correct on their website then they have a generating capacity of 27,000 cfs at Hells Canyon. The average flow past Hells Canyon was between 17,000 and 21,000 acre-feet of surplus per day and 307,200 acre-feet of water went past Hells Canyon that could not be used by their generators in the period from February 1 to March 14. So, there isn't any way that we are depleting Idaho Power of any water.

In closing, I would just like to say that we have an opportunity here to remove a cloud from the law. Whether the statute passed in 1994 was inappropriate, inadvertent, or deliberate. The Attorney General's opinion and the testimony you've heard here today indicates that it needs to be fixed.

Our interim committee for the past two years, and especially last summer, indicates that we have a crisis in the state of Idaho. It just happens to be showing up first in the East Snake River Plain. The Mountain Home aquifer is in crisis. The Treasure Valley aquifer is going down; it needs recharge. The Rathdrum Prairie aquifer now is being looked at for water

quality and recharge. What are we going to do to keep it up? We've got a good chance here to start today. Some of the testimony we've heard today said we need to create recharge projects. It needs to be a state obligation to make sure the water supplies for the citizens of this state are protected and amplified, improved. We need to start doing that. We're too late already. We should have started on this ten years ago. I urge you to send this bill to the floor with a do pass and then to go on the Senate floor and support this. I appreciate the cosponsors of the bill. We plead with you to take a start. Let's not be too late.

Senator Pearce: Thank you for that information. You know, we're going to have to defend our decision here today with the rate payers. What is the capacity at Milner? How much water could Idaho Power actually run through Milner?

Representative Raybould: I don't know the capacity there. I think if I recall back when the Swan Falls agreement was being debated that those minimum flows did provide the water that could be used there at Swan Falls. I did not find any of the capacity of those other installations. Whatever the capacity is at Milner, the state water plan is zero flow at Milner. I would imagine that some of the water I just enumerated as going past Milner is going through that power plant. It should be. Any water that's going downstream that we're not using upstream should be generating power.

Chairman Schroeder: This concludes public testimony part of this meeting. H 800 is now properly before you.

MOTION:
Senator Burtenshaw: I make a motion to send H 800 to the floor with a do pass recommendation.

SECOND:
Senator Williams: Second.

Senator Langhorst: I want to explain to all the people gathered here why I am going to be voting against this bill. I want to start by saying that we handle hundreds of bills every year. A lot of them don't need the kind of input we've gotten from you today. So many of you have come from so far to enlighten us and your efforts get us half way there. I feel like, however, that this bill is something that would take me a long time to become comfortable with, [especially considering] the amount of time we spent on the Nez Perce agreement last year or on the original Swan Falls agreement. I appreciate Representative Raybould mentioning [the timing] issue and how it got to us so quickly, but it still doesn't go far enough to make me feel comfortable.

Recharge is something that we all agree with; I don't see that as the

debatable part of the bill. I've heard a lot today about [how] recharge is a good thing; I didn't hear anybody say recharge is a bad thing. I think we need to do recharge, but it's a problem that's been 100 years in the making. Another year or two, in my opinion, won't make or break your farms or our aquifer.

One of the things I really want to address is the idea of whether this is the proper forum [in which] to address water rights, like we're doing today. I've heard the statements that water belongs to the people of the state, we don't want it to be controlled in corporate board rooms, and that the political process is the way that you want water rights adjudicated. But I have to respectfully remind you that that's the way the 1994 legislature dealt with it and now you're back here. I want everyone to think about and remember the fact that things are changing in Idaho and you might want to be careful what you wish for. Imagine yourself in this overflow room, maybe looking in from the outside, and seeing all these chairs packed with people from INL, or Idaho Falls, Pocatello, or Boise – these urban areas – making the argument that energy prices are killing our industry and we need to reorder the priority of water rights in the state of Idaho so we can shore up and protect our jobs. That day could come. I just don't know that fighting it out in the legislature every year is the proper way to do that. I appreciate your hearing me out.

**Senator
Burtenshaw:**

We've worked on trying to settle and negotiate a settlement for the last couple years. I see some people here in the audience today who I would have hoped to hear from [because] they've been working on recharge for 10 or 15 years and every time we get to the point where we can do something, we need to "study it" and "take more time." I think one thing that none of us has looked at, really, is if we allow Idaho Power to go through this adjudication court without clarifying what those trust waters are, we won't need to clarify them because they'll be decided. I think we have a responsibility to make that decision now.

I don't have any figures or facts except my own eyes, but if you think the spring flow has come and it's too late to recharge with this water, you've got another think coming. It's coming, and as soon as it warms up, you'll see it. Many of you drive across the Boise River and it's full now for one reason: They're afraid it's going to flood. I don't know how you could get better conditions anytime. I've been here ten years, and we've got a better chance to settle this thing now. It's been going for two or three or four years and nothing's been done. We've almost come to a settlement several times and there was always something that just wasn't quite right. I think now is the time to address this situation and get on with the recharge.

**Senator
Williams:**

I thank all those from my district who took the time to come over today. It shows great support and I appreciate it very much. Along the lines of

what Senator Burtenshaw said, it seems like we have a tendency here as legislators to talk things around quite a bit. Sometimes it's time for talking and sometimes it's time for doing. I'm here to tell you it's time for doing.

**Senator
Cameron:**

[I have] just a couple of comments. With all due respect to Senator Langhorst, I believe recharge is the debatable point. In spite of testimony you heard here today, I believe that there are those that don't want recharge. I think there have been great comments and great discussion about if this aquifer were a reservoir, would we prevent it from filling in order to run water down the river to generate electricity? I don't think this bill would be here today if it weren't for objections by Idaho Power to recharge.

Last year, many of us debated on the Natural Resources Committee, and we spent \$30 million of state revenue to try and fashion some solutions in a low water year, the sixth year of a seven-year drought. We spent that kind of money to find solutions. Idaho Power would not even come into the room if recharge was on the docket. They didn't say then, "it's because of rates." They didn't even want to talk about it. I find it ironic that we have this rate issue discussion and that's the issue that's being brought forward to the public.

They're a regulated public utility. Past legislators have made the decision that we need to control their rate because they are a public utility. So the issue, to me, goes back to what the initial agreement was. Did Idaho Power subordinate their rights in order to get minimum stream flows? In my opinion, they did. So what happened in 1994?

I was a member of the legislature and a member of the interim committee and I can tell you that the last thing we would have ever done was try to undo the Swan Falls agreement. Our intention was to list recharge as a beneficial use. We made the motions in the interim committee intending for that to occur, and I think testimony has proven that my recollection is the same as others' [regarding] agreements [that] were struck outside the legislative process. The bill was brought at the last minute amongst other bills that came from that interim committee, and the legislature signed onto it without really understanding or fully considering that it might be running something afoul to the Swan Falls agreement. If for one minute any of us had thought we were undoing a very contentious agreement, that bill would never have happened. Unfortunately, it did [happen] and we have the situation that's before us.

I want to tell you, we spent \$30 million last year because of the economic consequences to the Magic Valley region and to Eastern Idaho, but not only to them: to the entire state. It was very clear to us that if we didn't start to do some things, that the effect on the state was going to be \$200 million or greater. There were studies to show how important it was. I

believe that having a healthy, stable aquifer not only protects the state and its revenue, but I believe Idaho Power will be the beneficiary of that. I believe they will have stable flows as they flow out of Thousand Springs if that aquifer ever returns to the level it was. I'm not sure it could ever get back to where it was at its height, but it can certainly get to a point where it's at a stable level. I think agriculture has stepped up to the plate and is willing to set land aside and stop pumping from the aquifer – an appropriate step. But I think, likewise, it's an appropriate step for the state to step forward and to recharge that aquifer.

Now the issue is, if you recharge the aquifer, who has to be paid for it? I think Mr. Pander's testimony was that they were okay this year – they weren't last year – with recharging it as long as the state paid them for it. Why should we have to pay for a right that was already granted to us in the Swan Falls agreement? Those excess flows were already granted to us.

I don't see this as being a difficult decision. I don't see this as the legislature tinkering; it's the legislature rectifying and doing what's appropriate for the economic interests of the state. I urge your "aye" vote.

Senator Stennett:

I'm a surface water user on a ranch, and as I said before, I wasn't looking for a fight with Idaho Power. I guess what I come down to is I have to have a really sensible reason to vote one way or the other, but there's no gain politically one way or the other so I fall back on this agreement. I really appreciate the people here who were party to the original agreement. That's who I wanted to hear from.

When I do a business deal, we shake hands on it, but we still have a contract to fall back on. We're in a position today to be the judge on this deal and what the deal was. I go back to the document that Crapo put in the Senate minutes and back to the conversations that Senator Peavey had in the committee. It was asked at that time that if all the bills, passed as written, fulfilled the agreement between the power company, then the legislature decides to do away with it a couple of years later, what's the effect of the agreement? Mr. Nelson from Idaho Power said there's a provision in the agreement that says the agreement remains viable in the face of changes in the law. If the legislature wants to undo the whole thing next year, that's its prerogative. The only thing a legislature does not have the power to do would be to change the contractual recognition of the Company's water rights at the Murphy gauge. I can't find anything that's different at the Murphy gauge from the 3,900 and 5,600 cfs. I've asked and I'm looking for that document; if I had that document, I wouldn't be in the position that I'm in. But I can't go forward knowing what this agreement says and not support this bill.

Senator Pearce: A lot of times in these bodies, we vote for things we shouldn't have voted

for. A couple of years ago, we made a mistake in here that I look forward to the time when we can go back and correct it. So I think it's almost historic how many years it has taken us to go back and correct what we did in 1994. I appreciate the testimony; it really shed light on the issue. I appreciate the former senators coming back and telling us what the intent was because we could have lost that institutional memory.

I think the state was and is acting in good faith. We recognize that maybe water is over-appropriated, water is limited, and for us to purchase Bell Rapids to put that water back in the system – and Idaho Power is the beneficiary of that probably more than anyone in the state – [is prudent]. On the CREP program, we've got to put more water in. So I think we're acting in good faith by limiting and pushing back the use of this water just trying to fill this reservoir back up. I think this move is good and I think it's timely. We're going back and correcting something we should have done a long time ago. With that, I'm voting for it.

Senator Little: ...We know what happened at Swan Falls. In my mind, it's an absolute no-brainer that we do recharge. The question is: Are we changing the rules in the middle of the game? My visit with Mr. Creamer about whether the legislature can change [beneficial uses] makes me a little nervous. We've got the constitutional protection about first-in-time that overarches all these contracts, and there was an agreement in the Swan Falls agreement. In my mind, this move we have today is [taking us] back to 1983 or 1984 and we're putting in a new beneficial use at that time. It talks specifically about DCMI and it doesn't talk about recharge. The only thing about recharge was the pilot project in St. Anthony and Rexburg. Something Senator Peavey told me – about what the legislature giveth, the legislature can taketh away – makes me nervous.... [for] the future. Today we're here with Idaho Power. Are we going to be here next year with the spring users, and the year after that with surface water? With the changes in demographics in the state, what happens to everyone else's water right? So I am going to default back to the constitutional language we've got. I think this is changing the rules in the middle of the game.

Chairman Schroeder: Okay, the secretary will call the roll on the motion we have, and the motion we have is to send H 800 to the floor with a do pass recommendation.

Juanita will call the roll.

Senator Langhorst: No.

Senator Stennett: Aye.

Senator Little: No.

Senator Brandt: No.

Senator Williams: Aye.

Senator Burtenshaw: Aye.

Senator Cameron: Aye.

Senator Pearce: Aye.

Chairman Schroeder: No.

And the motion passes. Senator Burtenshaw, will you be the sponsor on the floor?

Thank you committee and everyone who came today. This meeting is adjourned.

ADJOURN: The meeting adjourned at 6:55 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 29, 2006
- TIME:** 1:00 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Burtenshaw, Williams, Brandt, Little, Stennett
- MEMBERS ABSENT/ EXCUSED:** Senators Cameron and Langhorst
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:05 p.m.
- He announced that committee members have been given a copy of the letter he sent to the Fish and Game Commissioners explaining the reasons why the committee held their bill, H 523, at the meeting of March 27.
- MOTION:** **Senator Williams** made a motion for approval of the minutes of March 20. **Senator Burtenshaw** seconded the motion. The motion passed by unanimous voice vote.
- Chairman Schroeder** then welcomed Representative Raybould who will present HJM 25.
- HJM 25** **Representative Raybould** said this legislation was put together last week as a result of a meeting with people concerned about offshore drilling on the Continental Shelf. It is to encourage the President to revoke administrative withdrawals on offshore development on the nation's Outer Continental Shelf and to direct the Minerals Management Service to contract for test wells on the Continental Shelf in a satisfactory and responsible manner. There has been a moratorium on the Management Service's leasing program on approximately 1.6 million acres of oil-rich lands which lie just off the coast of the United States. The first congressionally imposed moratorium was imposed in 1982 and it encompassed 736,000 acres off the coast of California. There is oil pollution on California's coast now and it is oil that is seeping up through cracks in the ocean floor because of the extreme pressure.
- In June, 1990 President George Bush, Sr., issued an executive order cancelling lease sales and withdrawing future off shore oil and gas leases off the coasts of California, Florida, New England, Washington and Oregon for a ten year period. In 1998, President Clinton issued an executive order extending the existing withdrawal from that point of time until June 30, 2012.
- What this legislation does is to encourage the President of the United

States to withdraw that administrative order and permit some test drilling and to create an environmentally responsible position for the United States to take in drilling for oil and to help our energy crisis.

MOTION: **Senator Brandt** made the motion to send HJM 25 to the floor with a do pass recommendation. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote. **Senator Brandt** will sponsor the bill on the floor.

Chairman Schroeder then welcomed Mr. Jack Lyman who will present HCR 64.

HCR 64 **Mr. Jack Lyman is with the Idaho Mining Association.** He said this is a resolution that contains 10 “whereas” clauses that summarize existing law regarding the federal Clean Water Act, the Idaho Water Quality Act, the State Ground Water Quality Plan, and the Idaho Environmental Protection and Health Act. There are three “resolved” clauses. The first one encourages DEQ to consider natural conditions in administering the water quality program; the second one encourages DEQ to change key aspects of the water quality only when there is broad agreement among affected parties; and the final resolve clause encourages DEQ to take full advantage of the flexibility that is available under the federal Clean Water Act, as well as the state laws that the legislature has enacted.

Mr. Lyman said that he spent a lot of time last spring and summer with two state agencies on rule development for cyanide legislation and he thought it would be helpful to have a single legislative document to summarize the key points. He emphasized that the problems he had over the spring and summer were not with the Department of Environmental Quality. The negotiations he had with DEQ were pleasurable. Mr. Lyman said water quality issues are ones that will continue.

Ms. Toni Hardesty, Director, Department of Environmental Quality, said she appreciated working with Mr. Lyman on this resolution. An item she wanted noted, for the record, was with regards to the broad agreement. The first and foremost position of the agency when going through negotiating rules is to try to seek agreement before moving forward. She stated that there are times when that is just not going to be possible.

Inserted into the minutes is written testimony that Ms. Hardesty provided regarding this resolution.

I would like to provide a couple clarifying comments for the record just to note the Agency*s interpretation of several sections of the resolution:

(1) Many items as noted in the resolution are regulated by the Clean Water Act and the agency is required to implement these items consistent with the Act. For example, while the 8th “WHEREAS” statements references standards not applying to manmade waterways and private waters, there are cases where the Clean Water Act requires that standards do apply to such waters and that they be regulated.

(2) The 9th and 10th “WHEREAS” statements regarding the Safe Drinking Water Act and the natural conditions provision should be viewed together to have a complete and accurate picture of how natural occurring constituents are handled under the ground water quality rule. The “WHEREAS” statement on the Safe Drinking Water Act, taken by itself could lead one to conclude that groundwater standards should not be developed anytime natural conditions would exceed that numeric standard. However, the ground water quality rule and the legislature recognized that there would be times that a groundwater standard would be established in the state and that some geographical areas may naturally exceed this standard. Therefore, a process called the natural background provision was laid out and is implemented by the agency when this situation. The agency’s intent would be to continue to follow this process as laid out in the ground water quality plan and rule. I believe our current process is consistent with the resolution.

Senator Pearce made the motion to send HCR 64 to the floor with a do pass recommendation. **Senator Brandt** seconded the motion. The motion passed by a majority voice vote. Voting nay were Senators Little and Stennett. **Senator Pearce** will be the floor sponsor of this bill.

Chairman Schroeder then asked Representative Raybould to present the next bill, H 841.

H 841 **Representative Raybould** said H 841 is a very important bill, as it is a trailer bill to H 800. Should H 800 pass the Senate and the Governor signs it, this bill is needed, as it declares the emergency clause.

MOTION: **Senator Little** made the motion to send H 841 to the floor with a do pass recommendation. **Senator Stennett** seconded the motion. The motion passed by unanimous voice vote. **Senator Burtenshaw** will be the floor sponsor of this bill.

MOTION: **Senator Pearce** made a motion for approval of the minutes of March 22. **Senator Williams** seconded the motion. The motion passed by unanimous voice vote.

Chairman Schroeder said that Senator Langhorst had reviewed the minutes of March 15, but is absent, so those minutes will probably be put on a buckslip.

ANNOUNCEMENT: Future meetings will be at the call of the Chairman.

ADJOURNMENT: **Chairman Schroeder** adjourned the meeting at 1:30 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary