

**MINUTES  
NATURAL RESOURCES INTERIM COMMITTEE  
9:00 A.M. TUESDAY, JUNE 12, 2007  
BOISE CITY COUNCIL CHAMBERS  
CITY HALL, BOISE, IDAHO**

The meeting was called to order at 9:00 a.m. by Cochairman Representative Dell Raybould. Other committee members present included Cochairman Senator Gary Schroeder, Representative Bert Stevenson, Representative Mike Moyle, Representative Scott Bedke, Representative Donna Pence, Senator Brad Little, Senator Chuck Coiner, Senator Jeff Siddoway and Senator Clint Stennett. Ad hoc members present were Senator Steven Bair, Senator Lee Heinrich, Representative JoAn Wood and Representative Jim Patrick. Ad hoc members Senator Dean Cameron and Representative Jim Clark were absent and excused. Legislative Services Office staff present were Katharine Gerrity and Toni Hobbs.

Others present included Representative Pete Nielsen, District 22; John J. Williams, Bonneville Power Administration; Brent Olmstead, Milk Producers of Idaho; Rich Rigby and Gail McGarry, Bureau of Reclamation; Mark Dunham, Idaho Association of Commerce and Industry; Scott Pugrud and Skip Smyser, Connolly and Smyser; Hal Anderson, Idaho Department of Water Resources; Gary Chamberlain, Idaho Water Resource Board; Rocky Barker, Idaho Statesman; Adam Little, Idaho Water Users Association; Garrick Baxter and Karl Klein, Attorney General's Office; Brenda Tominaga and Lynn Tominaga, Idaho Ground Water Appropriators; John Simpson, Twin Falls Canal Company/Northside Canal Company and Clear Springs; Don Hale, Committee of 9 and Water District 01; Linda Lemmon, Thousand Springs Water Users; Kent Lauer, Idaho Farm Bureau; Ray Houston, Legislative Services Budget and Policy Office; Bob McLaughlin, Idaho Department of Water Resource Public Information Officer; Lew Pence, Middle Snake Regional Committee; Rich Hahn, Idaho Power; John Barclay, Idaho Council on Industry and the Environment; Sherrie Porooks, U.S. Department of Agriculture/Farm Services Agency; Jonathan Parker and Norm Semanko, Idaho Water Users Association; Sharon Kiefer, Idaho Department of Fish and Game; Gregory Kasko, Idaho Trout Company; Tom Arkoosh, American Falls Irrigation District #2; Pat Sullivan, Sullivan and Associates; Ken Miller, Snake River Alliance; Jerry Deckard, Idaho Prior Appropriation Doctrine Association and Mary Taylor.

**Representative Raybould** explained that the water situation in southern and eastern Idaho has become critical due to another drought year. He said that water calls are being made, that there is a shortage of natural flow water and that even though the reservoirs were almost full, there will probably be a shortage of irrigation water this year.

**Representative Raybould** said that other areas of the state are seeing growth that will put a burden on the water supply in those areas and he noted that there is an adjudication under way in north Idaho. **Representative Raybould** said that, in his opinion, the Idaho Department of Water Resources and the Legislature are going to have their work cut out for them this next session to try to solve some of these problems.

**Director Dave Tuthill, Idaho Department of Water Resources**, was introduced to give the committee an update on the implementation of conjunctive administration in aquifers throughout Idaho. His complete PowerPoint presentation is available at the Legislative Services Office.

**Director Tuthill** began with an update of the water supply. He explained that Idaho is in the middle of another drought. He said that last year was an above average year but that will not be the case this year. He indicated that the summer stream flow forecast for Idaho is between 25% and 49% of expected normal runoff. He said this does not include reservoir water that flows down the river. **Director Tuthill** said that, although Idaho is fortunate to have reservoirs that are in pretty good shape, those reservoirs did not fill this year as expected because May was almost totally dry and the Bureau of Reclamation has to leave some space in the reservoirs for flood runoff regardless of the amount of water in the reservoir. He said the Bureau does its best to predict how much space will be necessary. He added that it was shocking to have an almost totally dry month of May and that caused the Upper Snake reservoir to not fill as expected. It was about 300,000 acre feet short. The Boise reservoir was about 20,000 acre feet short.

**Director Tuthill** said that the state is actually in pretty good shape relative to storage at about 90% of normal fill and this will augment the stream flows.

**Director Tuthill's** presentation included slides showing spring discharge forecasts for this year. He explained that the average annual spring discharge to the Snake River between Milner and King Hill is predicted to be slightly higher than the last few years due to the above average water year last year. **Director Tuthill** said that in the past 20 years, they are seeing a bit of stabilization as predicted.

**Senator Coiner** asked whether the estimate is for spring irrigation return flows and all sources getting into the river or if it is limited to measured spring flows. **Director Tuthill** said the estimate represents spring discharge to the Snake River and some are measured and some are not. **Senator Coiner** stated that if it does not include irrigation return flows he is not sure how a correct number could be reached.

**Director Tuthill** went on to present a chart depicting natural flow from the Snake River near Heise from October through September since 1911. He noted that even though last year seemed like a good water year, it was only slightly above average. Expected flow for this year, according to the Director, is probably one of the lowest ten years that have been experienced in the last 100 years.

**Director Tuthill** continued by presenting hydrograph used by the Department to follow the expected flows in the Snake River near Murphy. He explained the minimum stream flows that

have been established for protection of hydropower, which are generally 3,900 cfs in the summer and 5,600 cfs in the winter. The hydrograph indicates that the water supply later this summer could go below the minimum flow established.

Prior to addressing the various Idaho aquifers, **Director Tuthill** defined a number of terms:

- C “Hydraulically connected” surface water and ground water means that, within these sources, a portion of the surface water can become ground water or vice versa.

The Director went on to explain that when the Department looks at conjunctive relationships or the relationship between ground water and surface water, it looks at those areas where there is a connection between the ground water and surface water.

- C Historically, the term “Conjunctive Management” has been used to refer to both:
  - C The combined use of two or more independent sources for meeting one or more objectives such as reliability of supply; and
  - C Legal and hydrologic integration of administration of the diversion and use of water under water rights from ground and surface water.
- The term “Conjunctive Administration” is now used to mean the legal and administrative integration of water rights that govern the diversion and use of water from hydraulically interconnected surface water and ground water sources in areas having a common ground water supply.

**Director Tuthill** said that in the context of the Idaho Department of Water Resources, it looks at the management and administration of surface and ground water sources conjunctively rather than looking at the optimization of the resources. The Director continued with his presentation by focusing on various aquifers throughout the state.

### **Rathdrum Prairie**

**Director Tuthill** indicated that one has to recognize that Idaho, Washington and the Coeur d’Alene Tribe are involved with this basin in looking at the conjunctive management of the basin.

A synopsis of current understanding in this particular region includes the following factors:

- C A dominant factor affecting ground water levels in Idaho is the amount of annual precipitation;
- C There is no hydraulic connection between the aquifer and the surface water in Idaho;
- C Ground water withdrawals from the aquifer in Idaho are poorly documented;

- C Ground water levels in 2002 were largely unchanged from 1934, 1948, 1954, 1975 and 1985;
- C The aquifer connects and discharges to the Spokane River and Little Spokane River in Washington; and
- C Ground water withdrawals in Idaho may affect designated instream flows in Washington.

**Director Tuthill** went on to state that a conjunctive administration decision platform is similar to a four legged stool consisting of water laws and rules, water quantity, water rights and stakeholders.

He noted that on the Rathdrum Prairie, the Department has completed a collaborative study effort to construct a calibrated aquifer model. He said that the Legislature provided \$250,000 for a state match and a summit held in Spokane in early May 2007. **Director Tuthill** said this summit was very well attended and the study resulted in a model of cooperation between the states. He said there follow-up work is ongoing with funds provided through EPA. Tasks include a simplified spreadsheet tool based on model response functions, a detailed water budget of Lake Coeur d'Alene and an analysis of losing reaches of river below Post Falls Dam.

Future efforts in the Rathdrum Prairie will include working with Washington DOE on a memorandum of understanding for continued update and enhancement of a ground water model and developing a proposal for a facilitated decision making program through IWRRI. The Director noted that additional funding is needed to complete additional studies identified in the final model report and to enhance monitoring and measurement efforts. The Director's presentation included a slide showing projected milestones, by fiscal year, in the northern basins through 2015.

### **Moscow-Pullman**

**Director Tuthill** explained that there has been a concern about water supply in the Moscow-Pullman area for some time. He said the area has been the subject of a lot of study because of the location of the University of Idaho and there is more knowledge of their aquifer than most in Idaho.

A synopsis of current understanding in this particular region includes the following factors:

- C Recharge to Wanapum (upper) aquifer is from precipitation and stream losses;
- C Recharge to Grand Ronde (lower) aquifer is primarily from downward leakage from Wanapum;
- C Recharge to Wanapum is greater than to Grande Ronde, but estimates have large error band;
- C Ground water withdrawals from Grande Ronde have stabilized and water levels may be approaching stable, though lower, levels; and

- C The Interstate Palouse Basin Aquifer Committee (PBAC), which was formed in the 1990s, developed a management plan and continues to function.

**Director Tuthill** said that ground water is not sufficient to satisfy the future needs of this basin. This assessment has been made by the City of Moscow and they are moving forward to obtain storage water rights to construct a dam to augment the ground water and surface water. He said this is a microcosm of where the state is currently. In many cases, the state has fully utilized the supplies that are available and is trying to determine how to increase those supplies.

**Director Tuthill** noted that studies in the area funded by the 2005 Legislature have been completed including construction of dedicated monitoring wells in four different aquifers and a hydrogeologic study of shallow sediments to better understand recharge from Moscow Mountain. There is also ongoing coordination with local groups and the State of Washington to manage ground water.

### **Treasure Valley/Lower Boise River Basin**

**Director Tuthill** said this aquifer has been studied extensively over the years and there is a good understanding of the relationships between the rivers, canals, shallow zones and deep aquifers where there is interchange pumping withdrawals and the geothermal aquifer. He noted that there is almost as much recharge in this area from flood irrigation as there is from natural irrigation and that half of the recharge in the area comes from some type of irrigation.

A synopsis of current understanding in this particular region includes the following factors:

- C Ground water withdrawals impact availability of water in surface water sources (this means there is an interconnection between surface and ground water);
- C Significant declines in water levels have occurred in Southeast Boise and South of Lake Lowell;
- C Moderate declines, generally less than 10 feet, have occurred between Eagle, Kuna, and West Boise;
- C Model simulations show potential for additional declines with additional withdrawals;
- C Approximately 1,000,000 acre feet discharges annually from the western portion of the aquifer to surface water sources below the City of Star;
- C Water in eastern and central portions of the valley is not available when needed, which could be addressed with additional storage, including aquifer storage and recovery.

**Director Tuthill** noted that growth in the Treasure Valley area, particularly in the Northern Ada County foothills, is the most challenging issue. The Idaho Department of Water Resources formulated a preliminary scope of work for a study of ground water supplies in the foothills and expect to be working on that study this summer. He anticipates that this committee will have an opportunity to look at a proposal for a study of Northern Ada County during the next legislative

session. DCMI supplies, particularly above Star, continue to be an issue. There is an interest in developing additional storage in the Boise and Payette Rivers to satisfy future growth needs and to exchange water for Upper Snake salmon flow augmentation requirements. There is additional work and updating that needs to be done on the Treasure Valley Ground Water Model. The Bureau of Reclamation has completed an initial storage feasibility analysis, and it needs partners to move forward with the next level of study. The Idaho Department of Water Resources will be working with stakeholders to refine and develop a more detailed scope of work for the Northern Ada County study to submit to the 2008 Legislature.

## **Mountain Home**

**Director Tuthill** said that while there are some areas that are relatively steady in Mountain Home, there are also a lot of areas declining significantly. Overall in this aquifer the estimate is that there is about twice as much water being pumped as is sustainable for the area. He explained that the first step in this region is to adjudicate the water rights and then to create a water district through a water management plan. A local advisory committee has been working on this for some time.

A synopsis of current understanding in this particular region includes the following factors:

- C Two aquifers comprise the system - a shallow, perched aquifer and a deeper, regional aquifer;
- C We have limited knowledge of the geological features that control ground water characteristics, such as faulting;
- C Ground water level declines are more severe the farther away from the recharge area near the foothills;
- C Water use exceeds average annual recharge by approximately 30,000 acre feet per year; and
- C Limited surface water is available for recharge.

**Director Tuthill** said that in Mountain Home, Ground Water Management Areas and Critical Ground Water Management Areas were established in the early 1980's. A draft Ground Water Management Plan is under consideration by the Director and there is ongoing monitoring of water level trends. Additional monitoring wells were added to the network in the spring of 2007.

## **Big Wood**

**Director Tuthill** noted that the Big Wood was the subject of a lot of discussion during the last legislative session with regard to the Wood River Legacy Project. Efforts resulted in Senate Bill 1136 that was signed into law on March 29th, 2007. The Legacy Project is a voluntary program that allows water right holders to leave water instream with goals of improving stream habitat and restoring flows in the lower reaches.

**Director Tuthill** went on to say that the Big Wood Basin has long been short of surface water.

He noted that if someone has an 1885 water right in that basin, the chances are that right will be cut for part of this year. He added that since this is an alluvial system, a pumping well will affect the river fairly quickly. The Director stated that the basin has not been managed conjunctively in the past because water rights have not been determined. He said that most of the rights will be decreed before the next irrigation season and the Big Wood Canal Company has requested movement toward conjunctive administration. The Director said that, In his opinion, more of this area will eventually be managed conjunctively in the future.

### **Big Lost**

**Director Tuthill** said that this region has been dealt with conjunctively for some time. There is an upper basin above Mackay and a lower basin where the river finally trails out. It is the understanding of the Department that this basin is a tributary to the Eastern Snake Plain Aquifer and that there is significant ground water/surface water connection. Historical ground water disputes are extensive and there have been a number of court cases relating to the region over the years.

He noted that Water District 34 has its own set of rules that call for conjunctive administration that were developed in 1994. Those rules were supplemented by a Director's Report in 2000 and a basinwide mitigation plan was developed in 2005. **Director Tuthill** said that the Big Lost is the one basin that is operating conjunctively, although it is not a very thorough or extensive conjunctive administration. This region has been the state's first foray into conjunctive administration.

**Senator Stennett** asked how much water went past Arco prior to 1980. **Director Tuthill** said the Department could prepare a hydrograph with that information. **Senator Stennett** indicated he was interested in seeing how much water went into the Snake in the past and what goes in today.

### **Bear River**

**Director Tuthill** said that the Bear River Basin has not been initiated as an adjudication but there are problems in that region. He said the area has more stable aquifers in general but there is a severe lack of supply. There is a connection between the aquifers and the basin. **Director Tuthill** noted that it is his expectation that in the next 20 years this basin will need additional administrative action. He indicated that the lake storage has been affected during drought years but that it does come back up when there is water.

A synopsis of current understanding in this particular region includes the following factors:

- C The system is comprised of multiple aquifers, consisting primarily of valley sediments;
- C Ground water withdrawals cause depletions in surface water sources;
- C Surface water supplies will be extremely limited and releases from Bear Lake will probably not be sufficient to supplement full irrigation needs; and

- C This limited supply will probably result in curtailment of surface water diversions in Idaho in 2007.

**Director Tuthill** explained that in 2006 the Legislature provided \$50,000 (SB1497) to be matched with funds from the State of Wyoming and the U.S. Corps of Engineers for a preliminary study of flood control measures above Bear Lake. He noted that the Corps has yet to secure funding for their involvement. Several meetings have been held. Funds for the effort were allocated to the Idaho Department of Water Resources for two years. That funding may need to be extended if the Corps is not successful in acquiring funds.

**Director Tuthill** said there are other basins that could be discussed including the Teton Basin where there has not been a lot of study. Issues have arisen in that basin due to the growth in the Jackson, Wyoming area.. There is significant local concern in that area and there has been a request for a moratorium.

### **Eastern Snake Plain Aquifer**

**Director Tuthill** reminded everyone that this area has been the subject of significant review and submitted that he wishes the review had taken place thirty or forty years ago. In his opinion, what is being seen in the Eastern Snake Plain Aquifer today will be seen in all of the other basins if there is not administration in advance. The Director noted that Idaho is learning how to administer conjunctively and that Idaho is not behind other states in doing so. He stated that all of the other western states are going through the process of how to administer conjunctively.

**Director Tuthill** said that Idaho's technology is far superior to that in many states and should put us in a good position for conjunctive administration.

**Director Tuthill** went on to state that spring discharge in the Eastern Snake Plain Aquifer has continued to decline over the years. He said that from 1980 to 2002 the aquifer was relatively stable with some exceptions. His presentation included slides more specifically depicting this information.

**Director Tuthill** said that information received from the Idaho Water Resources Research Institute shows that the decline in the Thousand Springs aquifer is 1/3 due to drought, 1/3 due to improved surface water diversions, and 1/3 due to the pumping of ground water. In response to a question from **Senator Coiner**, **Director Tuthill** responded that the information was provided by Dr. Donna Cosgrove for the Idaho Water Resource Board based on her use of the modeling process for many years and is an overall assessment. **Senator Coiner** said that he was under the impression that the information was about ten years old and asked for further clarification.

Director Tuthill noted that actions that have been taken in the Eastern Snake Plain Aquifer include:

- C The Idaho Water Resource Board Comprehensive Management Planning Process;
- C Model Enhancement and Monitoring; and

C 2007 Calls and Mitigation.

**Director Tuthill** explained, with respect to modeling, that the Department is currently using EASTERN SNAKE RIVER PLAIN AQUIFER Model Version 1.1 and the Eastern Snake Hydraulic Modeling Committee (ESHMC) is currently developing goals and approaches to enhance the Eastern Snake Plain Aquifer model. Model Version 2.0 is expected in two years.

**Representative Bedke** asked whether Model Version 2.0 will show greater outputs or whether it will just fill in gaps where there is not currently a lot of data. **Director Tuthill** said that the current model is well calibrated and effective and that Version 2.0 is expected to refine the data that is received. He said there will be less than 10% change in data. **Mr. Hal Anderson** from Idaho Department of Water Resources agreed that the new model will simply allow for refinement of data. **Director Tuthill** said the reason for the upgrade is because the stakes are so high and the Department wants to make sure all data sets are evaluated properly. He added that some return and spring inflows are not currently measured, especially on tribal lands. He said that the tribes seem very willing to allow the state to obtain more data in those areas.

**Representative Bedke** clarified that, in his opinion, the model that is used has to be the gold standard and upgrading will help eliminate complaints that the model is faulty. He asked how this will affect litigation. **Director Tuthill** stated that conjunctive administration has many variables and that model runs are based on the best information that can come from a model. He said the new version will refine the data received.

According to the Director, the following factors apply to the current practices scenario:

- C It is designed to support IWRB in development of the Eastern Snake Plain Aquifer Management Plan;
- C It is a collaborative effort by ESHMC;
- C The preliminary model runs using the Eastern Snake River Plain Aquifer Model have been obtained and are under final review; and
- C The results indicate the water budget is approximately balanced under current practices.

**Senator Coiner** commented that the representation that the water budget is approximately balanced gives confidence but asked whether that means there are senior water right holders that are short of filling their rights. **Director Tuthill** said that was correct. **Senator Coiner** clarified that just because a balance has been reached does not necessarily mean that everything is fine. He said there are still declines being seen and asked how this can result in balance. **Director Tuthill** explained that in the last 12 years they have not seen declines in overall spring discharge. His assessment of the model scenario is that, in looking at the aquifer as a whole, it is approximately balanced. He said that some spring discharges seem to be leveling out, such as Blue Lakes. He agreed that some areas are declining but others are not.

**Senator Stennett** indicated that he was confused about the word “balanced” and asked whether the aquifer is being mined. **Director Tuthill** said he does not believe the aquifer is being

mined. He noted that Thousand Springs is outflow from the aquifer. He said there are various areas where there are water level declines but the overall assessment is that the aquifer is not being mined. Thousand Springs shows discharge that is at equilibrium. It does have less discharge than four years ago but he would not apply the phrase “mining the aquifer” to that situation.

The following points apply to the Eastern Snake Plain Aquifer “Strawman” Monitoring Program:

- C \$557,000 funded by the Idaho Legislature for FY 2008;
- C Monitoring of springs, ground water levels, river flows, ET estimates (METRIC), & updating EASTERN SNAKE RIVER PLAIN AQUIFER Model; and
- C Drafting contracts and property access agreements as well as other planning underway.

The Idaho Water Resource Board planning process is moving forward as follows:

- C Framework Plan submitted and approved by 2007 Legislature
- C Advisory Committee formed and has met twice not including Governors Summit. Committee includes a broadly based group of 16 primary and alternate members plus seven Agency Advisors. Information is available on website: [www.esaplan.idaho.gov](http://www.esaplan.idaho.gov)
- C Technical studies identified in Framework Plan and HCR 28 are being formulated

In response to a question by **Senator Stennett**, **Director Tuthill** said that climate change is being addressed. He went on to say that the University of Washington is one of the top researchers of climate change and the Department is working to get some funding to have them do a study of climate in Idaho. Climate change is being accepted as something that needs to be dealt with. In his opinion, it may be time to look at additional storage both above and below ground due to climate change. **Senator Stennett** asked whether climate change is part of the model, particularly in regard to snowmelt. **Director Tuthill** said the model can run what-if scenarios but climate change is not part of it at this time. **Mr. Hal Anderson** said the Department is looking at changes in the hydrograph due to climate change in the future. He said there appears to be a shift in Idaho to earlier runoff and they may look at how that affects supplies.

**Representative Bedke** asked whether the State of Idaho is using its influence with the Bureau of Reclamation so that water is not being dumped due to earlier runoff in response to an antiquated flood curve. **Director Tuthill** said he met with Bill McDonald from the Bureau and his staff in January and there was great concern about this issue, especially regarding flows past Milner early in the year. The Bureau was in the process of reducing flows and the Department was assured that the Bureau was doing their best, recognizing that this could be a short year. In March, Jerry Gray and Rich Rigby of the Bureau explained that they were tracking space for flood protection and expected the reservoirs would fill, with room for flood protection. In May, it was certain that the reservoirs in the Upper Snake would fill; unfortunately, no one predicted a totally dry May. In **Director Tuthill's** opinion, someone needs to look at the flood control curves in order to hedge against not filling reservoirs and the Bureau has said they are open to

this also.

**Representative Bedke** said that he understands the Bureau has to play the odds and leave a margin of safety but asked what obstacles are in the way that would not allow water that has to be released for flood control to be used for recharge. **Director Tuthill** said the reason for this is because there is a senior water right that exists for hydropower; the first water to flow down the river has to satisfy the hydropower right. Only flows in addition to that are available for recharge. The permit says that hydropower rights are subordinate to all upstream uses except recharge. He has received a request to issue the license with the same conditions and he has also received written requests to make the right subordinate to all uses including recharge. **Director Tuthill** said, in his opinion, this is a state policy issue and not an issue the Director should be deciding.

**Director Tuthill** stated that they do not anticipate additional funding needs for the Eastern Snake Plain Aquifer planning effort over the \$1 million that has been established. Currently ½ of that amount will come from the water users and ½ will come from the general fund. He stated there will be a need for funding for model maintenance, updating, and data collection.

**Representative Raybould** commented that one reason for the meeting was to hear about all of the aquifers in the state. He said that during the last legislative session, discussions were held regarding the need for administration and management of all the aquifers and suggested that a fund be established for that effort. He said that, in his opinion, there is a need for management and administration of all aquifers in Idaho. It was suggested that a special fund be established in the Idaho Department of Water Resources for aquifer management, planning and administration. He stated that he believes this effort should be an obligation of the state because it is going to be needed statewide. **Representative Raybould** noted that all people in the state use water. He said that assessing fees and collecting from everyone would be a huge endeavor for the Department. He stated that consideration needs to be given to establishing a special fund in the Idaho Department of Water Resources, to be funded from a general fund appropriation, based on the fact that this is a statewide issue.

**Senator Coiner** said that it would be important to adequately fund the Idaho Department of Water Resources before worrying about this funding need. He said that funding of the Department was neglected in past administrations. He thinks the Department is understaffed and funding should be a primary goal in order to keep people there.

**Senator Schroeder** asked how much a private well owner filing a claim in Northern Idaho will be charged compared to an Eastern Idaho well owner. **Director Tuthill** explained that it depends on whether or not a claim was filed previously. If a claim was previously filed, the fee will be \$50.00 and if there was no previous filing, they will be charged \$100. The fees were so established because they have realized that a claim can no longer be processed for \$50.00. The Eastern Snake Plain Aquifer filing fee is \$25.00.

**Senator Schroeder** asked where the Northern Idaho adjudication court will be located.

**Director Tuthill** said that determined by the Idaho Supreme Court and it has assigned the Snake River Basin Adjudication (SRBA) court to be the court for the adjudication. He said court practice has been for court to go to the local jurisdictions where hearings are being held and that is the stated intent at this time. There are some instances where video conferencing has been used by our court to save money and travel but still allow face to face contact. The Department has ordered equipment for that purpose and expect to install a video conferencing link in the Northern Idaho SRBA court and in Boise. He said the court does plan to visit Northern Idaho in August and all special meetings will be attended by the judge and a special master.

In response to another question from **Senator Schroeder** regarding how much has been spent on the SRBA, **Director Tuthill** answered approximately \$80 million, \$23 million of which has been funded by water users. **Senator Schroeder** asked how the costs break out in the Northern Idaho adjudication. **Director Tuthill** said it will be about two to one state to private funding. The total estimate of adjudication is about \$60 million for all of the remaining basins.

**Representative Neilsen** asked whether any studies have been done looking at increased use resulting from residential growth. **Director Tuthill** said that in North Idaho a significant amount of use is domestic so it is important to get claims filed. They have recognized that domestic use does affect water supply. He noted that there is a lot more irrigation in the Snake river area.

**Senator Schroeder** asked whether efforts have been taken to open dialogue with the State of Washington with respect to their aquifers. **Director Tuthill** said this have been a bright spot. There are relationships with Washington's regional office and Idaho in the Rathdrum/Spokane Valley area that are very strong as well as relationships with the federal government. He said this has also promoted relationships between the directors in Idaho and Washington on an agency to agency basis. **Director Tuthill** said that Washington did seek funding for ongoing stakeholder research and he expects Idaho to do so as well. He expects that as the stakeholders are brought together, there will be an ongoing relationship with Washington. It is his expectation that this will also enhance the gubernatorial relationships down the road. **Senator Schroeder** asked whether Idaho Department of Water Resources has the authority to discuss a compact with Washington. **Director Tuthill** said that they are only discussing ideas that would lead to a compact and that an agency director does not have the authority to negotiate a compact.

**Senator Siddoway** asked why the extra flows at Milner could not be used further up river for recharge. **Director Tuthill** clarified that all flow up to 5,700 cfs at Milner has to go to satisfy the hydropower right and flows have not yet been above that amount.

**Mr. Karl Klein, Attorney General's Office** was introduced to give the committee an overview of the litigation involving Idaho Power and the State of Idaho. He began by giving background information on the Swan Falls Agreement. He explained that the Swan Falls Agreement was signed on October 25, 1984, between Idaho Power and the State of Idaho as part of a settlement that resolved two separate lawsuits that had been filed by Idaho Power.

The first lawsuit dealt with whether Idaho Power had forfeited their Swan Falls water rights by

failing to use or defend them. In the second lawsuit, Idaho Power sued a number of junior water users alleging that their junior use was injuring Idaho Power.

As part of the Swan Falls settlement, the parties agreed that Idaho Power's hydropower rights at Swan Falls were a minimum flow of 3,900 cfs in the summer and 5,600 cfs in the winter. Idaho Power surrendered rights to any flows above these minimums into a trust held by the state for the benefit of Idaho Power and the people of Idaho. The parties also agreed that Idaho Power could use this trust water to generate power until the state doled it out for future upstream use that was deemed to be in the public interest. At that point Idaho Power's use would be immediately subordinated to the newly approved upstream use. The agreement was signed by Governor John Evans and others. The Legislature also got involved, passing legislation to implement the Swan Falls Agreement. The legislation ratified the trust concept and provided for the commencement of the Snake River Basin Adjudication (SRBA).

**Mr. Klein** moved on to discuss the current SRBA litigation. He explained that the current SRBA began in 1987 and is still going on today. It is a general adjudication designed to determine the ownership, nature, and extent of water rights in the Snake River Basin. He explained that some of these rights in Basin 37 involve the Swan Falls Agreement and are now up for subcase adjudication before a special master. This action began when the Director of the Idaho Department of Water Resources filed a report in the SRBA recommending that under the Swan Falls settlement the court should decree the state as trustee holding legal title to the rights for the benefit of Idaho Power and the people of Idaho. In the SRBA process, the director's report is presumed correct and the rights will be adjudicated as reported unless someone objects.

The filing of the report prompted Idaho Power to do several things. The first thing was to object in the subcases. Idaho Power filed a standard form objection to the Director's recommendation. Idaho Power also filed a counterclaim that named the Governor, the State of Idaho, the Attorney General, the Idaho Department of Water Resources and the Director of the Idaho Department of Water Resources.

Within the main SRBA court case, Idaho Power filed motions with the court asking it to stay or consolidate all of the subcases and also filed a complaint and petition for injunctive relief suing the Governor, the State of Idaho, the Attorney General, the Idaho Department of Water Resources and the Director of the Idaho Department of Water Resources. This complaint is virtually identical to the counterclaim that was filed in the subcases.

After the complaint was filed, the state filed a motion to dismiss or strike Idaho Power's complaint in the main case. The argument by the state is that Idaho Power's complaint seeks declaratory and injunctive relief that is beyond the scope of the SRBA. The position is that the SRBA court's function is not to grant civil relief against parties but to decree the ownership, nature and extent of water rights.

**Mr. Klein** said that the state's case is not intended to foreclose Idaho Power from arguing what the state feels are proper SRBA issues. Rather, the state seeks to limit the scope of the parties'

dispute to those issues and to see that they are resolved before a special master in the subcases using standard SRBA procedures. A court is set to hear argument on these motions on June 25, 2007.

**Mr. Klein** continued with an overview of Idaho Power's complaint and counterclaim. He said the complaint alleges that the state has never asserted or acted consistently with having title to the water rights until December, 2006, when it filed notices of change of water rights ownership with the Idaho Department of Water Resources, noting that if the Department went forward with its recommendations to the SRBA Court it needed to make sure it considered the Swan Falls Agreement when it made its recommendation. Idaho Power also alleges that the state failed to give the company notice of the state's position or to try to work the issues out through discussion and negotiation.

**Mr. Klein** said another allegation is that, due to depletions in the Eastern Snake Plain Aquifer, there was never any trust water and therefore there was never any trust. Idaho Power also alleges that the parties to the Swan Falls Agreement were mistaken in believing that there was trust water when they signed the agreement and that the state has mismanaged the aquifer and failed to properly administer water rights in the SRBA.

**Mr. Klein** said Idaho Power wants the court to declare that there was never any trust water or any valid trust and to reform the Swan Falls Agreement by eliminating the trust provision entirely while retaining the rest of the agreement. It asked that the court provide title to all of the water rights to Idaho Power, declare that the water rights are not subordinated to ground water recharge, and declare that the state has failed to administer the water rights and manage the Eastern Snake River Plain Aquifer. The complaint also asks the court to order the Attorney General to repeal a decision regarding recharge and the Swan Falls subordination, to order the Idaho Department of Water Resources to reevaluate water availability and take appropriate action in the permit process, to take reasonable steps to manage the Eastern Snake River Plain Aquifer and administer water rights, and to ensure and guaranty that the minimum flows occur at the Murphy Gauge below Swan Falls Dam. **Mr. Klein** said that the state's view is that much of what Idaho Power is complaining about are not issues that the SRBA Court can resolve. This includes private claims for relief against defendants, how the Department administers water rights, suits against the Director and the Department and so on.

**Mr. Klein** said that if the court grants the state's motion, the state's view is that it will ultimately make a summary judgment motion asking the special master to declare that the Director's report is correct and that the state, as trustee, holds legal title to the rights for the benefit of Idaho Power and the people of Idaho and that the rights to use trust water can be subordinated to any future upstream use approved by the state according to state law.

**Senator Little** asked whether the 600 cfs of trust water is under the SRBA court jurisdiction.

**Mr. Klein** explained that the trust water is any amount above the minimum flow of 3,900 cfs or 5,600 cfs going to the full extent of Idaho Power's water right. He said he did not know how that is actually playing out in the SRBA. He clarified that they are indicating that the SRBA

special masters can issue rulings about what the state title is to that trust water. **Senator Little** asked where does someone go if they have a complaint about how a water right has been administrated. **Mr. Klein** said they would go to the Idaho Department of Water Resources. According to **Mr. Klein**, in order to name the Director of Idaho Department of Water Resources in a claim, it would require a complete administrative proceeding and an administrative record, from which point the parties would be able to appeal.

**Representative Raybould** asked whether this case dealing with the trust water issue opens up any other aspects of the of Swan Falls Agreement that might negate it. **Mr. Klein** explained that Idaho Power is asking the court to reform the Swan Falls Agreement and in his opinion if the trust agreement is taken out, it would put on the table past arguments that were resolved by the Swan Falls Agreement.

In response to a question from **Representative Wood**, **Mr. Klein** responded that any party is entitled to object to a Director's report. He also said any party that wants to respond to Idaho Power's objection may also do that and said that there is a ground water users organization and two individuals that have filed objections. **Mr. Klein** explained that the special master serves as the judge and after a trial is held this special master will make a recommendation to the main SRBA court judge for a decree.

In response to a question from **Senator Schroeder**, **Mr. Klein** said that he cannot say whether the lawsuit is an attempt to eliminate the Swan Falls Agreement. He added that the state is confident that the court will uphold the decision as the Director decreed. He said he could not comment on Idaho Power's reason for filing the lawsuit.

**Mr. John Williams**, Bonneville Power Administration (BPA), gave the committee an overview of a Ninth Circuit decision that eliminated residential exchange program credits to investor owned utilities.

He explained that in the late 1970's there was evidence the federal power base could not serve all loads to the Northwest. BPA provided power to the investor owned utilities at that time. This resulted in the 1980 Power Act. In that act there was a provision called the Residential Exchange Program where BPA was to utilize its ratemaking to provide benefits to investor owned utilities, residential and small farm load customers.

In doing this, BPA would look at its out-of-system costs, the investor owned utilities out-of-system costs and the difference would be a monetary benefit passed on to residential and small farm customers. The program has been in effect since that time.

**Mr. Williams** said that in late 1997-98, BPA decided to implement a subscription process that delivered benefits particularly in the Residential Exchange Program to investor owned utilities. In order to do this, BPA needed to come up with a different mechanism of delivery of those benefits. Unfortunately, due to the energy crisis, some public utilities noticed a huge rate increase in their system and not such a huge rate increase in the investor owned utilities rates.

As a result, some of the public utilities filed a lawsuit saying the BPA erred in providing these benefits to the investor owned utilities in 2002-03. BPA tried to reach a settlement to resolve the lawsuit but that was unsuccessful.

On May 3, 2007, the Ninth Circuit ruled that BPA went beyond its statutory authority. Even though BPA believes the ruling is in error, they have suspended residential exchange payments to the investor owned utilities. BPA is trying to get all the public power customers, investor owned utilities, and others together to figure out a way to proceed with a legally feasible residential exchange benefit program that will meet all needs. He said BPA has requested another hearing because they believe the Ninth Circuit erred.

**Senator Schroeder** asked whether it is possible that the 9% increase in Washington, and the increase that has been discussed in Idaho, will be rescinded in the future. **Mr. Williams** said it has been discussed. He said that public utilities have stated they did not intend for the suspension of these benefits.

In response to another committee question, **Mr. Williams** explained that the public customers that challenged BPA's authority involve 50 public customers primarily located in Washington. He also explained that there are actually two lawsuits: Portland GE vs. BPA, and Golden Northwest vs. BPA. The second lawsuit also challenged BPA on a number of issues dealing with the residential exchange program.

**Representative Raybould** asked whether withholding the residential exchange funds from the investor owner utilities resulted in a reduction of the rates that the public utilities were paying to BPA. **Mr. Williams** said it did not and that not all of the utilities get the same amount of benefits. He said that during the subscription process, BPA negotiated with the investor owned utilities together with the regulatory commissions.

After lunch **Director Tuthill and Clive Strong, Division Chief of the Natural Resource Division of the Attorney General's Office**, spoke to the committee regarding litigation involving conjunctive administration of surface and ground water rights on the Eastern Snake Plain Aquifer. Their complete PowerPoint presentation is available at the Legislative Services Office.

**Mr. Strong** explained that his discussion would center around the Eastern Snake Plain Aquifer and the delivery calls that are occurring between the surface water users and ground water users. His presentation included maps depicting the Eastern Snake Plain Aquifer boundary and the areas that use irrigation from ground water. He explained that it is important to realize where the irrigation is occurring because the impact of particular ground water pumping on springs is dictated in large measure by the location where that pumping is occurring.

#### **Brief History of Eastern Snake Plain Aquifer Water Management:**

- C SRBA begins in 1987

**Mr. Strong** noted that the state has known since the mid-1980's that the aquifer was declining and there was need for addressing that decline, particularly given the consequences to spring flows. As part of the Swan Falls Agreement, the state agreed to conjunctively administer surface and ground water rights. In order to be able to understand how to do this, it was necessary to have a catalog of all of the rights under diversion from the Eastern Snake Plain Aquifer. One of the critical components of the Swan Falls Agreement was for the state to initiate the SRBA that began in 1987. He stated that as we near the 20<sup>th</sup> year, the state is close to getting most water rights decreed in the adjudication of the 150,000 water rights. He said the length of the process and the extended drought have complicated the administration of those rights.

C Musser case - filed in 1993/Ruling in 1994

**Mr. Strong** said that in this case it was made clear that the Department had the responsibility to move forward with the conjunctive administration in a judicious fashion.

C Conjunctive Management Rules in 1994

These rules provide the framework by which the Department intends to administer the water rights. In a decision made this year by the court in the American Falls Reservoir District #2 case that challenged the constitutionality of the rules, the court said that the rules are facially constitutional. It did not address the question of whether the rules as applied by the Department were constitutional. It left that to be decided in the administrative hearing process. He said they are in the process currently of getting a hearing scheduled.

**Mr. Strong** said that in the last few months, the Idaho Ground Water Users Association brought another action against the Idaho Department of Water Resources in which the ground water association was granted a temporary restraining order by the Fifth Judicial District Court that enjoined the Department from going forward with curtailment of water rights pursuant to the delivery calls. As of last week, the state was successful in arguing before Judge Melanson that the case should be dismissed, and so the state is back in the administrative hearing process.

**Mr. Strong** went on to explain the following tools that are in place assuming those administrative rules are in place.

C Water Measurement Districts established in 1996

He said these are beginning to yield data necessary to understanding how the water rights interact with one another.

C Ground Water Management Areas designated in 2001

C Mitigation plans approved in 2001-2004

C Ground Water Districts established 2001-2006

These are very important and will be used to administer the water rights as the contested case hearings are completed.

C Water Districts established/modified 2002-2007

**Mr. Strong** went on to discuss the delivery water calls that have been made. The first is the Surface Water Coalition call in the American Falls Reach that was made in 2005. This coalition includes the A&B Irrigation District, American Falls Res. Dist #2, the Burley Irrigation District, the Milner Irrigation District, the Minidoka Irrigation District, the North Side Canal Company and the Twin Falls Canal Company. **Mr. Strong** said the call precipitated the American Falls Reservoir District #2 case he discussed earlier. After that case was remanded by the Supreme Court, they are now poised to move forward with an administrative hearing. It is his understanding that the hearing will happen in late October or early November.

The second set of delivery calls are in the Thousand Springs Reach and were also made in 2005. These involve 11 different delivery calls that are pending. **Mr. Strong** said that unlike the surface water call, these are primarily trout producers and the calls are based upon the failure to receive the water they were historically entitled to through the springs in that reach. **Mr. Strong's** PowerPoint presentation includes slides that show more detailed information regarding the specific calls.

The third set of delivery calls is in the A&B Irrigation District and goes back to 1993 when the ground water levels declined and they sought administration of other ground water rights. Unlike the first two sets of delivery calls, this call is ground water to ground water. **Mr. Strong** said that under this call there is a stipulated settlement in which the state agreed to undertake certain actions which include the adoption of conjunctive management rules and implementation of conjunctive administration. He said that this call has been reinitiated by the A&B Irrigation District because they do not believe the stipulation has been fully complied with.

**Director Tuthill** spoke to the committee regarding additional information on the specific delivery calls. He categorized them from the most straightforward to the most complicated for this year.

### **A&B Irrigation District**

This is a long-term call and a long-term solution is in place. **Director Tuthill** said that A&B is taking a long-term approach and does not expect curtailment this summer. The expectation is that curtailment will begin next year if necessary with long-term notification of water calls. He said the A&B Irrigation District asked that the Department consider creating ground water management areas in the EASTERN SNAKE RIVER PLAIN AQUIFER. One reason for this is because it requires development of a plan and requires that if there is to be curtailment, the notice be sent prior to September 1 for the ensuing year. **Director Tuthill** does not expect to create a ground water management area this summer, recognizing that there will be opportunity

for hearing on the issue.

### **Surface Water Coalition**

**Director Tuthill** said that based on the March 5, 2007 Supreme Court decision, the Governor's water summit was scheduled for April 17. This summit was intended to:

- C Bring people together - **Director Tuthill** said that this was achieved and more than 200 people attended;
- C Update interested parties on the status of issues on Eastern Snake River Plain Aquifer for all areas of state;
- C Provide discussion on issues to arrive at solutions if possible; and
- C Find a solution for calls for 2007.

**Director Tuthill** explained that the Surface Water Coalition calls come in light of this decision and the April 17 summit. He said that subsequent to the summit, a number of meetings were held looking for the possibility of a mitigation plan being filed by the Idaho Ground Water Appropriators on behalf of the ground water districts. A mitigation plan did come in around May 9 and **Director Tuthill's** assessment was that the mitigation plan mitigated too low of an amount of water. As a result, the Director deemed the mitigation plan as insufficient, and he issued a warning letter on May 14 warning that a curtailment order would be issued on May 28. In response to that warning letter, and in an attempt toward providing additional mitigation, the Ground Water Appropriators submitted an amended plan that guaranteed the ground water appropriators would provide for the shortfall or would provide for the 1,075,000 acre feet expected to be required as a minimum flow supplied by Twin Falls Canal Company. **Director Tuthill** said that the mitigation plan did not show where all of the water was coming from, and even though it was not complete, he assessed that the mitigation plan was enough to forego curtailment based on the Surface Water Coalition call, and it was conditionally approved in late May. **Director Tuthill** said a status conference meeting was held on June 5 and a hearing is set for June 21 dealing with the Surface Water Coalition's objection to the adequacy of the mitigation plan. The agreed upon hearing schedule between the ground water and surface water users stipulates discovery processes throughout the year, that prefiled testimony may be used and that they expect a late 2007 hearing on the Surface Water Coalition issue. Once that hearing is held, an order will be issued. It is expected that the order will be appealed to the district court and very likely to the supreme court. It is likely that the supreme court will be looking at the case later in 2008 with a decision being made by 2009.

**The Director** noted that this information is important because it provides an initial step on how Idaho will implement conjunctive administration in the future. He said it is important that the hearing be conducted to allow both sides to make their arguments.

## **Thousand Springs**

According to **Director Tuthill**, the series of calls on Thousand Springs is the most difficult for the Department. This involves various calls by different users. There are more than ten calls and they are all in different stages. He said that currently there are two calls, Blue Lakes and Clear Springs that are proceeding jointly. These are the most critical relative to water delivery in 2007. The Director stated that this does not mean there are only two fish propagation facilities that are short of water.

**Director Tuthill** said that action needs to be taken on the Thousand Springs matter this week and the direction taken will be critical for resolution of this entire process. He said there are administrative, technical and legal issues involved.

**Director Tuthill** explained that two meetings were held on April 17, 2007, with the Thousand Springs users and ground water users and it became clear to him that a mitigation plan, in addition to the one that had been submitted earlier that fell short of providing water, would be required. He sent out a warning letter dated April 30, 2007, to the users and owners of 771 wells warning that unless additional mitigation was provided, there would be no choice but to curtail their use for this year. In response, on May 8, 2007, the Idaho Ground Water Appropriators went to the district court in Jerome and obtained a temporary restraining order restraining the Director from issuing a curtailment order. A hearing was set for May 30, 2007, to allow the Department to explain why the warning letter was sent out, why they were planning to issue a curtailment order, and to allow the Ground Water Appropriators to say why that curtailment order would be inappropriate. Just before the hearing took place, the Surface Water Coalition joined in the action, creating a potential conflict of interest for the judge, so he recused himself.

According to **the Director**, the hearing was eventually held on June 6, 2007, and the case was dismissed, which ended the temporary restraining order and put the issue back in the hands of the Idaho Department of Water Resources. The judge stated that the case was not ripe for the court and that a hearing has not been held. The Director sent out a notice of the status conference on June 8, 2007, and the parties agreed that a hearing needs to be held expediently. This hearing had been requested since the initial order was filed in 2005. Last year they were moving toward conducting a hearing but it got bogged down in looking at the constitutionality of the rules. He said that at the end of the status conference it became clear that this issue was not fully resolved, is back before the Department and that action needs to be taken this week. **The Director** said there is an opportunity to look at a variety of solutions. He said this is a very critical juncture and critical matter that he takes very seriously. He said he does not know what the solutions will be but said the direction taken will be critical for the ultimate resolution of the process.

**Representative Bedke** said that requirements for mitigation ramp up each year. He asked how many acres will shut off for next year if the same situation and conditions exist. **Director Tuthill** explained that there are a variety of different types of mitigation. These include recharge

offered by the Idaho Ground Water Appropriators. He said that a credit has been computed and will be applied for the conveyance of incidental recharge as water is brought into the basin. Other types of mitigation include the conversions that have taken place over recent years that amount to providing surface water instead of pumping ground water, the CREP program and actions by dairy producers. **Director Tuthill** said that as the shortfall is computed, based on the plan that exists, it is 7 cfs per second for Blue Lakes reach and 10.1 cfs for Clear Springs. The computation is that 8,840 acres will be curtailed for the Blue Lakes Reach and 17,025 for Clear Springs Snake River Farms Reach. He said there are about 3,787 acres of overlap so the net result is 22,079 acres; reduced from the initial 33,000 as indicated in warning letters. The priority dates for the Blue Lakes Reach is 12/9/90 and for Clear Springs if 2/13/77.

**Representative Raybould** asked about the impact on municipalities that do not have a mitigation plan. **Director Tuthill** said that in-home and domestic de minimis uses will not be impacted. Most municipalities have a series of senior water rights as well as those that are in danger of being curtailed. The Idaho Department of Water Resources will add up those senior rights and municipalities will be asked not to exceed the amount of those senior rights.

In response to a question from **Representative Patrick** regarding how much water is being saved by shutting off acres, **Director Tuthill** explained that the model uses averages for irrigated lands based on computed evapotranspiration, actual water used by the crops and that each cell in the model has a computation. The Director said that by nature the model is based on averages, and the more water rights that are involved the more accurate the model becomes.

**Representative Patrick** asked whether crop rotation is included in the computation. **Director Tuthill** said that was true on a case-by-case basis. He said the model is for regional computations based over time on remote sensing reviews of evapotranspiration and assumes that the land will be used similarly to how it has been used in the past. If cropping patterns were to change, he said there could be some modifications to the model.

**Senator Stennett** asked which water right would be shut off first between a 1965 well located above Blue Lakes that is more capable of delivering actual water, and a 1980 well right in Carey. **Director Tuthill** said that the concept is still first in time-first in right, regardless of what might have a greater impact. He noted that if a certain well over time has less than 10% of its impact on the reach that is being called, those wells are cut out. He also said that if the junior water right is in the area of impact with at least 10% of the impact in the reach, that well will be called prior to the senior right. **Senator Stennett** commented that cutting off all of the wells from the 1980 rights in Carey would not deliver enough water down the river. **Director Tuthill** said this would be moving toward the concept of futile call; whether a call on those rights would be futile. He said without any rules, futile call would have to be addressed. The rules describe how it is done currently.

**Senator Schroeder** asked about businesses located in municipalities that might be curtailed. **Director Tuthill** explained that there are no exemptions for certain businesses. If the priority date is junior, the business would be affected.

In response to another question from **Senator Schroeder**, **Director Tuthill** said there is an expectation that there will be curtailment this year. **Senator Schroeder** asked about exposure to the state for taking these actions. **Mr. Strong** said that the laws are uncertain in this area and that first in time-first in right is easier stated than it is applied. **Mr. Strong** said, regarding liability issues, that the question is whether the state's action was based on a reasonable interpretation of the law. If the state took some action that was not based in fact or law, that would injure someone, the state could be subject to liability.

In response to another question from **Senator Schroeder** regarding economic impact to the state, **Director Tuthill** said he did not have an exact number but based on 33,000 acres, it is estimated to be about \$38 million and with a multiplier effect it will be much higher.

**Senator Schroeder** asked whether there is a mechanism in place to tell people not to plant because there will probably not be any water. **Director Tuthill** said that based on where the call is being made, the surface water coalition call is weather dependant for the previous year. The forecast is not available until April 1 of each year. The potential for curtailment will be looked at carefully this summer to see if people should be warned for next year and when that warning should be issued.

**Senator Coiner** noted that senior water users are being involuntarily curtailed today because they are not receiving their water. This is why the calls were made. He said these senior water users have the expectation to receive their full water share and that may or may not happen this year. He said that if the promised mitigation water does not arrive in the Twin Falls Irrigation District, they will end up bankrupting their storage and not being able to finish crops with nowhere to go next year. **Senator Coiner** also commented about the dairies and processors that have mitigation plans in place that have been worked on for the last two or three years to cover themselves in the event of curtailment. He stated that negotiating these mitigation plans was not easy, and they were held to a higher standard than that which the Idaho Department of Water Resources is holding everyone else today. In his opinion, to start spreading those mitigation plans around for the benefit of everyone on the plain will make it difficult to get new mitigation plans in the future. **Senator Coiner** added that they are beginning to work with cities to get mitigation plans in place.

**Senator Stennett** noted that curtailment has been going on for many years. He said that wells on private property are not easily accessible and asked who would be responsible to shut these down and about the penalties for not shutting down. **Director Tuthill** said if they are forced to curtail as a method of last resort, an order would be sent out to specific wells as to who is to be curtailed and when. He said the Department has ways to monitor water use. The expectation is that cities and many users will follow these orders. For those that choose not to comply, the Department is empowered to physically turn off wells and can also detect if water is not being shut off. The fine can be up to \$300 per acre per day and will be approached on a case-by-case basis. He says the Department does not want actual confrontations on people's property but the Department does have authority to go on private lands. They try to notify people and make every arrangement to do so with the owner's knowledge.

**Senator Little** asked what would stop someone from simply paying the fine if they have a high value crop. **Director Tuthill** said that because we have not had a curtailment to this point, there is no experience in this area. He said they have used law enforcement with surface water. **Senator Little** asked whether there are any other ramifications for the next year if a water user gets fined and pays it. **Director Tuthill** said that could be a very large fine and he does not think that will happen. **Mr. Strong** said that a water user would still be subject to the curtailment order.

The committee moved on to a discussion of the issue of funding aquifer management.

**Representative Raybould** explained that there was an interest in setting up a special fund in the Department of Water Resources for aquifer management to be funded from the state general fund. He noted that there was also the possibility that legislation would be drafted to define “futile call.” He asked for committee discussion on these issues.

In response to a question from **Senator Little** regarding the CREP Program, **Director Tuthill** stated the latest figure is between 40,000 and 50,000 acres being offered. He said there was not a lot of activity this spring recognizing the CREP cycle is October to October. He noted that the warning letters that were sent out regarding curtailment contained a paragraph that someone must sign up for CREP before an action of curtailment happens. He said to his knowledge there have been no additional signups at this time.

**Representative Stevenson** said that the funding mechanism that has been discussed will need to move forward quickly so that it can be included in the Governor’s budget. **Representative Raybould** noted that this was being discussed because aquifer management is a statewide issue. **Representative Moyle** agreed and commented that he would be inclined to support using general fund money to support this issue. **Representative Wood** asked whether municipalities would be included in the obligation. **Representative Moyle** said that since it is a statewide issue, municipalities would also need the benefit. He explained that the committee could make a motion stating they are in support of this funding.

**Senator Coiner** said the question is what is going to be funded. How deep will the funding be? Will it include studies of the aquifer and getting that information or will the funding help those that are being curtailed? In his opinion a decision needs to be made regarding what responsibility the state has to fund and where the users themselves should step in.

**Representative Raybould** summarized that the discussion last session regarding funding the water management plans and administration of that plan included the idea to assess all water users in the Eastern Snake Plain Aquifer area because of the conjunctive management that was mandated by the court. He said that from these discussions he thought the legislature or this committee should present an idea to the Governor that the Idaho Department of Water Resources should be made better able to handle this without coming back to the user. One big issue was the fact that there are so many different kinds of users and that setting up a mechanism to assess and collect these funds would be very difficult. That is where the idea of funding this from the

general fund came from. **Senator Schroeder** suggested that perhaps the committee cochairs could meet with **Director Tuthill** to see what his needs are and bring those back to the committee at the next meeting to see if they would support making a recommendation to the Governor. **Representative Raybould** commented that the Governor makes his budget on August 1.

**Representative Wood** moved that the committee make a recommendation to the Governor to include in the budget the creation of a fund in the Department of Water Resources for the management and administration of Idaho aquifers to be funded out of the general fund and that the co-chairs consult with the Director to find out what his needs are. **Representative Bedke** seconded the motion.

**Representative Bedke** stated that House Bill 290 was presented last session. He explained that House Bill 241 appropriated \$557,000 on a one-time basis and House Bill 290 made this \$557,000 ongoing. House Bill 290 did not pass and the idea was referred to this committee to make a decision on a recommendation to make this an ongoing appropriation to the Governor. **Representative Raybould** stated that House Bill 241 asked for the state to pay half of the cost and the water users to pay half. The other bill funded the entire amount and that is the amount that is being considered to be made ongoing. This will be expanded to cover the management plans and formulation of those plans for the other aquifers in the state.

**Representative Bedke** asked whether the \$557,000 will be put in the base as the ongoing amount or will that amount need to be adjusted for inflation and so on. **Director Tuthill** explained that this year the costs will include \$400,000 for planning, \$450,000 for additional technical studies and \$350,000 used by the Water Resource Board plus the \$557,000 for the model upgrade process over 10 years. Years 2 through 10 costs are expected to be \$1 million just for the Eastern Snake Plain Aquifer. In terms of reaching out to other aquifers, this amount will not be adequate.

It was suggested that the committee work with the Department to see what funding would be necessary and to get approval from the Governor also.

**The motion carried unanimously by voice vote.**

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