

House Resources & Conservation Committee

Minutes
2007



MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 9, 2007

TIME: 1:00 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

ABSENT/EXCUSED: Reps. Wood (35), Andrus, Moyle

GUESTS: Anthony Barrett, Intern, Idaho Water Users Association (IWUA); Wally Butler, Idaho Farm Bureau Federation (IFBF); Russ Hendricks, IFBF; Pat Holmberg, self; Jonathan Parker, IWUA; Lynn Tominaga, Idaho Ground Water Appropriators (IGWA)

TO ORDER: A quorum being present, Chairman Stevenson called the meeting to order at 1:05 p.m.

INTRODUCTIONS: Daniel Cox will be Committee page the first half of the session. Danny is from Kellogg.

Chairman Stevenson asked Committee members to introduce themselves.

ANNOUNCEMENTS: Chairman Stevenson reviewed Committee protocol.

Representatives bringing legislation to the Committee are asked to process it through the Committee secretary in order to expedite scheduling.

Chairman Stevenson provided an overview of up-coming meetings:

1/11/07 1:30 p.m.

Introduce IDFG Commissioners; Report on wolf management

1/11/07 3:00 p.m. - Joint Session with Senate Resources

Snake River Plain Aquifer; Conjunctive management of ground and surface water in Idaho

1/12/07 - 9:00 a.m. - Joint Session with Senate Resources and House and Senate Ag Affairs Committees

Update on the eastern Idaho elk situation

Rep. Bell asked that four Committee members, also members of JFAC, be excused from attending the Joint Session of January 12. Chairman Stevenson excused those members, and apologized for the necessity of scheduling the meeting when there are conflicts. It is difficult to accommodate the schedules of four legislative committees.

INTRODUCTIONS: Chairman Stevenson asked lobbyists in attendance to introduce themselves to the Committee, as they are frequent guests. They are identified above.

ADJOURN: The meeting was adjourned at 1:32 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** January 11, 2007
- TIME:** 1:30 PM
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively
- ABSENT/
EXCUSED:** Reps. Barrett, Pence
- GUESTS:** Jeff Allen, Policy Advisor, Office of Species Conservation (OSC); Rocky Barker, Reporter, Idaho Statesman; Bob Barowsky, Commissioner, Idaho Department of Fish and Game Commission (IDFG); Jack Bell, self; Stan Boyd, Legislative Advisor, Idaho Wool Growers Assoc. (IWGA), Idaho Elk Breeders Assoc. (IEBA); Randy Budge, Commissioner, IDFG; Jim Caswell, Administrator, OSC; Dave Goins, Idaho News Service; Nate Helm, Sportsmen for Fish and Wildlife-ID (SFW-ID); Phil Homer, Legislative Advisor; IASA; Alex Irby, Commissioner, IDFG; Sharon W. Kiefer, Legislative Liaison, IDFG; Jim Lau, Admin. Chief, IDFG; Terry Mansfield, Acting Director, IDFG; Tony McDermott, Commissioner, IDFG; Roger Phillips, Reporter, Idaho Statesman; Gary Power, Commissioner, IDFG; Mary Reid, Assistant, OSC; Fred Riggers, self; Kelci Karl-Robinson, Idaho Assoc. of Counties (IAC); D. J. Schlers, Reporter, Wire; Jim Unsworth, Wildlife Chief, IDFG; Cameron Wheeler, Commissioner, IDFG; Wayne Wright, Commissioner, IDFG
- TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:41 p.m.
- MINUTES:
January 9, 2007** A motion was made by Rep. Wood (27) to approve the minutes of January 9, 2007 as written. The motion passed by voice vote.
- INTRODUCTIONS:
IDFG
Commissioners** Cameron Wheeler, Idaho Department of Fish & Game Commission, Chair, introduced two new IDFG Commissioners: Randy Budge and Bob Barowsky. They, and Commissioners Wayne Wright, Gary Power, Alex Irby, Tony McDermott, and Cameron Wheeler each gave a brief introduction of themselves to the Committee.
- Chairman Stevenson encouraged Committee members to become acquainted with the Commissioner from their districts.
- INTRODUCTIONS:
IDFG
Staff** Chairman Wheeler introduced IDFG staff present: Sharon W. Kiefer, Legislative Liaison; Jim Unsworth, Director Wildlife Bureau; Jim Lau, Administrative Chief; and Acting Director Terry Mansfield.
- INTRODUCTIONS:** Jim Caswell, Administrator, Office of Species Conservation,

**OSC
Staff**

introduced himself and OSC staff present: Jeff Allen, Policy Advisor; Mary Reid, Assistant to Administrator.

**REPORT:
IDFG Commission**

Chairman Wheeler, IDFG Commission, said the Commission was intent on preserving Idaho's heritage of hunting, fishing and preserving the state's natural resources. He spoke briefly to several issues:

Staffing: Steve Huffaker, IDFG Director, has retired. A process is in place to replace him. Within the next thirty days that process should be complete. Steve Barton, Intergovernmental Policy Coordinator, has retired effective January 20, 2007. These changes "at the top" give an opportunity to revitalize the department.

Idaho Wildlife Foundation: The Committee has expressed concern regarding the relationship between IDFG and the foundation. Chairman Wheeler said there are no sitting members of the foundation who are Commissioners or employees of the department. The relationship is "as transparent as we can get and still function."

Budget Process: The Commission has worked closely with the germane committee chairs and co-chairs on JFAC to make responsive changes to the budget process.

Wolves: There was a meeting with Dale Hall, Fish & Wildlife Director, when he met with Governor Risch regarding the wolf delisting process. There is an optimistic time frame to return wolf management to the state—within eighteen months, depending on the Wyoming management plan. The outcome will be positive for Idaho.

QUESTIONS:

Rep. Saylor asked if the delisting process would proceed regardless of anything Wyoming does. Chairman Wheeler said yes, at the same pace. There is a method to separate Wyoming from Montana and Idaho. However, proceeding together with both Montana and Wyoming would better insulate Idaho from potential lawsuit challenges.

Chairman Stevenson asked for a brief report on the Redbird project. Chairman Wheeler said the project has been anticipated since the early 1990s. A lease-purchase has been negotiated through the Foundation. Commissioner Irby told the Committee that Redbird Canyon was unique on the Snake River as habitat for Bighorn Mountain Sheep.

QUESTIONS:

Rep. Wood (35) asked for clarification of management objectives. Commissioner Irby said the Redbird site would provide open sportsmen access, where before it was available to only a few.

Chairman Stevenson asked for a brief report on the Mule Deer Initiative. Chairman Wheeler said the work continues, but there is no immediate all-encompassing solution. There is much science still to be done, such as the interaction between elk and deer, and the conservation reserve program. There is support among legislators and sportsmen to recover Mule Deer.

Chairman Wheeler, in closing remarks, expressed his appreciation to the Committee for their feedback, guidance and support. He said it

was important to have trust in the Commission to make good decisions.

Chairman Stevenson thanked Chairman Wheeler for his report, and the Commissioners for the effort they make to preserve natural resources for sportsmen. He told Committee members that Ms. Kiefer would be able to provide them any information they need.

**OSC UPDATE:
Wolf Management**

Jim Caswell, Administrator, Governor's Office of Species Conservation (OSC), told the Committee that although the wolf delisting rule for Idaho was expected by the end of January, as previously stated, he heard yesterday that it may come as early as the end of next week. Chairman Stevenson said, hopefully, the rule will be finalized by the time OSC makes its report to the Committee. People on both sides of the issue agree that the reintroduction of wolves has been more successful than anyone expected. Now the serious problem is bringing wildlife back to pre-wolf numbers. Chairman Stevenson said he appreciated what OSC does to keep obscure species from the endangered species list. (See Exhibit 1)

ANNOUNCEMENTS:

Chairman Stevenson, in the absence of Vice-Chair JoAn Wood (35), announced the members of the Administrative Rules Subcommittee: Reps. Brackett, Wood (27), and Shively. A meeting of the Rules Subcommittee will be held immediately following the Committee of the Whole, January 15th, Room 412.

**Scheduled
Joint Session
Committees**

Members were apprised of two meetings to be held in Joint Session this week: January 11th, 3:00 p.m., with the Senate Resources & Environment Committee, Gold Room; and January 12th, with the House & Senate Agricultural Affairs Committees and the Senate Resources & Environment Committee, 9:00 a.m., Gold room.

Chairman Stevenson said the January 11th meeting is for the purpose of providing a report on the Eastern Snake River Plain Aquifer, and issues relating to the conjunctive management of ground and surface water in Idaho. There is currently a case in the Idaho Supreme Court that may result in legislation this session. This report will provide an overview for legislators.

The January 12th meeting is an overview of current Domestic Cervidae issues, now coming under management authority of the Idaho State Department of Agriculture (Idaho State Department of Agriculture (ISDA)).

QUESTIONS:

Rep. King asked about water adjudication in progress. Chairman Stevenson said the first round of adjudication in the Eastern Snake River Plain Aquifer is about finished; but the adjudication in North Idaho is just starting.

ADJOURN:

The meeting adjourned at 2:18 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES
**JOINT SESSION OF THE
HOUSE RESOURCES & CONSERVATION COMMITTEE AND
SENATE RESOURCES & ENVIRONMENT COMMITTEE**

DATE: January 11, 2007

TIME: 3:00 p.m.

PLACE: Gold Room

HOUSE MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively

ROLL CALL: Informational Session: No roll call was taken.

SENATE MEMBERS: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, Langhorst

GUESTS: Dr. Gary Johnson, Idaho Water Resources Research Institute, University of Idaho (IWRRRI); Dr. John Tracey, Director, IWRRRI; Dr. David Tuthill, Acting Director, Department of Water Resources (IDWR)
See attached sign-in sheets for other guests.

TO ORDER: Senator Gary Schroeder presided. Chairman Schroeder called the meeting to order at 3:00 p.m.

INTRODUCTIONS: Senator Schroeder said Idaho water issues continue to be of concern. A case currently in the Idaho Supreme Court may result in major legislation this session.
Chairman Schroeder introduced Rep. Bert Stevenson, Chairman, House Resources & Conservation Committee, who worked with the Senate Committee to facilitate today's presentation; Senator Don Burtenshaw, and Rep. Dell Raybould, Co-Chairmen of the Interim Committee.
Chairman Schroeder introduced Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR), and Dr. John Tracy, Director, Idaho Water Resources Research Institute, University of Idaho (IWRRRI).

PRESENTATION: Dr. John Tracey, Director, Resources Research Institute at the University of Idaho (IWRRRI), thanked the Committees for the opportunity to address them in Joint Session. He said today's presentation is the equivalent of "Water 101."

Idaho Water Challenges

**Dr. John T racy
Director
IWRRRI**

The Idaho Water Resources Research Institute (IWRRRI) was created by the Idaho Legislature in 1963. Every state has a water institute which focuses on issues that are important to that region. The institutes function collaboratively. He asked Director Tuthill to provide a description of the agency's role in dealing with the different issues, and the major challenges to be expected in the next few years.

Dr. Tracy introduced Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR); and Dr. Gary Johnson, IWRRI. Dr. Johnson works on problems relating to how water moves through the Eastern Snake Plain. IWRRI works collaboratively with IDWR. Director Tuthill will provide a description of IDWR's role, and speak of major challenges to be expected in the coming years.

(Exhibit 1 - Idaho Water Challenges; Briefing for Members of the Idaho State Legislature)

**Dr. David Tuthill
Acting Director
IDWR**

Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR), said Idaho's water issues are complex. Director Tuthill explained that IDWR was sometimes confused with the Idaho Water Research Board. That Board is appointed by the Governor, and tasked with guiding water policy around the state. The state agency, IDWR, administers programs. IDWR is comprised of three divisions: the Energy Division, headed by Bob Hoppie; the Planning & Technical Services Division, headed by Hal Anderson; and the Water Management Division, headed by Gary Spackman.

Because of the nexus between water and energy, Dr. Tuthill is in support of modifying the agency name to include energy. The Office of Energy has been moved, and is now included within IDWR.

Director Tuthill's presentation, titled "Idaho Water Challenges," briefed the Joint Committee regarding the status of current water issues. (See Exhibit 1)

SUMMARY: As of next week, all Snake River Basin Adjudication Directors' reports are filed except 37 III, the upper part of the Bigwood Basin. A preliminary recommendation will be submitted next week, and the final report filed by the end of the month. The final report does not signify the end of the Snake River Basin Adjudication, but it is a major milestone. The 170,000 original claims files have been reviewed. The department's work load will decrease. Legal staff will be involved with the courts.

The North Idaho Adjudication will continue as set forth during the last Legislative Session in 42-1406b. The process is on track to begin taking claims next year.

Two major water issues in the state are: 1) the conjunctive administration of ground and surface water; and 2) aquifer recharge.

Conjunctive management hasn't been addressed in most western states. In Idaho it is being considered in several ways, including the court case now before the Idaho Supreme Court, coming as a result of a 5th District Court decision finding the Idaho Department of Water Resource's (IDWR) rules for applying conjunctive management to be unconstitutional. CDR Associates was hired to facilitate the development of an Eastern Snake River Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan Framework for the 2007 Legislature. The Idaho Water Resource Board scheduled public meetings to solicit public input. CDR, in conjunction with the Board, is identifying goals for Eastern Snake River Plain Aquifer management; making a determination as to the level of management needed; and identifying funding alternatives. A report will be shared with the Legislature next month.

The aquifer recharge issue has not been resolved. Recharge issues include availability of water for recharge, its appropriate and beneficial use, and the relationship of recharge water to hydropower diversions.

Water issues in Idaho will continue to require broad-based participation. That participation necessitates understanding the issues, which is the goal of the meeting today.

**Dr. Gary Johnson
IWRRI**

Dr. Gary Johnson, Idaho Water Resources Research Institute, University of Idaho (IWRRI), made a presentation briefing the Committee regarding the Snake River Plain Aquifer. (See Exhibit 2, "Idaho Water Issues Background and Science Focus: Snake River Plain Aquifer")

SUMMARY: The broad topics of the presentation included: hydrology basics, conjunctive management challenges, the Snake Plain example; and aquifer management opportunities in the system.

The basic concept of an aquifer system is analogous to a large tank. The Snake River Plain Aquifer is about 200 miles long, and 80 miles wide. It can be seen as a flow resource, or a stock resource. Dr. Johnson said it was better considered a flow resource—with inputs and outputs to the system, than a stock resource—such as coal, to be mined. He portrayed a tank with dramatically varying inputs from streams and more constant outputs. Inflows to the system represent aquifer recharge. Common sources of recharge include infiltrating precipitation, river or lake-bed seepage, subsurface inflows from nearby aquifers, and seepage from human activities. Common sources of discharge include plant evaporation, seepage to rivers or lakes, subsurface outflows to nearby aquifers, ground-water pumping, and spring discharge.

Another useful analogy, when thinking of an aquifer, is to think of a water budget that is not unlike a bank account. If more is spent than is made, the account balance goes down. That is not to say that water levels in the aquifer should not change; but long term trends of depletion have a different meaning from short term trends.

It is also important to recognize that there is a river-aquifer connection. There is a gain to the aquifer when a stream is below the surrounding water table. There is a loss to the aquifer when a stream stage is higher than the water table. It is also possible for a stream to be "perched," with the stream bed well above the water table, and a hydraulically disconnected stretch of unsaturated ground lying between the stream and the aquifer. The hydraulic interconnection between ground and surface water is an important consideration in managing water as a system. Idaho has both hydraulically connected and disconnected conditions.

Aquifer storage is, simply, the amount of water stored in the aquifer. It changes as a function of connected surface water impacts. Long term decreases in storage indicate aquifer mining. Consumptive surface water use has a functional 1:1 relationship. Consumptive ground water use is more difficult to determine. Theoretically, an eventual 1:1 correspondence is to be expected; but the 1:1 correspondence is not immediately evident. The effects are not necessarily visible and propagate in all directions, not just downstream. The time lag in seeing the effects of ground water consumption is a major complication in the effort to manage surface and ground water systems conjunctively. A

management plan has to be undertaken with vision extending decades into the future.

A model has been created for the Snake River Plain Aquifer. A model predicts and identifies the timing and location of impacts to the system. It is a numerical representation of the physical system. Applying the water budget analogy to the Snake River Plain Aquifer, approximately 6.5 million acre-feet (8,000 c.f.s.) of water recharges the aquifer annually. The discharge to Thousand Springs reach is 5,000 to 6,000 c.f.s. annually; and to the American Falls reach it is 2,500 to 3,000 c.f.s.

Irrigation on the Snake Plain, which was initiated in the 1890s, peaked in the 1950s. Since then, the system has been impacted by ground-water pumping, conversion from flood irrigation to more efficient sprinkler systems, an increase in irrigated land areas, and the drought of recent years. Ground-water pumping is the agricultural usage that most impacts the system; commercial-industrial uses have less impact; and municipal and rural domestic uses represent a very small part in terms of total water use.

It is important to recognize that all basins are like the Eastern Snake River Plain Basin, specifically as usage relates to agriculture. On the Snake River Plain the 1:1 correspondence in and out does, roughly, apply.

No model is 100% correct; but as the model is populated by measurements over time, an understanding of boundaries and an estimate of fundamental relationships will develop. This work is on-going at the present time as a collaborative effort with IDWR, the Bureau of Reclamation, private consultants and companies, and educational units. Historical data has been calibrated and matched over a 22-year period with 15,000 measured data points.

Some predicted future water challenges in the Snake River Plain Aquifer include continued changes in irrigation practices, land use changes, climactic changes, and changes in social priorities—for instance the protection of species. These challenges effect all land basins in Idaho, including the Bear River Drainage, the Spokane Valley/Rathdrum Prairie Aquifer and the Treasure Valley Aquifer.

There are several “tools” in the “toolbox” for aquifer management, including managing recharge by using excess spring run-off in high water years, removing acres from agricultural production through conservation reserve programs, ground-water banking, converting some ground-water irrigation back to surface irrigation, and curtailing water use during low water years. Some of these management options may require legislative action, and creating priorities.

QUESTIONS: Chairman Schroeder opened the meeting to questions, first to Legislators, then to other people in the audience. Rep. Stevenson announced that anyone wanting a copy of the power point handouts can contact the House Resources & Conservation Committee secretary at 332-1136, Room 414 in the Capitol Building.

Rep. Raybould said a significant factor in the conjunctive water management issue had been omitted: that is discharge from the springs into the river. At the turn of the century, the springs at Hagerman were discharging at 4200 c.f.s., went up to about 7000 c.f.s. after surface artificial recharge took place in the 1950s, and have returned to 5200-

5300 c.f.s. now. The current measurement is above that of the aquifer in equilibrium back in the 1900s, meaning there is a loss from the springs themselves equal to approximately 800,000 c.f.s. annually. Rep. Raybould asked how the aquifer might be stabilized to keep spring flows where they are currently, and to provide for other needed uses. Dr. Johnson said that analysis was correct. The spring discharge now is greater than what existed in natural conditions, as a result of the heavily man-influenced system. Some ideas to maintain equilibrium include Conservation Reserve Enhancement Programs (CREP), reducing withdrawals from the system, adjusting in- and out-flows, and managing recharge.

Rep. Raybould asked where to set the standard for the need to recharge in order to compensate for the spring flow itself, in order to stabilize the aquifer; what action can the Legislature take; and will those actions carry over to other aquifers. Dr. Johnson said it was for the Legislature, not him, to set standards. That is one of the major issues.

Rep. Chavez said, as agricultural lands become urbanized, there will be concern about the health of the aquifer as well as its capacity. She asked what impact, if any, there is from runoff coming from asphalt, concrete and other man-made surfaces. Dr. Johnson said there is an opportunity for contamination, but he is not the person to answer that question.

Sen. Coiner, referring to page 9, Exhibit 2—the Water Budget on the Snake Plain, said the total of the variable sources affecting recharge—those that can be manipulated, is equal to less than .125 of 1% of the total. He said the Legislature has to be mindful of how much effect, realistically, managing the water budget has; and what the cost will be per ac/ft. Referring to page 10, Exhibit 2, spring discharge in the American Falls region has been relatively stable until the last twenty years. 80% of the water supply for the Twin Falls Canal Company is from natural flow. Although rumor has it that agricultural users are greedy, in this instance where 80% of irrigation water comes from natural flow, there is still a decline in the last twenty years.

Rep. JoAn Wood (35) asked if all consumptive use was from irrigation. Dr. Johnson said, talking about water removed from the basin, essentially all consumptive use is associated with agriculture. Rep. JoAn Wood (35) asked if municipal usage was relatively small. Dr. Johnson said municipal use represents extraction from the aquifer system, but as a redistribution and not a loss to the system though perhaps a loss to the aquifer. Rep. JoAn Wood (35) asked if the three different reaches of the Snake River operate in different ways; and are they dependable. Dr. Johnson said the exchange between ground and surface water discharges have impacts all along the Snake River; the impact is location-dependent. A ground water use near Jerome dominantly impacts the Thousand Springs area. A ground water use near Blackfoot dominantly impacts the American Falls area. Rep. JoAn Wood (35) said she wanted to know if there was a difference to the end result of the flow. Dr. Johnson said he didn't understand. Rep. JoAn Wood (35) said she would talk with him after the meeting.

Rep. JoAn Wood (35) asked if water storage in dams was a good recharge tool. Dr. Johnson said the interaction of rivers and aquifers were affected by dams. In American Falls, where water backs up behind the dam, there has to be a scientific effect. That effect has not been

evident yet in evaluating the data. Which isn't to say the effect doesn't exist.

Sen. Little, referring to the bar graph on Page 9, Exhibit 2, said he assumed that decreases result from canals being lined and agricultural systems becoming more efficient. He asked if making canals less efficient would positively affect aquifer recharge. Dr. Johnson said the idea of seepage loss as a management tool is not good because there is no control mechanism.

Rep. Vander Woude asked if the real problem was depletion of the Thousand Springs flow, or depletion of the aquifer. The irrigation system has increased the flow, but is being blamed because the flow isn't being maintained. Dr. Johnson said the problem is that there is more water demand than there is supply. Perhaps it is a legal question as to who has entitlement to what water from the system.

ADJOURN: The meeting adjourned at 4:50 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES
JOINT SESSION
HOUSE RESOURCES & CONSERVATION COMMITTEE
HOUSE AGRICULTURAL AFFAIRS COMMITTEE
SENATE RESOURCES & ENVIRONMENT COMMITTEE
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: January 12, 2007

TIME: 9:00 AM

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively

**ABSENT/
EXCUSED:** Informational Session: No roll call was taken.

**SENATE
RESOURCES &
ENVIRONMENT
COMMITTEE** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, Langhorst

**HOUSE
AGRICULTURAL
AFFAIRS
COMMITTEE** Chairman Trail, Vice Chairman Andrus, Reps. Lake, Stevenson, Bolz, Shirley, Patrick, Pence, Chavez, Durst

**SENATE
AGRICULTURAL
AFFAIRS
COMMITTEE** Chairman Cameron, Vice Chairman Heinrich, Senators Schroeder, McGee, Corder, Hill, Siddoway, Stennett, Kelly

GUESTS: John Chatburn, Deputy Administrator, Division of Animal Industries, Idaho State Department of Agriculture (ISDA); Jim Unsworth, Bureau Chief for Wildlife, Idaho Department of Fish & Game (IDFG)
See sign-in sheets for other guests.

TO ORDER: Senator Tom Gannon, presiding, called the Joint Session to order at 9:02 a.m. This meeting is comprised of an unusual grouping, but is appropriate.

The Joint Session results from the respective Chairmen comparing notes regarding the legislation that is anticipated this session relative to domestic cervidae. All four agree that it would be well to start from a foundation of base-line information, and a briefing as to events occurring this past summer. Chairman Gannon said there would be no public testimony because there will be no hearings, only informational presentations. He asked for questions to be held until the end of the presentations.

**UPDATE ON
EASTERN IDAHO
ELK SITUATION:** John Chatburn, Deputy Administrator, Division of Animal Industries, Idaho State Department of Agriculture (ISDA) gave an update on the Eastern Idaho elk situation. (See Exhibit 1, Domestic Cervidae

**IDAHO
DEPARTMENT OF
AGRICULTURE:**

**John Chatburn
Deputy
Administrator**

Program Chronology; and Exhibit 2, Rules Governing Domestic Cervidae)

The Chronology of the domestic cervidae program is as follows:

- 1991 - Fallow Deer imported from Montana to Hammet, ID, test positive for Tuberculosis (TB). The ISDA and IDFG depopulate the infected herd.
- 1994 - Domestic cervidae authority transferred by the Legislature from IDFG to ISDA.
- 1995 - ISDA publishes first domestic cervidae rule in IDAPA 02.04.03. This rule included provisions for disease testing on imported cervidae and licensing domestic cervidae farms.
- 2000 - Mandatory chronic wasting disease (CWD) testing and importation requirements are put into IDAPA 02.04.03.
- 2001 - Idaho Legislature authorizes ISDA to issue civil penalties effective March 23, 2001.
- 2001 - ISDA issues a notice of violation with civil penalties to a hunting ranch located in Madison County, Idaho for various violations including operating without a Cervidae Farm License.
- 2001 - CWD trace revealed that 37 domestic cervidae imported from Colorado to a domestic cervidae farm in Salmon, Idaho, may have been exposed to CWD. ISDA quarantined and depopulated all 37 animals imported from Colorado and collected samples for CWD testing. There were no CWD positive test results.
- 2002 - Idaho Legislature amends domestic cervidae law to eliminate the provision that allowed ISDA to assess each day of an ongoing violation as a separate violation. Mr. Chatburn noted that a media misperception was promulgated at the time that the Legislature forgave a \$750,000 civil penalty. The penalty was never issued by ISDA. If the department had assessed maximum penalties on each potential violation, up to \$750,000 could have been assessed. The actual violation assessed was about \$60,000.
- 2002 - ISDA publishes the domestic cervidae rules as a separate chapter in IDAPA 02.04.19. The requirement to license domestic cervidae farms is removed from this rule because the AG determined that ISDA did not have the specific statutory authority to require the licenses.
- 2003 - ISDA proposes a bill to, among other things, require the permitting of domestic cervidae farms.
- 2006 - Numerous elk escaped from a domestic cervidae farm in eastern Idaho
- For specific information relating to animals harvested inside and outside the Chief Joseph enclosure; and subsequent testing for CWD, Tuberculosis (TB), Red Deer Genetic Factor, and Brucellosis, see Exhibit 1.

QUESTIONS: Rep. Barrett asked why animals were harvested inside the enclosure. Mr. Chatburn said they were harvested in commercial

hunting activities.

Rep. Chavez asked how the meat from the animals was disposed. Mr. Chatburn said it was taken to a custom exempt slaughter facility after field dressing, processed, and delivered to a charitable organization.

Rep. Durst asked if it was customary for a domestic cervidae ranch to keep an animal inventory. Mr. Chatburn said there was an inventory. Calves born are not required to be inventoried, identified, and reported to ISDA until 12/31 of the year they are born. That is how 20 animals of unknown status came to be listed.

Rep. Andrus asked if the department was satisfied that the animals tested for Red Deer Genetic Factor did not carry the gene. Mr. Chatburn said testing for the Red Gene Genetic Factor was run at a commercial lab in Canada—the only lab in North America doing any type of test for Red Deer. It is not a DNA test, but a blood test looking at protein markers identified over a period a time as indicating potential for Red Deer genetic influence. It is not unlike what is done for Brucellosis. Testing positive does not mean an animal has Brucellosis, but animals are treated as if they have the disease. The same approach is used where animals test positive for Red Deer Genetic Factor, based on protein markers. The animals from the Chief Joseph enclosure tested exactly the same on two tests from two samples drawn a week apart. It was concluded that they did have Red Gene influence and were ordered depopulated pursuant to the rules.

Rep. Andrus asked if it is illegal in Idaho to have animals with the Red Deer gene, and if there is a penalty. Mr. Chatburn said the rules require all animals imported into Idaho either to test negative or be from a herd registered with the North American Elk Breeders Association. It would be illegal if importation documents were falsified. The animal in question did test negative prior to being imported to Idaho a number of years ago. The test was done at a commercial laboratory in Colorado. It is not known what test was used; and the lab is no longer in the business of conducting tests for Red Deer Genetic Factor. In this case, the current test results were used to make a determination.

Senator Schroeder asked if it was known how the fence was breached; and if fence breaching would be an on-going problem on elk ranches. Mr. Chatburn said it is unknown why the fence was breached. On inspection, the breach had been repaired. It occurred where two rolls of wire were spliced together. In the ten years ISDA has had oversight of the domestic cervidae program, this is the first documented escape due to a fence breach. Generally the cause is an insecure gate.

Senator Schroeder asked for a characterization of the soil and topography. Mr. Chatburn said he hadn't seen the facility, but from pictures it appears to not be heavily wooded and fairly flat.

Rep. Barrett asked about the practice of splicing, and how it related in this instance. Mr. Chatburn said the fencing used is traditional on elk farms, and is the same fencing used by ISDA to fence stock yards where there is Brucellosis—for instance, in Eastern Idaho. It comes in 330' rolls. Rep. Barrett commented that the owner would fix the fence to protect animal assets remaining inside the enclosure. She asked for clarification concerning the rules enforcing Red Deer Genetic

Influence. Mr. Chatburn quoted from IDFG Rules: where Red Deer Genetic Influence has been determined, the animal shall be destroyed.

Rep. Trail asked if ISDA had a fence inspection procedure. Mr. Chatburn said the department inspects each domestic cervidae farm at least annually. That inspection includes an inspection of the perimeter fence. An inspection also occurs when an escape is reported. Rep. Trail asked about the record of inspection at this ranch. Mr. Chatburn said it was a fairly new facility that had been inspected sometime from early to mid summer.

Rep. Shirley asked if providing adequate feed was a requirement on elk ranches. Mr. Chatburn said domestic cervidae are considered livestock. ISDA doesn't have any feed requirement. It is the owner's responsibility to provide supplemental feed if necessary. Rep. Shirley asked if there was recourse if the owner didn't provide supplemental feed when it was necessary. Mr. Chatburn said ISDA forwards animal care cases for many species. They are taken to the county prosecutor. If warranted, the county may seize animals. Animal cruelty laws were amended last session.

Rep. King asked how often the Brucellosis test was required for domestic cervidae. Mr. Chatburn said all animals imported into Idaho must test negative for Brucellosis on two official tests, or come from a Brucellosis certified free herd. They must also test negative for TB or come from a TB negative free herd. Brucellosis samples are also taken at slaughter. Rep. King asked if there were bacteriological or parasite tests. Mr. Chatburn said there are disease control programs for domestic cervidae, as there are for other livestock. Generally speaking, unless a disease is prevalent, testing for it isn't included in annual test procedures.

Sen. Langhorst asked how many escapes had been recorded in the last ten years. Mr. Chatburn said, since the domestic cervidae program came under the aegis of ISDA, 221 animals have been reported to have escaped. This number includes the 63 animals that escaped from the Chief Joseph facility. Sen. Langhorst asked if the Legislative process bill put forward in 2003 declined the opportunity to create a licensing-permitting process, or was that the primary intention. Mr. Chatburn said the legislation had several other provisions, some of which have been enacted. The main trust from ISDA at the time was for a permit, not a license, and to have specific status authority to permit or license a domestic cervidae farm. Sen. Langhorst asked if that legislation created a new classification, and ended the open range law for escaped cervidae. Mr. Chatburn said those were other bills put forward by the cervidae industry. The one referred to earlier, was brought by ISDA.

Senator Kelly asked if ISDA was pursuing action against the owner of the Chief Joseph facility. Mr. Chatburn said the investigation is not yet closed.

Rep. Barrett asked how licensing or permitting would prevent escape; and how much weight was being given to private property rights in the discussion. Mr. Chatburn said he was not an attorney. ISDA and IDFG have followed Governor Risch's executive order to the best of their ability. He said licensing or permitting obviously wouldn't prevent escapes, but would heighten the producers' perception of the need to

comply with regulations.

Rep. Trail asked if any state requires double fencing, since nose-to-nose contact between animals is one concern; and if it would increase security. Mr. Chatburn said he was not aware of that requirement in any other state. Double fencing would locally have built-in redundancy in containment.

Senator Stennett asked if the owner contacted ISDA within the 24-hours required. Mr. Chatburn said the owner never notified ISDA. A neighbor called in the suspected escape. The owner said he was not aware animals were out; but would immediately address the situation. The breach in the fence was patched by the time ISDA and IDFG inspected. Senator Stennett asked what penalty could be expected for a rule violation. Mr. Chatburn said failure to notify the department willfully would be a violation with a maximum civil penalty of \$5,000. There could also be a misdemeanor criminal penalty. Senator Stennett asked if he meant \$5,000 per animal, or per violation. Mr. Chatburn said per violation.

Senator Schroeder asked if wild elk had contact with domestic cervidae on the ranches; and if diseases can be transmitted. Mr. Chatburn said nose-to-nose contact could occur through perimeter fences. Disease could be transmitted—depending on the disease.

Senator Little asked what disease could be transmitted by nose-to-nose contact. Mr. Chatburn said there is some evidence that CWD can be spread through urine and feces, and therefore possibly by nose-to-nose contact. ISDA is charged with animal disease control. It is a concern.

Rep. Saylor asked how common it was for wild elk to get inside a domestic cervidae enclosure. Mr. Chatburn said they can be inside when the enclosure is built and, depending on the topography and location of the facility, sometimes have other access opportunities. ISDA and IDFG work with producers to attempt to move wild elk from enclosures when they are built.

**IDAHO
DEPARTMENT OF
FISH & GAME:**

**Jim Unsworth
Bureau Chief for
Wildlife**

Jim Unsworth, Bureau Chief for Wildlife, Idaho Department of Fish & Game (IDFG), presented “Wildlife, IDFG, and Domestic Elk Farming. (See Exhibit 3)

Mr. Unsworth said there are 125,000 elk and 100,000 elk hunters in Idaho. It is an industry that brings \$67 million dollars in direct expenditures annually to the Idaho economy, and has an economic impact of over \$170 million annually.

There are currently 78 domestic cervidae farms, and over 5,600 animals in enclosures. The biggest issue has been with contact between domestic and wild elk, deer, and moose. Lately there have been more escapes.

The major issues are:

- Disease control, which is a concern of regulatory agencies, managers, and farmers.
- Genetic interchange, and the unknown consequence of hybridization.

- Accidental confinement of wild animals behind fences. This is occurring more often with larger facilities being built.
- Impacts on native cervids as habitat is lost and movement corridors are altered.
- Using sportsmen funds to manage and control escapes from domestic facilities. Over \$50,000 is estimated to have been spent for the Chief Joseph escape. This represents a significant increase from before.
- There is the social question concerning the appropriateness of hunting within enclosures.

The IDFG Commission has developed policies which minimize disease and genetic risks. The Commission doesn't recognize shooting domestic cervidae within enclosures as "hunting." The Commission opposes spending sportsmen's dollars on managing or controlling domestic elk.

QUESTIONS: Rep. Wood asked for clarification about IDFG's spending on domestic cervidae. Mr. Unsworth said money is spent because the department works with ISDA to move animals, control fences, and this fall to implement the Governor's executive order. Rep. Wood asked if IDFG was being arbitrary to say, on the one hand, it's OK to hunt on private property; but, on the other, say it's not a free hunt if the property is enclosed. Mr. Unsworth said The IDFG Commission believes shooting domestic elk behind high fences doesn't fall within the definition of hunting, which is the pursuit of wild animals in free range conditions.

Chairman Gannon asked if the IDFG Commission would consider hunting pheasants raised in captivity and released—or other such game, for instance, steelhead raised and released—to fall within its definition of hunting. Mr. Unsworth said the Commission hasn't made that determination.

Senator Schroeder commented that, listening to the two presentations, there are some things Legislators need to know: 1) the economic value of the elk ranching industry to the state. 2) The Legislature would be remiss to eliminate elk ranching without taking into account consequences other states have experienced by doing so. For instance, Montana has had to pay where courts have ruled there were takings. 2) The scientific impact when Red Deer genes are introduced to produce big antlers.

Senator Coiner said hunters dollars should not be spent. It is better to cede all activity to ISDA. Mr. Unsworth said IDFG has limited involvement now. Fence inspections occur only if wild animals are inside. Senator Coiner asked if there would be an objection to removing that responsibility from IDFG. Mr. Unsworth said there might be a conflict as IDFG still has a mission to protect wild animals in the state.

Rep. Trail asked if the position on the concept of fair chase might be in conflict with the Americans for Disabilities Act. Opportunities to hunt animals in enclosures enhances hunt opportunities for the disabled. Mr. Unsworth said IDFG personnel also work with the disabled, both in and outside fenced enclosures.

Rep. Bedke asked, from IDFG's point of view, what shortcomings there were in current statues and rules. Mr. Unsworth said ISDA feels that additional rules, or language, would help enforcement efforts. Rep. Bedke asked him to direct his answer from IDFG's perspective. Mr. Unsworth said IDFG's issues include disease and genetics. As long as contact between wild and domestic animals is a possibility, there will be some risk. Fair chase is a societal issue, and not for IDFG to decide. It would help to promote IDFG's mission to promote secure fencing, to site domestic facilities to minimize the potential for escape. Rep. Bedke asked if IDFG would bring forward suggestions as to what rules should be addressed. Mr. Unsworth said IDFG would work with ISDA, but didn't know if IDFG would bring legislation this session.

Senator McGee asked how much money was spent trying to eradicate Brucellosis by IDFG, the cattlemen, and their associations. Mr. Chatburn said he didn't know, but it would be in the hundreds of thousands of dollars.

Rep. Durst asked what potential there was for disease being spread as a result of domestic elk contact with wild elk. Mr. Unsworth said if elk can get inside an enclosure, they can also get out. Some possibilities for access include fence breaks, snow drifts, and situations where the terrain has been compromised. Disease could be spread from the outside in, or the inside out. Rep. Durst said he was picturing the situation where elk were contained while the fence was being built, and then were not able to get outside the enclosure. He asked, even if domestic cervidae were tested for diseases, commingling could result in contamination. Mr. Unsworth said yes.

Rep. JoAn Wood (35) said both Mr. Unsworth and Mr. Chatburn have said there was no disease in domestic cervidae. She asked if the disease problem wasn't "a bit of a reach." Mr. Unsworth said it's true there has been no disease problem recently. Mr. Chatburn said although the primary regulated diseases have not been found in domestic cervidae, they do have other diseases and parasites. It can't be said that they are disease-free. Rep. JoAn Wood (35) asked if the concern was that domestic animals are going to infect wild animals, or the reverse. Mr. Unsworth said IDFG has done a good job with regulated diseases, but is concerned about unregulated diseases; for instance, liver flukes are found in domestic herds, but not wild herds.

Senator Little said, regarding parasites, that migratory wild animals are not apt to get infected. The problem occurs inside small fenced areas. It is the same with cattle and sheep. He asked if that was IDFG's concern about parasites, and if it also applied to the liver fluke. Mr. Unsworth said captivity magnifies the parasite problem. Wild animals have dozens of parasites. IDFG's concern has to do with parasites that are not endemic to Idaho. Senator Little asked if there were good tests that aren't being used, or helpful rules that could be promulgated. Mr. Unsworth said he wasn't sure.

Senator Coiner said, ultimately, every domestic cervidae is tested for CWD, TB and Brucellosis. He asked what percentage of elk in Idaho were tested for "regular" diseases. Mr. Unsworth said a very small percentage—probably about 1%.

Chairman Gannon commented that "the hearings have begun." He

said the four committees met in joint session today in order to review the situation as it relates to escaped elk in Idaho. Considerable latitude has been allowed today to ask questions. He asked if anyone had questions relating to the particular situation on the farm where the elk recently escaped.

Rep. JoAn Wood (35) asked if sportsmen's money would have been spent on the incident had the Governor not issued the executive order. Mr. Unsworth said IDFG would have helped ISDA to resolve the problem in any event. The answer is, likely, yes.

It was asked if there was any way to tell how long the fence has been breached prior to notification. Chatburn said, from physical evidence and according to the neighbor, about a week.

Senator Langhorst asked if the cost of the recent escape at the Chief Joseph facility was included in the \$50,000 estimated cost from sportsmen's funds. Mr. Unsworth said it did include it.

It was asked if there was any indication that the neighbor contacted the owner of the domestic cervidae facility before contacting IDFG. Mr. Chatburn said the neighbor called ISDA, not IDFG, because the elk were in her hayfield eating uncut alfalfa. She did not give any indication that she contacted the facility owner.

**CLOSING
REMARKS:**

Chairman Gannon told the Committee that legislation brought forward this session will originally come through the Department of Agriculture. Hearings can be expected to begin toward the beginning for February. He asked any members bringing legislation to be realistic, and to bring it forward early.

Rep. Stevenson thanked the Chairman for including the House Resources & Conservation Committee participation.

Sen. Schroeder said the Committees had worked closely together to coordinate today's Joint Session. He reiterated the importance of bringing forward realistic legislation.

Chairman Gannon thanked the secretaries and pages for their assistance.

ADJOURN:

The meeting adjourned at 10:35 a.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 15, 2007

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

**ABSENT/
EXCUSED:** None.

GUESTS: Dr. Joan Cloonan, Board Chair, Idaho Department of Environmental Quality (IDEQ); Roy Eiguren, lawyer, lobbyist; Toni Hardesty, Director, IDEQ; Jack Lyman, Exec. Director, Idaho Mining Association; Norm Semanko, Vice Chairman, Environmental & Regulatory Affairs Committee, Idaho Council on Industry and the Environment (ICIE)

See sign-in sheets for other guests.

CALL TO ORDER: A quorum being present, Chairman Stevenson called the meeting to order at 1:32 p.m.

**Approve Minutes of
1/11/07**

Rep. Saylor made a motion to approve the minutes of January 11, 2007 as written. The motion passed by voice vote.

Chairman Stevenson welcomed the group making the presentation today for the Idaho Council on Industry and the Environment, and asked Committee members to hold questions until the end of the presentation.

**PRESENTATION:
ICIE
Rules, Guidance,
Stringency**

**Norm Semanko
ICIE**

Norm Semanko, Vice Chairman, Environmental & Regulatory Affairs Committee, introduced today's speakers: Toni Hardesty, IDEQ Director; Roy Eiguren, Lawyer, Lobbyist; Jack Lyman, Executive Director, Idaho Mining Assoc.; Dr. Joan Cloonan, Board Chair, IDEQ; John McCreedy, Chairman, ICIE and Becky Johnstone, President, ICIE were not able to be present today. Pat Barclay continues to serve as Executive Director, ICIE. Scott Nichols, directs regulatory affairs and John Barclay directs administration for ICIE.

Mr. Semanko said ICIE was formed as a membership group in 1989. The focus of the group is to promote and facilitate the use of facts and science in environmental decision-making. Among other educational workshops, it will host the workshop to be held in the Gold Room on February 6th. The topic this year is Biotech to Biofuels.

Mr. Semanko summarized today's agenda. Director Hardesty is here today for the purpose of answering any questions.

Roy Eiguren

Roy Eiguren, lawyer and lobbyist, outlined the key points of the

Lawyer, Lobbyist

Administrative Procedures Act (APA). (Exhibit 1 - slide show presentation)

SUMMARY: Mr. Eiguren's presentation clarified the difference between rules and guidance. Agency directors and Boards are responsible for the promulgation of administrative rules, which is an open process with public involvement. Rule-making is well defined under statute and APA guidelines. Rules have the force and effect of law. They interpret, implement, and prescribe policies and procedures of agencies. Because the definition in Idaho Statute is brief, the Idaho Supreme Court has delineated six characteristics of a rule. (See Exhibit 2 - An Overview on Administrative Rules, Policy and Stringency).

Guidance documents have several similarities to rules. Only rules, however, prescribe a legal standard or directive that the agency can enforce without further explanation or effort. Guidance documents are typically appropriate where there is no need, or desire, to have statutory direction.

MEAD v. ARNELL was cited as the definitive court case establishing the Constitutional separation of powers doctrine in Idaho. The issue in MEAD was whether the Legislature's use of statutory authority to amend, modify, or reject rules is constitutional under the doctrine of the separation of powers. In other states, it is not. MEAD establishes the Legislature's authority to review and reject rules, provided the Legislature states why a rule is rejected; and the reason must relate to improper conformance with Legislative intent. MEAD has never been challenged. In Mr. Eiguren's opinion, Idaho statute needs to be revisited.

**Jack Lyman
Idaho Mining
Assoc.**

Jack Lyman, Executive Director, Idaho Mining Association, addressed the stringency provision in Idaho environmental law. (See Exhibit 2)

SUMMARY: The stringency provision essentially requires that states' environmental regulators do not impose requirements exceeding those of the federal government without the direct involvement of the Legislature. The provision was first proposed in 1983 by HB 144, the Idaho Hazardous Waste Management Act. It was expanded in 1987 by SB1172. Additional environmental laws were enacted in the 1990s: H778, the Idaho Solid Waste Facilities Act; SB1236, the Idaho Clean Air Act; SB1284, the Idaho Clean Water Act; SB1516, the Idaho Land Remediation Act. In 2002, HB658 required DEQ to identify any part of a proposed rule broader in scope or more stringent than federal law or regulations (EPA), or proposing to regulate an activity not regulated by the federal government. The premise is that the federal government will generally be in a better position to establish the appropriate level of regulatory authority.

The stringency provision doesn't restrict the Legislature from other available actions. It does ensure that actions be consciously enacted through statute, not by an unelected bureaucracy.

**Dr. Joan Cloonan
IDEQ Board Chair**

Dr. Joan Cloonan, Board Chair, Idaho Department of Environmental Quality (IDEQ) and independent consultant, cited examples illustrating rules v. guidance documents. In general, guidance documents are written as interpretation of rules by agencies. They do not set legal standards. There are situations where guidance documents are

appropriate, and rules are not as, for instance, to establish operational standards. Rules can not consider all possible management procedures as legal requirements. It is better to negotiate guidance documents site-by-site.

Ms. Cloonan said Director Hardesty has developed an effective way to oversee the guidance process at DEQ. She has published a well-written explanatory memorandum. (See Exhibit 3) Ms. Cloonan said the DEQ guidance procedure could, perhaps, be made statutory in order to provide the regulatory community a standard.

QUESTIONS:

Rep. Raybould asked if the Legislature can bring a rule back for a second review. Mr. Eiguren said there is nothing, as a matter of law, precluding the Legislature from looking at a previously promulgated rule and addressing it in its current resolution. In that regard rules are no different from statutes. Rep. Raybould asked if the Legislature may promulgate legislation to override a rule, putting specific requirements in statute. Mr. Eiguren said yes. Legislative authority to enact statute is unfettered, except by Constitutional requirements.

Rep. Sayler asked how far the Legislature can go to modify rules. Mr. Eiguren said, by a literal interpretation of MEAD v. ARNELL, Legislative authority is Constitutionally limited to rejecting a rule, if it is found not to conform to Legislative intent. Mr. Lyman said the primary issue concerns separation of powers.

Rep. Wood (35) asked why it was required that a questionable rule be brought forward as a Concurrent Resolution of both houses. Mr. Eiguren said that process was addressed in MEAD v. ARNELL. It is appropriate for the entire Legislature to express that a rule doesn't conform with Legislative intent.

Chairman Stevenson asked how to answer constituents when they feel an agency is not following the rules. He also requested for clarification as to why ICIE was organized. Mr. Semanko said groups, for example the Idaho Water Users Association, can work with the relevant agency to address differences of opinion, or specific needs. ICIE was organized for the express purpose of bringing facts and science into the environmental decision-making process.

Chairman Stevenson asked how to appropriately answer recurring op-ed articles requesting that DEQ promulgate more stringent rules than EPA. This occurred last year relative to SEMBRA . Mr. Lyman said he understood peoples' frustration in some instances, but it is against the law. The proper way to address the situation is to bring legislation requesting a statutory change, subject to Gubernatorial approval. DEQ is prohibited through rule-making, but the Legislature has that Constitutional authority. Ms. Cloonan said stringency provisions vary, depending on the subject. The hazardous waste area is more clear than other areas. Particularly where it applies to air. Water, and other environmental areas, are broader. Agencies are required to note when a rule is more stringent than federal requirements. Sometimes that is very difficult. Requiring agencies notes gives the Legislature an opportunity to reject or accept the rule, and proceed statute-by-statute.

Chairman Stevenson commented that the Resources & Conservation Committee usually doesn't deal with environmental issues. He thanked the presenters for providing an overview for the Committee.

CLOSING: Mr. Semanko extended an invitation to Committee members to attend ICIE meetings. It was at a ICIE meeting that Sen. Schroeder suggested a presentation be made to the four Committees likely to handle rules of this nature.

**Toni Hardesty
IDEQ Director** Chairman Stevenson asked Director Hardesty to address the Committee. She thanked ICIE for the presentation. She cited her memo as a reference source to help understand the difference between rules and guidance documents. (See Exhibit 3) IDEQ rule-making is an open process; it includes an opportunity for industry groups and the public to comment.

Referring to Rep. Raybould's earlier question, Director Hardesty said any concern regarding IDEQ's rules can be handled by approaching the agency. If the concern is broader than just an industry, a rule change may be required. It is a balancing act to administer and promulgate rules.

ANNOUNCEMENTS: Chairman Stevenson informed the Committee of an up-coming visit by Michael Bogert and Robert Johnson, U.S. Department of the Interior. Mr. Bogert will introduce Mr. Johnson, who is the new Reclamation Commissioner, replacing John Keyes. They will be at the Statehouse January 23rd mid-afternoon. When more specific information is available, you will be informed.

ADJOURN: The meeting adjourned at 2:18 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION SUBCOMMITTEE
ADMINISTRATIVE RULES REVIEW

DATE: January 15, 2007

TIME: Monday

PLACE: Room 412

MEMBERS: Chairman Wood (35), Representatives Brackett, Wood (27), Shively

**ABSENT/
EXCUSED:** None

GUESTS: George Bacon, Acting Director, Idaho Department of Lands (IDL); Rep. Lenore Barrett, Dallas Burkhalter, Deputy Attorney General, Idaho Department of Fish & Game (IDFG); Nate Helm, Sportsmen for Fish and Wildlife-ID (SFW-ID), Sharon W. Kiefer, Legislative Liaison, IDFG; Jim Lyons, self

CALL TO ORDER: Chair Wood (35) called the meeting to order at 1:30 p.m.
The purpose of the Subcommittee is to review pending rules and fee rules for the Department of Lands and the Department of Fish & Game. Rules for the Outfitters and Guides Licensing Board will be addressed at a subsequent meeting.

**IDL Docket
20-0314-0601** Chair Wood (35) asked the Subcommittee to begin with Rule Docket 20-0314-0601. George Bacon, Acting Director, Idaho Department of Lands (IDL) stood for questions.
Chair Wood asked if IDL was presently operating under Docket 20-0314-0601. Director Bacon said yes, but there has been no occasion to enact it.
Chair Wood asked the purpose of the fee. Director Bacon said the fee only applied to grazing rules pertinent to state endowment land. Currently those are 10-year leases. At the end of the lease period, interested persons other than the current lessee may file a lease application. IDL inspects the lease area to determine the value of improvements owned by the lessee. If the lease is awarded to a new applicant, that person must pay the former lessee the value of the improvement. This is the way IDL has operated for years. Recently grazing lands have been more competitive, resulting in more people going through the application process. Questions sometimes arise as to the Department's valuation of improvements. There is nothing in statute or rule to establish the improvement valuation procedure. Some people coming before land boards to settle value disputes brought frivolous claims. A few years ago, Director Winston Wiggins formed a range working committee. (See Exhibit 1)
Other states raise more revenue through grazing. In Idaho, costs about equal income, largely due to the process. This rule represents IDL's first effort to correct process by establishing a procedure to establish value and resolve disputes of value. Over the next few years, there will be more IDL rule changes to streamline rules and fill in gaps.

Rep. Brackett asked what happened to fees when collected. Director Bacon said the cost of hiring an appraiser was at least \$2,500. The fee is lost to pay the appraiser. Rep. Brackett asked if the fee was non-refundable. Director Bacon said yes. Rep. Brackett asked for clarification when the decision did not favor IDL. Director Bacon said the rule isn't clear, but in that instance it would be refunded. Chair Wood said a new rule would be needed to add that language, which could be done next session. Director Bacon agreed. He said there had been discussion about that eventuality in preparation for this meeting. There is no corporate memory of intent.

Rep. Brackett asked if an objector could be either the current lessee or the conflictor. Director Bacon said yes.

Chair Wood discussed methods to word a motion requesting IDL to include an explanatory revision to their rules next session. Director Bacon suggested a letter from the Committee requesting that IDL follow an administrative procedure until a change went into effect. If IDL prevails, there would be no refund.

Rep. Shivley asked if there were objections that did not concern grazing—for example, houses on leased land. Director Bacon said rules are specific to grazing. There are no other allowed uses. Any improvement must be approved by IDL. In the past, there have been problems caused by illegal development. Illegal improvements aren't considered in the valuation.

**MOTION/VOTE:
IDL Docket
20-0314-0601**

Motion was made by Rep. Brackett, second by Rep. Fred Wood (27), to accept IDL Docket 20-0314-0601 as written, without recommending a Committee letter.

The motion passed by unanimous voice vote.

**IDFG Docket
13-0104-0601**

Dallas Burkhalter, Deputy Attorney General assigned to the Idaho Department of Fish & Game (IDFG), and Sharon W. Kiefer, Legislative Liaison, IDFG, stood for questions.

Page 8 (505.02): Chair Wood asked if this controlled hunt area allocation of tags referred only to zones licensed for outfitters. Mr. Burkhalter said it applies only where a controlled hunt zone or tag restriction affects both public hunters and outfitters.

Chair Wood asked for clarification that all hunts would not be affected; and if the intent was to limit the harvest of animals or species. Mr. Burkhalter said all hunts are not affected; and the intent is to limit the harvest.

Chair Wood asked if limits would be imposed proportionally on the hunting public and outfitters. Mr. Burkhalter said where there is a reduction it will be proportionate.

Page 9 (505.02.a): Chair Wood noted an error in English. **Mr. Burkhalter will ask the Administrative Rules Office to make a typographic correction.**

Page 9 (505.02.1): Chair Wood asked why the number of available tags within a controlled hunt area was raised from 3% to 6%. Mr. Burkhalter said the previous language was written seven years ago. It hasn't often been used. The Commission found the old language to be too restrictive. The increase is not mandatory, but at the Commission's discretion. Any

adjustment will include public input and IDL's recommendation.

Rep. Brackett asked for an explanation of the process used to arrive at 6%. Mr. Burkhalter said Brad Compton would need to come before the Subcommittee for a detailed explanation. He understands that it was negotiated between IDL staff, the Wildlife Bureau, Jim Unsworth, representatives from the Outfitters & Guides Association, and the Outfitters & Guides Licensing Board.

Chair Wood asked if a public hearing had been held after the decision was made. Mr. Burkhalter said a public hearing was held at a Commission meeting. **Ms. Kiefer offered to provide the Subcommittee with minutes of that meeting.**

Rep. Barrett asked if there had been any public input at that meeting. Ms. Kiefer said she believed there had been. She will provide the record to the Subcommittee.

Rep. Fred Wood provided a historical perspective of the original Commission meeting. He asked if the groups involved at that time had been included in the negotiation of this new rule. Mr. Burkhalter said it was his recollection that only the Outfitters & Guides Association, the Association's Licensing Board, and staff from the Wildlife Bureau had been included. Rep. Fred Wood commented, in that case, that the public had been excluded. Though there was a public hearing, it may not have been well advertised. Many people will not know this change has been made. His concerns are: 1) that outfitters and guides may now spill over into areas where they have historically had no opportunity; and 2) that 20 years down the road the Commission would feel a need to deliver 50 tags - not 1% or 2%.

Rep. Fred Wood asked why the language on Page 8 (505.02) strikes the language "existing prior to 1998." Mr. Burkhalter said it was felt to be extraneous. Rep. Fred Wood asked if it was Mr. Burkhalter's legal opinion that striking the language would still provide adequate legal protection that outfitters and guides won't spill into areas they have not been in the past. Mr. Burkhalter said, based on references in other sections referring to historic use and the calculation also based on historic use, those controlled hunt areas would have to have been historically licensed to an outfitter in order to qualify for an allocation. "My answer would be yes."

Rep. Fred Wood asked that the minutes be made to reflect the Subcommittee's concern, which was the original Commission's concern, that outfitters not be able to go into areas where there has been no historic use.

Rep. Fred Wood said he appreciated why the number of allocated tags went below 50. The initial rule-making process, however, included hunters. He takes issue with an increase to 6% because the historical memory is gone from the Commission. The process now is not a true negotiated rule-making process because there are no hunters and, in addition, the increase has been elevated to 6%. Rep. Fred Wood said IDFG should expect that the Resources & Conservation Committee may take issue with the change. Ms. Kiefer noted that the rule is relatively new. **She asked for an opportunity to provide the Subcommittee with records that may demonstrate whether the Commission utilized their discretion.** Rep. Shivley said yes, it would be appreciated.

Chair Wood asked the Subcommittee to continue with IDFG Rules, and to defer a motion on IDFG Docket 13-0104-0601 for the time

being.

Page 13 (900. Children With Special Needs Big Game Permitting): Chair Wood asked for clarification. Ms. Kiefer said IDFG was directed to make the amendment to provide a special license requirement. It is a direct response to SB1391. Chair Wood asked how many people had taken advantage of the special license requirement. Ms. Kiefer said none to-date. The information is now posted on the web. Chair Wood asked if participants were required to take a hunter education course. Ms. Kiefer said no, but they must be accompanied by an adult with an Idaho license. She produced the text of SB1391 for perusal.

**IDFG Docket
13-0105-0601**

There were no questions on this docket.

**IDFG Docket
13-0108-0601**

Page 20-21: There was discussion having to do with omissions in the text. Mr. Burkhalter explained the process which includes several opportunities for language errors. **The rule in question includes an erroneous reference to a chapter regarding the adjustment from 3% to 6%. He said it would be corrected in future rule-making.**

Page 34-35: Chair Wood asked if changes in text represented boundary changes. Mr. Burkhalter and Mr. Kiefer explained that IDFG sent a letter to Rep. John A. Stevenson, Chair, House Resources Committee in September that summarized IDFG rules. Every year seasons are set by rule-making and are no longer relevant by the time they come before the Committee. This process might better be accomplished by proclamation. Currently, the information is printed every year in the hunting brochure. It is questionable that physical boundaries descriptions, that are printed every year, need to be brought to the Legislature every session. Chair Wood said she was aware of the referenced letter. Mr. Burkhalter noted that legal descriptions for big game management units are not included in department rules unless they have been amended this year. Chair Wood agreed that redundancy was not necessary.

The Subcommittee agreed, and it was requested the minutes reflect that it be recommended to the House Resources & Conservation Committee that, in the future, controlled hunt boundaries need not be printed in IDFG Administrative Rules for Committee review.

**IDFG Docket
13-0109-0601**

Page 47: Chair Wood asked if the pending rule was new. Ms. Kiefer said it was new, and was in effect for the pheasant season which closed 12/31/06. It applied only where pheasants are stocked, and not in all wildlife and management areas. Chair Wood commented it was an on-going safety issue in a limited application area. Mr. Burkhalter clarified that the rule applied to wildlife management areas owned by IDFG where pheasants are stocked.

**IDFG Docket
13-0111-0601**

Page 52: Ms. Kiefer clarified language changes. Essentially, separate rule definitions are no longer needed to explain "catch and release" and "closed to harvest" because of the similarity between the two.

Chair Wood said there are frequent complaints about the number of outfitters in boats on streams where the total number of boats are limited. The issue was deferred for later review in the Outfitter & Guides Licensing Board Rules.

MOTION/VOTE:
IDFG Dockets
13-0105-0601
13-0108-0601
13-0109-0601
13-0111-0601

Motion was made by Rep. Shively, second by Rep. Fred Wood (27) to recommend IDFG Dockets 13-0105-0601, 13-0108-0601, 13-0109-0601 and 13-0111-0601 to the full Committee.

The motion passed by unanimous voice vote.

MOTION/VOTE:
IDFG Docket
13-0104-0601

Discussion: Rep. Fred Wood (27) questioned that there was enough time for adequate public review to act on this docket this Legislative session. Mr. Burkhalter agreed there might not be enough time. Ms. Kiefer asked for an opportunity to bring IDFG records for Subcommittee review before making a decision. Chair Wood agreed to hold the docket over to the next Subcommittee meeting.

A motion was made by Rep. Shively, second by Rep. Brackett, to hold action on IDFG Docket 13-0104-0601 until the next meeting of the Subcommittee, pending further review by IDFG and the IDFG Commission.

The motion passed by unanimous voice vote.

Outfitters & Guides
Licensing Board
Dockets
25-0101-0601
25-0101-0602

Chair Wood said the Outfitters & Guides Licensing Board Dockets would be reviewed at the next Subcommittee meeting.

ADJOURN:

The Subcommittee adjourned at 3:30 p.m.

Representative JoAn Wood
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 17, 2007

TIME: Wednesday

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

**ABSENT/
EXCUSED:** Rep. Bedke

GUESTS: George Bacon, Acting Director, Idaho Department of Lands (IDL); John Lawson, Idaho Department of Environmental Quality (IDEQ); Kathy Opp, Division of Administration, IDL; Jane Wittmeyer, Lobbyist, Intermountain Forest Association (IFA)

See sign-in sheets for other guests.

CALL TO ORDER: A quorum being present, Chairman Stevenson called the meeting to order at 1:32 p.m.

**Approve Minutes of
January 15, 2007** Rep. Saylor made a motion to approve the minutes of January 15, 2007 as written. The motion passed by voice vote.

**REPORT:
The Use of Cyanide
in Mining** John Lawson, Idaho Department of Environmental Quality (IDEQ), presented a report on the use of cyanide in mining. Jack Lyman, Executive Director, Idaho Mining Association (not here today due to illness), requested that the report be made to the Committee. Mr. Lawson said his mission was to provide information, and not to convince anyone to any way of thinking. A power point presentation entitled "The Use of Cyanide in Mining" was presented. (See Exhibit 1)

SUMMARY: Cyanide (CN) is a molecule of nitrogen and carbon, that is a biodegradable compound occurring naturally in the world—for example, our bodies and over 1000 types of plants. It was first made in 1872. Today it is used in many processes including manufacturing synthetics and plastics, metal plating, fertilizers, dye, printing, food, and mining. Mining is one of the smaller uses.

Cyanide mining is actually a misnomer. It is used as a leaching agent to remove metals from ore—primarily gold and silver in Idaho. In leach solution, it is effective at extracting metal from ore and putting it in solution. The solution is quite stable. Cyanide has to be "pushed" to get it to extract gold from ore. Once the metal is extracted, the solution can be reused. There is an economic incentive for the industry to reuse the solution.

The leaching process, itself, is not unlike the carbon filters we use in our homes to treat tap water. It is versatile and can be used in vats, can be kept in solution all the time, and can be used in winter. A sophisticated

refinery is not necessary. The concentration of CN in the solution is typically less than 100 ppm, or around 0.01%. To keep CN from forming cyanide gas, the leaching solution used must be kept at a pH of at least 10.5, but preferably 12.5 (alkaline or basic). The solution is easily neutralized with hydrogen peroxide.

Mr. Lawson explained the heap leach process.

Cyanide is dangerous primarily because it inhibits the ability of organisms that respire to utilize oxygen. It binds quickly with iron and with enzymes that help respiration. As it binds, the more you respire, the more quickly it binds—resulting in asphyxiation. Free cyanide doesn't have anything bound with it. It is the most lethal. The mean lethal dose of unbound, or free, CN is 50-200 mg, causing death within 60 minutes. Cyanide can enter the body by inhalation, skin absorption or ingestion. Up to 5 mg per day is not lethal. Cyanide breaks down in the liver and has no residual effects. CN is most lethal to fish, birds and small mammals.

Spills and environmental accidents are quickly diluted. Small animals, fish and birds may be affected close to the site. Macrophytes or plant life in streams aren't affected by CN.

80% of CN used in the world is not used in mining. CN is regularly transported over the usual systems of transportation. Mr. Lawson knows of no instances where transportation spills have occurred in Idaho.

Mr. Lawson gave an overview of recent legislation that upgrades engineering requirements, improves closure requirements in combination with IDEQ, increases bonding, and provides for a third party review process.

Mr. Lawson asked Committee members to call him with any questions they may have in the future.

QUESTIONS: Rep. Chavez said she had concerns about private mining claims being worked along Newsome Creek, out of Elk City. She asked if a permit was needed for a person to purchase cyanide for use to work a private claim. Mr. Lawson said a private claim was likely to be a placer mine, where cyanide would not be used. Rep. Chavez repeated the question. Mr. Lawson said mining and processing are two different things. To mine and put together a permit and a facility to extract the ore requires a significant operation. If that is the case, then, yes. However, no one is going to sell ten pounds of cyanide.

Rep. Chavez said her concern is that Newsome Creek is a natal stream for Chinook salmon. There are mining claims all along that stream. Her concern is that cyanide bonds to other metals and breaks down in the water and soil. She asked if the mining claims and the materials being used were monitored. Mr. Lawson explained the legal procedure. Many steps are required: 1) A mining operation is approved by IDL before any processing begins; and 2) it is evaluated according to the type of operation, where it is located, if federal, state or private land is affected, etc. Then a mining permit is required. If a body of ore requires cyanide processing, IDEQ is involved through a permit process.

Chairman Stevenson suggested that Committee members meet privately with Mr. Lawson or DEQ where they have specific concerns.

Rep. King expressed a concern about the very alkaline solution used in processing. She asked if it was lye. Mr. Lawson said yes, typically sodium

hydroxide is used to elevate the Ph of the solution used. Rep. King asked if problems occurred where birds landed in ponds. Mr. Lawson said occasionally. Typically, the practice is to float balls on the pond—not unlike the ball enclosures children play in at a McDonald’s restaurant. The floating balls cover the pond; birds don’t see the water, and don’t land. It is an inexpensive method that works well, and has been used in the Beartrack Mine out of Salmon and in Nevada. It is correct that the Ph level breaks down oils in birds, especially in ducks.

Rep. King asked if there have been problems where ponds have been breached, where the alkaline solution washed downstream. Mr. Lawson said it has happened. There may be some acute impact directly off site, but the solution is rapidly diluted.

Rep. JoAn Wood (35) asked if cyanide was used in cobalt mining. Mr. Lawson said no.

Rep. Shively commented on a pond near an old gold dredging operation near Warren, where there are fish. He said people living in the area said the fish were safe to eat. He asked if that was the case. Mr. Lawson said the pond was a result of mining, not processing. He said the fish were probably good to eat, but there could be mercury which does accumulate in fish.

Rep. JoAn Wood (35) asked about the process to reclaim CN in leach heaps. Mr. Lawson said it is reclaimed during the operation and put back on top of the leach pile. At the end of the operation, peroxide can be added to break it down quickly. There are still heavy metal issues at the end of the operation, as CN also leaches those from the ore. Heavy metals are monitored quite well in Idaho. Recovery systems are installed in the ponds, leach pads and floors under the refinery to keep them from going outside. Typically, at the end of the operation, they are reclaimed.

Rep. King expressed a concern about cadmium and lead left in the soil. Mr. Lawson said the solution does pick up cadmium, zink, nickle and lead when the solution leaches through the ore. Some stays in solution, and some is removed through a carbon filter. Legislation last session addressed the issue quite well. An operation can’t just walk away leaving a problem.

Chairman Stevenson thanked Mr. Lawson for the presentation before the Committee.

**REPORT:
Idaho Department
of Lands Briefing**

George Bacon, Acting Director, Idaho Department of Lands (IDL), presented the annual department briefing. A summary document was distributed, providing an historical overview, addressing IDL’s statutory authority and purpose, administrative schema, and an overview of resources coming under the purview of the department. Director Bacon said IDL, more than any other agency, operates as a profit-driven business. (See Exhibit 2)

QUESTIONS: Rep. Saylor asked what outstanding, contentious issues now confronted IDL. Director Bacon said the most contentious issues concerned the department’s regulatory duties, notably those relating to the lake protection acts and navigable waters involving property values and litoral rights. Personnel are “stretched to the max” to address these issues, not pursuant to new requests but due to new owners requesting reconfigurations of old improvements.

IDL, like other agencies, also anticipates massive retirements as baby boomers reach retirement age. IDL is planning now, and positioning the department to be more effective.

RS16460

George Bacon, Acting Director, Idaho Department of Lands (IDL), presented RS16460 that amends Idaho Code Sections 38-1203, 38-808, 38-809, 38-1202, 38-1207, and 38-1220A, changes reflecting name changes from "state" to "Idaho" board of scaling practices, and amending the name of the industry association to the current name which has gone through several revisions. The change eliminates confusion. The associate requirement is changed to allow each association some flexibility in submitting nominees for appointment when they may not have a member residing in that area of the state. (See Exhibit 3)

**MOTION/VOTE:
RS16460**

Rep. Raybould made a motion to introduce RS16460.

DISCUSSION: Rep. Vander Woude asked if members must reside in Idaho, or could be from other states. Director Bacon said any out-of-state members are members of the association. He deferred the question to Jane Wittmeyer, Lobbyist, Intermountain Forest Association (IFA), who said IFA's requirement was to be an Idaho resident, and to be active in scaling. No one from out-of-state would be put forward for these positions.

Rep. Chavez asked for clarification on the grammatical convention used in the RS, where names of associations or groups are not capitalized. Rep. Stevenson said he hesitated to question Legislative Services (LSO), but asked the secretary to query LSO. Rep. Raybould said a change of that nature could be made without going to general orders.

The motion passed by voice vote.

RS16461

George Bacon, Acting Director, Idaho Department of Lands (IDL), presented RS16461 that amends Idaho Code Section 58-127 relating to how certain fees are credited. Currently they accrue to the general account. It is appropriate for them to accrue an earning reserve account attributed to the appropriate endowment. The language should have been modified in FY2000 when endowment reform legislation was passed. Since 2000, from \$50,000 to \$100,000 in fee income has been credited to the general account. On an annual basis, from \$10,000 to \$40,000 is credited, depending on activity. Director Bacon acknowledged Kathy Opp, Division of Administration, IDL, who is present to answer any questions. (See Exhibit 4)

**MOTION/VOTE:
RS16461**

Rep. Eskridge made a motion to introduce RS16461.

DISCUSSION: Rep. Bell asked if the change was retroactive. Director Bacon said it is effective from this point forward and is not retroactive.

The motion passed by voice vote.

RS16464

George Bacon, Acting Director, Idaho Department of Lands (IDL), presented RS16464 that proposes to amend Idaho Code Section 58-304 Idaho Code to eliminate the restriction requiring the rental for grazing leases be due and payable by certain dates. It puts most leases on the same track for billing, reduces spikes in the workload, makes it easier to meet deadline dates specified in statute, eliminates late payments attributing to court cases and conflicted lease agreements, and gives

more flexibility to land commissioners. The amendment has been reviewed by people in the livestock industry. There is no corporate memory for the language as written. No budgetary impact is anticipated. (See Exhibit 5)

QUESTIONS: None.

**MOTION/VOTE:
RS16464**

Rep. JoAn Wood (35) made a motion to introduce RS16464.

DISCUSSION: Rep. Vander Woude asked if there was a time frame to expect payment, or if it was open-ended. Perhaps the original intent was to ensure payment would be forthcoming. Mr. Bacon said the change would not impact billing procedure, but give flexibility to IDL. If a lease is issued in June, there would be no need to issue a temporary six-month permit before issuing the ten-year lease.

The motion passed by voice vote.

RS16465

George Bacon, Acting Director, Idaho Department of Lands (IDL), presented RS16465 that amends Idaho Code Section 58-415. Currently Idaho code addresses the sale of timber, but does not incorporate all forest products. This amendment clarifies that all forest products sold, not just timber, should be measured. (See Exhibit 6)

QUESTIONS: Rep. Chavez asked what other products might be included. Director Bacon said there are many other forest products including Christmas trees sold by permit to individuals and for commercial production, pine cones, boughs for wreaths, bear grass for basket weaving. There are also wood-related pulp products derived from branches and slash. RS16465 encompasses everything harvested from the forest.

**MOTION/VOTE:
RS16465**

Rep. Saylor made a motion to introduce RS16465.

The motion passed by voice vote.

ANNOUNCEMENTS:

Chairman Stevenson said there would be no meeting Friday, January 19th.

Cal Groen has been selected to be the new Director of the Idaho Department of Fish and Game. He was selected from five outstanding candidates, and comes to the position with seventeen years experience in the department. (See Exhibit 7)

ADJOURN:

The meeting adjourned at 2:33 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 23, 2007

TIME: Tuesday

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

**ABSENT/
EXCUSED:** Reps. Barrett, Bedke, Wood (35)

GUESTS: Devin Fielding, Student, University of Idaho (UofI); Orville Green, Administrator, Waste Management, Idaho Department of Environmental Quality; Amy Lientz, Vice President & Director, Communications & Governmental Affairs, CH2M-WG Idaho; Brian Whitlock, Idaho National Laboratory
See sign-in sheet for other guests.

CALL TO ORDER: Chairman Stevenson called the meeting to order at 2:02 p.m.
The secretary took a silent roll call.

**Approve Minutes
January 11, 2007
Joint Session** Motion was made by Rep. Pence to approve the minutes of January 11, 2007 as written, except to correct the spelling of Newsome Creek in two instances on page 2. The motion passed by voice vote.

**Approve Minutes
January 17, 2007** Motion was made by Rep. Pence to approve the minutes of January 17, 2007 as written. The motion passed by voice vote.

**PRESENTATION:
CWI Idaho National
Laboratory** Amy Lientz, Vice President & Director, Communications & Governmental Affairs, CH2M-WG Idaho, presented a report on the status of the CWI Idaho National Laboratory cleanup project. (See Exhibit 1) She distributed her business card to Committee members, telling them she was available to them for any questions they may have in the future. (See Exhibit 2)

Amy Lientz

SUMMARY: The Idaho National Laboratory (INL) site is charged to undertake research and mission development; risk reduction, cleanup, and protection of the Snake River Plain Aquifer (SRPA); and retrieval, packaging and transport of stored transuranic waste.

There are three major contractors at INL: CH2MHILL, Washington Group International, and Premier Technology, Inc.

CH2MHILL is the contractor for the Idaho Cleanup Project, charged in risk reduction and protection of the aquifer. The project is centered around five facility areas.

- Idaho Nuclear Technology and Engineering Center
- Radioactive Waste Management Complex
- Test Area North

- Reactor Technology Complex
- Power Burst Facility

Ms. Lientz said there is a misconception that buried waste is not being retrieved. To-date, 3,555 cubic yards of material has been excavated from the subsurface disposal area. The environmental investigation of buried waste continues, as is required by the Federal Facility Agreement and Consent Order.

INL engages in outreach programs for the public, media, special groups and events. Translation is being done for the Hispanic population as requested.

Decontamination, decommissioning and demolition work continues—to-date, including: 4 industrial buildings, 10 radiological buildings, 2 nuclear facilities, and 40 other buildings.

Plans for fiscal year 2007 include:

- Finalizing plans for the shipment of unirradiated light water breeder reactor fuel to the Nevada test site.
- Continuing to transport spent fuel.
- Continue grouting activities at the Tank Farm.
- Procure the final permit from DEQ to construct a steam reformer unit at the Tank Farm.
- Continue exhumation of targeted buried waste.
- Continue environmental investigation.
- Continue shipments offsite.
- Complete the internal dismantlement, and begin demolition of the first reactor vessel and the associated building.
- Complete the demolition of 18 facilities, reactor buildings and vessels.
- Begin demotion of the TAN Hot Shop facility.

QUESTIONS: Rep. Chavez asked if there was a prepared packet for use in math/science classes. Mr. Lientz said there was not; but presentations are frequently made in schools. Rep. Chavez said she would be interested in receiving such a packet, especially for use in the northern part of the state where people may not be as well informed about INL. Mr. Lientz said it was a great idea. There will be more public relations targeted toward northern Idaho.

Chairman Stevenson asked if Legislators could be included in INL tours; and if tours occurred on a regular basis. Ms. Lientz said Legislators are invited to participate in INL's organized tours, or could be accommodated at any convenient time.

Chairman Stevenson thanked Ms. Lientz and CH2M-WG Idaho for today's presentation.

ANNOUNCEMENTS: Chairman Stevenson recognized visitors from the University of Idaho. Devin Fielding introduced his group.

Chairman Stevenson also welcomed Brian Whitlock, Idaho National Laboratory.

Two handouts are included in Committee folders: A news release announcing the appointment of Cal Groen as Director of the Idaho Department of Fish and Game; and a chart projecting FY2006 revenue loss without the Craig-Wyden legislation. Chairman Stevenson asked Committee members to review the chart to note projected impacts to Idaho counties. (See Exhibits 3 and 4)

There will be an informal meeting at 3:00 p.m. today, Room 412. Michael Bogert, Counselor to the Interior Secretary, will introduce Robert Johnson. Mr. Johnson is the new Bureau of Reclamation Commissioner.

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

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 25, 2007

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

**ABSENT/
EXCUSED:** Reps. Barrett, Bedke, Bell, Eskridge

GUESTS: John Barclay, Consultant, Idaho Council on Industry and the Environment (ICIE); Stan Boyd, Legislative Advisor, Ridgeline Energy; Joe Holmes, Commissioner, Adams county; Pete Johnston, Adams County Biomass Facilitator; Kathy Opp, Division Administrator, Idaho Department of Lands (IDL); Mike Paradis, Commissioner, Adams County; Matthew J. Yost, Director, Energy Development of Idaho
See sign-in sheet for other guests.

CALL TO ORDER: A quorum being present, Chairman Stevenson called the meeting to order at 1:37 p.m.

**Joint Session
Minutes of
January 12, 2007** A motion was made by Rep. Pence to approve the Joint Session minutes of January 12th as written. The motion passed by voice vote.

**Minutes of
January 23, 2007** A motion was made by Rep. Pence to approve the minutes of January 23rd as written. The motion passed by voice vote.

PRESENTATION: Pete Johnston, Adams County Biomass Facilitator, distributed "Adams County Woody Utilization Proposal." (See Exhibit 1)
Mr. Johnston introduced guests here today representing Adams County.
**Energizing the
Biomass
Utilization
Industry in SW
Idaho**
Pete Johnston
SUMMARY: Adams County is proposing a multi-county partnership to facilitate the development of value-added woody biomass industries in southwest Idaho. He explained what constitutes woody biomass, and presented a synopsis of the proposal. Utilizing woody biomass to develop value-added industries would benefit forests, create jobs, and facilitate the insertion of "green" products into the marketplace.
These industries are particularly suitable to rural communities because they are close to resources. Schools, in particular, would benefit economically from heat and cooling efficiencies.
Another reason to promote biomass industries now is that the Department of Environmental Quality is currently working with neighboring states to promote new regulations for smoke management. It would be appropriate for Idaho to promote incentives and take action before the Forest Service and/or other national agencies institute

programs.

There is precedent to develop biomass industries: The Montana Community Development Corp. in Missoula, MT has been successful in helping to establish woody biomass industries in western Montana.

Mr. Johnston asked that Legislators consider incentives for biomass industries in Idaho.

QUESTIONS: Rep. Chavez asked if any thought had been given to recycling the metal pieces of the spools, old choke cables, and other metal in the waste. Mr. Johnston said that could be done, but his emphasis is the woody biomass.

Rep. King asked if there were recommendations for specific incentives. Mr. Johnston said yes. Other states are providing low- or no-interest loans to schools putting in woody biomass burners. Encouragement could be given to local communities to promote local bonds. The Legislature could provide tax incentives. There are urban economic incentives, as well as rural, for biomass industries. A tremendous volume of material goes into land fills, for instance.

Rep. Saylor said Kellogg was doing something similar to what is being proposed. He asked if providing incentives to schools wouldn't be building in a competitive disadvantage to future biomass businesses. Mr. Johnston said no, because the volume represented by school use is minuscule compared to the potential market.

Rep. Vander Woude asked if the savings, stated to be 75%, wasn't incentive enough. Mr. Johnston said schools look at initial costs. Often the long-term savings is not the most important initial consideration.

Rep. Wood (35) said the Salmon, ID school district used a sawdust burner for a long time. It had to be replaced when the sawmill closed. Mr. Johnston said he was aware of the unique situation in Salmon. A mill, however, isn't the only source of woody biomass. There is no mill in Council,

for instance. Their materials come from Western Wood Products as waste from the Tornado project.

Rep. Wood (35) asked if the Forest Service was considering hiring a facilitator. Mr. Johnston said the forest service has provided guidance and assistance to him, but would not have funds for a facilitator under current budget restraints.

Chairman Stevenson thanked Mr. Johnston for his presentation.

RS16719:

Stan Boyd, Legislative Advisor, Ridgeline Energy, presented RS16719, legislation proposing to amend the definition of "commercial purposes" in section 58-307 Idaho Code. "Commercial purposes" shall be any commercial or industrial enterprise as defined by the state land board, but will not change certain leases for commercial purposes as they relate to state lands. RS16719 is brought with the recommendation of Idaho Department of Lands (IDL).

Mr. Boyd explained the economic disincentive for wind energy to be developed on state lands because it is not clear that the use would be considered an industrial enterprise. From \$2-3 million dollars might be invested in one tower, which is not a reasonable investment to consider on lands leased for ten years. The legislation proposes that, at the end

of commercial lease, the lessee can exercise a preference right so long as the preference right is in writing. Commercial leases of state lands shall not be subject to the conflict auction provisions in Idaho code. The board, at its discretion, may call for proposals and sealed bids and may evaluate and award the lease based economic and performance capability criteria.

Kathy Opp, Division Administrator, IDL, is here today to answer questions.

QUESTIONS: Rep. Pence asked if geothermal leases would fall under the definition of "commercial purposes." Mr. Boyd deferred the question to Ms. Opp, who said it is not being proposed to change the leasing arrangement for geothermal leases. Those leases now fall under the minerals statutes.

Rep. Brackett asked if leases of the proposed type can overlay agricultural or grazing leases. Mr. Boyd said yes, as long as IDL deems them to be compatible. He gave examples.

Rep. Andrus asked if the legislation was compatible with IDL's interest in land management. Mr. Boyd said he worked closely with IDL, and the legislation has their support and approval.

**MOTION/VOTE:
RS16719**

A motion was made by Rep. Raybould to recommend RS16719 as written.

DISCUSSION: Rep. Chavez asked for clarification regarding the comparative definitions of the words "industrial" and "commercial." Mr. Boyd said the word "industrial" is used in the existing language. The term "commercial use" is being added for clarification. For example, a wind energy tower is certainly a commercial use, but might not be seen as an industrial use.

The motion passed by voice vote.

ADJOURN:

The meeting adjourned at 2:06 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION SUBCOMMITTEE
ADMINISTRATIVE RULES REVIEW

DATE: January 25, 2007

TIME: Thursday

PLACE: Room 412

MEMBERS: Chairman Wood (35), Representatives Brackett, Wood (27), Shively

**ABSENT/
EXCUSED:** None.

GUESTS: Dallas Burkhalter, Deputy Attorney General, Idaho Department of Fish & Game (IDFG); Marcus Gibbs, Idaho Outfitters & Guides Licensing Board (IOGLB); Jake Howard, Director, IOGLB; Sharon W. Kiefer, Legislative Liaison, IDFG; Grant Simonds, Director, Idaho Outfitters & Guides Association (IOGA); Dennis Stevenson, Office of Administrative Rules
See sign-in sheet for other guests.

CALL TO ORDER: Chair Wood (35) called the meeting to order at 2:16 p.m.

**Outfitters & Guides
Licensing Board:
Docket
25-0101-0601** Jake Howard, Director, Idaho Outfitters & Guides Licensing Board (IOGLB), introduced Marcus Gibbs now on the IOGLB, and formerly a Commissioner with IDFG. Chair Wood (35) welcomed Mr. Gibbs.
Mr. Howard said changes to Docket 25-0101-0601 are not substantive but clarify boundaries on the St. Joe River.
QUESTIONS: Rep. Wood (35) asked for clarification. Mr. Howard said two specific areas are addressed in the proposed rule changes: the first area has been historically operated as an outfitter area, but has not been included in rule; the second has never been included in rule, but there has been ambiguity. Outfitters have been using the area for floating and fishing.
Page 63 Rep. Shively, regarding Red Ives, asked if the reference was to the headwaters where there wasn't enough water to float. Mr. Howard said yes. The walk and wade operation at the St. Joe Lodge is being put into rule. This is a catch and release area.
DISCUSSION: Committee members discussed the proposed motion.

MOTION/VOTE: A motion was made by Rep. Shively to recommend IOGLB Docket 25-0101-0601 to the Resources & Conservation Committee as written.
**IOGLB
Docket
25-0101-0601** The motion passed by voice vote.

**Outfitters & Guides
Licensing Board:
Docket
25-0101-0602** Jake Howard, Director, Idaho Outfitters & Guides Licensing Board (IOGLB), said Docket 25-0101-0602 provides for changes to meeting times. Board members have had difficulty meeting at times now specified in rule. It is being proposed to follow Idaho Public Meeting Law.

On an unrelated issue, Rep. Wood (35) asked what IOGLB intended to do relative to locations where the number of outfitter boats on rivers have created problems. Mr. Howard said he will discuss the issue with the Board and make them aware of Rep. Wood's (35) concern. Marcus Gibbs, IOGLB and Grant Simonds, IOGA, are aware of the issue. The Board will be asked to hold a meeting in the Idaho Falls area, where it will be included on the agenda. Rep. Wood (35) said she would make her constituents aware of the up-coming meeting.

DISCUSSION: Rep. Wood asked Mr. Howard to explain Idaho Public Meeting procedures for the new Legislators.

MOTION/VOTE:
IOGLB
Docket
25-0101-0602

A motion was made by Rep. Brackett to recommend IOGLB Docket 25-0101-0602 to the Resources & Conservation Committee as written.

The motion passed by voice vote.

IDFG:
Docket
13-0104-0601

Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG), told the Subcommittee that the Senate mistakenly rejected Docket 13-0104-0601 in its entirety, rather than rejecting the subsection in question. Rep. Wood (35) said the Subcommittee's concern is to certain that ambiguous language does not allow outfitters into areas where they have not historically operated. Ms. Kiefer said the department's preference would be to reject the subsection, not the entire docket.

DISCUSSION: Rep. Wood (27) said the allocation process, formulated by the IDFG Commission when it was originally written, disallowed outfitters where there had not been historic use; and expressed a concern for the "creep factor." He said Dallas Burkhalter, Deputy Attorney General, IDFG, has alleviated his concerns that the language in Docket 13-0104-0601 might allow outfitters where they have not had historical use: Mr. Burkhalter's legal opinion is that the changes will not open new areas to outfitters.

Rep. Wood (35) told Subcommittee members that the Senate has asked her to write the Concurrent Resolution for the House. The Senate will then sign off. Ms. Kiefer thanked her for her help. Rep. Wood (35) asked if IDFG would bring rule changes by March. Mr. Burkhalter said they would not be brought until next session. The proposed language, however, can be shared with the Committee this session.

Subcommittee members discussed 13.01.04.505.02.e.i as to the language in the proposed rule, the original intention of the IDFG Commission, and the wording of the proposed motion to reject the subsection.

MOTION/VOTE:
IDFG:
Docket
13-0104-0601

A motion was made by Rep. Brackett to recommend IDFG Docket 13-0104-0601 as written, except 13.01.04.505.02.e.i.

The motion passed by voice vote.

The rejected subsection is: [The number of allocated tags available within the controlled hunt area will be based on a variable scale depending on the number of tags established by the Fish and Game Commission: less than fifty one (51) tags – zero percent (0%); fifty one (51) or more tags – maximum of three percent (3%) ~~No more than six percent (6%); or (7-1-99)(7-17-06T)~~

Rep. Wood (35) said she, and/or Rep. Wood (27), will explain the Subcommittee's intention to members of the Senate Resources & Environment Committee.

ADJOURN: The meeting adjourned at 2:46 p.m.

Representative JoAn Wood
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: January 29, 2007

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

ABSENT/EXCUSED: Reps. Barrett, Bell, Eskridge

GUESTS: Rich Garber, University of Idaho Center for Livestock and Environmental Studies; Cal Groen, Director, Idaho Department of Fish & Game (IDFG); Sharon W. Kiefer, Legislative Liaison, IDFG; Bob Naerebout, Idaho Dairymen's Association; Brent Olmstead, Milk Producers of Idaho; Kathy Opp, Administrator, Division of Support Services, Idaho Department of Lands (IDL)
See sign-in sheet for other guests.

CALL TO ORDER: A quorum being present, Chairman Stevenson called the meeting to order at 1:36 p.m.

Minutes of January 25, 2007

A motion was made by Rep. Pence to approve the minutes of January 25, 2007 as written.

The motion passed by voice vote.

Chair Stevenson welcomed Dawn Wells.

INTRODUCTION:
**Cal Groen, Director
Idaho Department
of Fish & Game**

Rep. Fred Wood (27) introduced Cal Groen, Director, Idaho Department of Fish & Game, relating the history of their relationship going back to 1996. Director Groen comes to his new position with "the expertise and political wisdom to stay out of difficulty, and to work with sportsmen in Idaho, and with the rest of Idaho." Director Groen has a nine-year tenure as supervisor of the Clearwater Region. He is a 17-year veteran of Fish and Game.

Chairman Stevenson welcomed Director Groen to the Committee. He asked the Director to comment on IDFG budget issues, understanding that he has just come to the position.

**IDFG BUDGET
REVIEW:**

Director Groen said IDFG is currently preparing the budget for the Joint Finance and Appropriations Committee (JFAC). The challenge is to follow the guidelines of the Commission and the Governor. IDFG doesn't receive State tax money, but is funded from license fees. He summarized IDFG's budget challenges. The department expects to cut back expenditures in certain areas in order to compensate for reduced revenues and increased costs of goods and services. IDFG's budget includes dedicated funds which may only be used for specific purposes.

Director Groen said today the U.S. Fish & Wildlife Service announced the delisting of the Great Lake wolf population. It can be expected that

Idaho will assume management of its wolves within the year. The IDFG Commission will propose a bill establishing a fee structure for hunting wolves: \$26.50 for in-state tags; \$256.00 for out-of-state tags. Wolves will be managed in Idaho as are bear, lions, deer and elk. Public concern has already been expressed about the wolf management plan. Safeguards will be set in place to insure its integrity, including a five-year period of annual reports to the U.S. Fish & Wildlife Service. If Idaho's management plan is not successful, wolves could again be listed. If Wyoming does not develop a successful wolf management plan, Montana and Idaho will be "delinked" from Wyoming, and allowed to manage wolves in their States. Idaho's bottom threshold will be ten packs and 100 wolves.

Director Groen said, for those who want to bid, ten special Commission tags will be available. Rep. Fred Wood (27) will introduce the bill, which will also set up a fee structure for wolf tags.

QUESTIONS: Rep. Raybould asked what revenue was being realized from license fees now, compared to two or three years ago. Director Groen said revenues from hunting license fees are fairly stable. In parts of the State where license fees have declined, they seem to have increased in other areas to compensate. For example in 1997, the winter before wolves were introduced in eastern Idaho, elk herd numbers plummeted. However, revenue from license fees remained stable because of revenue increases in other parts of the state. Director Groen said herds in the Lolo/Selway area are still in trouble, and wolves are a main factor.

Chairman Stevenson thanked the Director for his report, and asked him to return to the Committee after the Department's JFAC presentation. The Committee's congratulations was extended to Director Groen.

**UNIVERSITY OF
IDAHO CENTER
FOR LIVESTOCK &
ENVIRONMENTAL
STUDIES:**

Chairman Stevenson introduced Rich Garber, University of Idaho Center for Livestock and Environmental Studies, saying Mr. Garber's report today is being presented to the Committee in an effort to inform as many Legislators as possible about the proposed plan as it moves forward.

Mr. Garber serves as Director of Industrial and Governmental Relations for the College of Agriculture and Life Sciences at the University of Idaho. He introduced other people in the room affiliated with the project. (See sign-in sheet)

The proposed center will enhance interdisciplinary research in collaboration with government and private organizations, and the cooperative educational efforts between the University of Idaho and the College of Southern Idaho. It will provide undergraduate and graduate education and training in dairy, beef, agricultural science, and offer exceptional educational opportunities for dairy workers and technical students. (See Exhibit 1)

State-of-the-art research facilities, capable of large-scale research, will attract funding and talent. Research areas are expected to include nutrient and wastewater management; odor and emissions control; green energy production and energy-use conservation; water use and protection; value-added byproducts; biosecurity and bioterrorism prevention; labor management; and forage cropping and agronomy.

The center will include two distinct components: research/education

facilities, and a fully operational 1,500 milk cow dairy. The Magic Valley of south-central Idaho is the proposed location for the center because 72% of Idaho's dairy herd is located there. Mr. Garber summarized the need for the center, and its benefit to Idaho. He illustrated the areas of the State where dairy and cattle industries are now concentrated.

The dairy industry brings \$1.418 billion dollars to Idaho, and is the largest single sector in Idaho's agricultural economy. Over \$67.5 million dollars is realized in State and local tax revenues. \$2.58 billion dollars accrued from farm cash receipts in 2005.

Between 22,000-23,000 jobs directly relate to the industry, with another 13,470 attributing to peripheral service industries. Between 2001 and 2006 the industry increased 7.6%, while total manufacturing jobs decreased across the State.

Mr. Garber reviewed projected budgetary requirements for the center. Commitments to date include \$5 million dollars from the dairy industry to stock the center with dairy cattle; and \$10 million dollars from the University of Idaho. The State of Idaho is being asked to fund \$10 million dollars. \$25 million dollars is the initial funding requirement. (See Exhibit 1 for a breakdown range of project costs.)

Mr. Garber noted funding partners, including: The Office of the Governor, the State of Idaho, University of Idaho College of Agriculture and Life Sciences, Dairymen United of Idaho, College of Southern Idaho, USDA Agricultural Research Service, Idaho Cattle Association, Idaho Wool Growers, Idaho National Laboratory, Idaho State Department of Agriculture, USDA Natural Resource Conservation Service, and the Environmental Protection Agency.

QUESTIONS: Rep. Shively asked what would be done with the agricultural products produced by the facility. Mr. Garber said milk will be marketed to local processors.

Rep. Moyle asked how many cows were now at the Moscow dairy. Mr. Garber said 50, with a maximum capacity of 100.

Rep. Shively asked if the revenue figures cited includes such things as buying hay from farmers. Mr. Garber said numbers used today refer to milk sales. Brent Olmstead, Milk Producers of Idaho, said the dairy industry commissioned a study by BSU in 2002. He summarized study results.

Rep. Vander Woude asked what research funding the center expected to attract. Mr. Garber said that was difficult to anticipate. The center will be a world-class facility and can be expected to attract funds from federal research sources, homeland security, and industry.

Chairman Stevenson thanked Mr. Garber for his presentation. He asked Committee members to contact him if they had further questions.

H 24:

Kathy Opp, Administrator, Division of Support Services, Idaho Department of Lands (IDL), presented H 24 that amends Idaho Code sections relating to State Board of Scaling practices to make the name more identifiable outside of Idaho. It also makes changes to make current the name of the Intermountain Forest Association in code, and allows flexibility in submitting nominees for appointment to overcome scheduling difficulties that have occurred.

QUESTIONS: None.

MOTION/VOTE
H 24:

A motion was made by Rep. Wood (35) to send H 24 to the floor with a DO PASS recommendation.

DISCUSSION: Rep Chavez asked for clarification regarding the changes being made by the amendments which was provided.

Rep. Raybould said Intermountain Forest Association's (IFA) representative told the Committee at the print hearing that board members could be people from out of state (page 1, line 20-21) . He asked for clarification. Ms. Opp said IFA stipulated that representatives from their association would still have to reside in Idaho.

The motion passed by voice vote. Rep. Saylor will carry H 24 on the floor.

H 25:

Kathy Opp, Administrator, Division of Support Services, Idaho Department of Lands (IDL), presented H 25 that modifies code relating to endowment land transaction fees. These changes should have occurred in FY2000 when endowment reform legislation was passed. Changes insure all fees relating to endowment land transactions be property credited to endowment earnings reserve accounts. Over the past three fiscal years, over \$60,000 in fee income inappropriately attributed to the general fund.

MOTION/VOTE
H 25:

A motion was made by Rep. King to send H 25 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. King will carry H 25 on the floor.

H 26:

Kathy Opp, Administrator, Division of Support Services, Idaho Department of Lands (IDL), presented H 26 that deletes certain date restrictions relating to annual payments for grazing leases. In some cases, the issuance of conflicted grazing leases has been delayed due to administrative appeals or legal challenges. Delays can jeopardize the department's ability to meet the dates outlined in code, and could prevent a lease from occurring for months. Also, the codified dates put most leases on the same track for billing, causing spikes in work loads. There is no budgetary impact.

QUESTIONS: Rep. Wood (35) asked what provision was made for payment dates. Ms. Opp said the changes being made allow IDL to issue a lease immediately when administrative appeals or challenges are completed.

MOTION/VOTE
H 26:

A motion was made by Rep. Brackett to send H 26 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. Brackett will carry H 26 on the floor.

H 27:

Kathy Opp, Administrator, Division of Support Services, Idaho Department of Lands (IDL), presented H 27 that clarifies that all forest products sold from state endowment land, not just timber, shall be measured. There are many forest products, including: fence poles, plants for medical purposes, Christmas trees, and boughs.

QUESTIONS: Rep. Chavez asked if a list of forest products could be compiled for general informational purposes. Ms. Opp said it would be helpful if board policy stated what the various products were; perhaps as

a companion to the statute.

**MOTION/VOTE
H 27:**

A motion was made by Rep. Andrus to send H 27 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. Chavez will carry H 27 on the floor.

Chairman Stevenson asked Ms. Opp to provide those Committee members carrying the bills on the floor with the talking points she used today.

**SUBCOMMITTEE
REPORT:**

Rep. Wood (35) submitted the report from the Administrative Rules Review Subcommittee. (See Exhibit 2) She requested that the Committee approve the recommendations of the Subcommittee.

QUESTIONS: Rep. Andrus asked for explanation regarding the exception to IDFG Docket 13-0104-0601. Rep. Wood (35) said the wording included in the report to the Committee is the same language used in the rules submitted by IDFG. Rep. Wood (27) explained that the language as submitted in the rules allowed for a 50% increase. The intention of the change was to allow at least one outfitter permit in areas where small controlled hunts have historically been permitted; this would occur if the number of issued permits decrease to a level that exclude any outfitter permits under the old rule. It was found, however, that the proposed rule would also apply to other hunts. That was not the Commission's intention. Since this subsection has been rejected, the rule reverts to the 3% figure currently in force.

Chairman Stevenson corrected Rep. Wood (27) saying the rule has to be affirmed on the set-aside before it is denied. Rep. Wood (35) agreed with the Chairman. Rep. Wood (27) told the Committee that the Senate had denied the entire docket based on that fact. The Senate has agreed to accept this Subcommittee letter, and to deny only the indicated subsection in their final report.

MOTION:

A motion was made by Rep. Wood (35) to accept the Administrative Rules Review Subcommittee report as written.

DISCUSSION: Chairman Stevenson asked Rep. Chavez if her previous questions had been answered. She said they had.

The motion passed by voice vote.

Chairman Stevenson thanked the Subcommittee for their work.

ANNOUNCEMENTS:

The Resources & Conservation Committee will meet both Wednesday and Thursday this week.

The last day for the Committee to hear RSs is Friday, February 9th.

ADJOURN:

The meeting adjourned at 2:38 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** January 31, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood, Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively
- ABSENT/EXCUSED:** None.
- GUESTS:** Albert Barker, Attorney, Barker Rosholt & Simpson LLP; Norm Semanko, Executive Director, Idaho Water Users Association (IWUA); Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA); Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR)
See sign-in sheet for other guests.
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:32 p.m. The secretary took a silent roll call.
- Approve Minutes of January 29, 2007** A motion was made by Rep. Pence to approve the Minutes of January 29, 2007 as written.
The motion passed by voice vote.
- INTRODUCTION:**
Steven B. Daley Laursen Rep. Brackett introduced Steven B. Daley Laursen, Dean and Professor, College of Natural Resources, University of Idaho. Dr. Daley Laursen will be returning to make a presentation to the Committee later in the session.
- IDWR BRIEFING:**
Dr. David Tuthill Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR) presented the Interim Director's Report to the Committee. (See exhibit 1)
IDWR also promotes a culture to encourage teamwork, communication and program competency.
SUMMARY: Director Tuthill's presentation is organized topically based on current IDWR issues:
- Principles of Operation - Idaho Departments and Agencies have been tasked by the Governor to be principle centered, customer focused and data driven.
 - IDWR Organization - Bob Hoppie, Administrator, Energy Division; Hal Anderson, Administrator, Planning and Tech Services Division; Gary Spackman, Acting Administrator, Water Management Division. There is a close working relationship with the Idaho Water Resources Board.
 - SRBA/NIA Update - a two-theater perspective has been adopted: 1) to complete the Snake River Basin Adjudication (SRBA)

Director's Reports on a fast track, working overtime as necessary, before moving on to other tasks, then 2) direct assets to other priorities.

Theater one: only the upper part of the Bigwood Basin remains to be finalized. That is expected to occur next week. All offices are now working on other issues except the Southern Regional Office. Theater two: Filing the Director's Report will not be the end of SRBA. There will be a phased objection period—each basin having its own schedule. By year's end many objections will have been resolved, and the number of objections outstanding will be known. There is a dispute process in place.

Director Tuthill summarized the status and accomplishments of the SRBA. North Idaho Adjudication (NIA) is projected to begin in FY2007. A matrix projecting NIA time-lines is included in Exhibit 1. IDWR is still operating under the matrix presented last year. If funding is authorized, work in two additional basins will begin. The Northern Idaho projects will benefit from more than twenty years of Snake River Basin Adjudication experience, and more powerful technology.

The case currently in the Idaho Supreme Court provides a troublesome backdrop for water discussions this year. A request was made to the court, and denied, for a temporary stay under the existing rules. IDWR is operating now as if those rules are unconstitutional, and waiting for the Supreme Court decision. A request was made on December 8th to expedite it. Now before IDWR are calls for curtailment or administration under the law as it is without conjunctive management rules. It is a very critical issue which the Legislature will surely hear more about this spring. There are a variety of possible outcomes which Director Tuthill is not yet prepared to discuss.

CDR Associates are preparing a framework for conjunctive management. The plan will be brought to the Legislature in early February together with a request for funding.

On-going challenging issues remain including:

- Conjunctive administration (management) - for the Eastern Snake Plain Aquifer now, and in other basins in the future. CDR Associates are preparing a framework for the Idaho Water Board, which is expected in February. Director Tuthill explained the difference between conjunctive management and conjunctive administration: Agency rules are conjunctive management rules; conjunctive administration is the optimization of ground water and surface water use, which is what is done to administer water rights.
- Recharge - Incidental and managed approaches are being considered. There are variables and constraints to be considered; as well as the relationship of recharge water to hydropower diversion. Part of the conjunctive management of water is recharge, which is easier said than done.
- Staff issues - Critical staffing issues at IDWR include the pay scale, which is well below market; funding; and unfilled vacancies. There is an aging workforce, and very few young

technical people on the staff now. Pay scales are now so far below market that even hiring people new to the job market isn't successful, although there is a good pool of applicants. The department will be making a presentation to JFAC next week.

- Research Initiatives - Ending on an up note, Director Tuthill said there is a bright future to be expected in research at the Water Center. It was an original and powerfully innovative idea to have the university, state, federal and private water entities all in one building. Idaho is the only state to have such a center. Director Tuthill summarized research currently in progress, including: green LIDAR; low head hydropower plant feasibility; Blackfoot River Basin surface and ground water modeling; woody debris in river systems, and flood plain modeling on the Boise River.
- Next Steps - 2007 will be a pivotal year for water. IDWR is committed to working with the Governor's Office and other groups to determine common purposes and mutually beneficial solutions.

QUESTIONS: Rep. Raybould said he was continually asked what would happen if Judge Wood's decision is not overturned by the Supreme Court. He asked if IDWR had a tentative priority cut-off date to establish which wells junior to that date would be curtailed. Director Tuthill said relevant law is being reviewed now. The answer to the question depends on a number of factors, and the maximum or minimum number of acres curtailed could encompass a broad range. There is no number today. If a decision was forced today, a devastating number of acres would be affected. Director Tuthill is hopeful that an option other than curtailment is found. As the law is currently written, there would be no choice but to recognize senior water rights. Most of IDWR rules are based in common law, and provide phasing in 25% increments per year. Without rules, that doesn't apply.

Rep. Eskridge noted that the matrix projected that adjudication in Basins 96-98 would begin in FT2011. He asked if there would first be a vote of the people in Bonner County. Director Tuthill said yes. There is funding now to start Basins 91-95. Legislation and funding will have to occur before any work begins in other basins. Rep. Eskridge asked for confirmation that a popular vote would first occur. Director Tuthill said he would have to look at the wording; he is sure there is a funding requirement. Rep. Saylor said he doesn't believe a popular vote is required; but funding from the Legislature is required.

Rep. Bedke asked to what extent budget issues were referenced in the Governor's recommendation to the Legislature, relative to IDWR's staffing issues. Director Tuthill said he didn't believe they were. He is not objecting or complaining, just saying staffing issues still need to be considered.

Rep. Shively asked for relative figures to illustrate pay ranges for a few specific positions—engineers, geologists. Director Tuthill said the 2005 Report done by the Personnel Commission showed IDWR to be 33% behind policy, which is more than 40% below market. A starting engineer can be offered \$18/hour. An engineer with 4-6 years professional engineering experience with IDWR might be receiving \$23-25/hour, which is several dollars per hour lower than

market.

Rep. Eskridge, referring to the chart on page 8 (Exhibit 1), asked for clarification in the panhandle. Director Tuthill said SNOTEL data indicates that the panhandle, as of January 29th, has received 92% of average.

Chairman Stevenson thanked Director Tuthill for his presentation.

RS16652:

Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), presented RS16652 that proposes to add a new section to Idaho Code section (43-1510) to provide for certain tax exemptions. He explained the situation in Ada County, where irrigation districts are asked to do an annual review process rather than recognized the exception now in law. RS16652 would allow local government and irrigation districts in Ada County to not adhere to the annual review process. There is no fiscal impact. (See Exhibit 2)

QUESTIONS: None.

**MOTION/VOTE
RS16652:**

A motion was made by Rep. Moyle to recommend RS16652 to print, and send to the Revenue & Taxation Committee.

The motion passed by voice vote.

RS16801:

Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA), presented RS16801 that proposes to remove the acreage limitation that now applies to irrigation districts. All irrigation districts would have the option to change their voter qualifications. Mr. Tominaga presented an historic overview: In summary, changing agricultural demographics make it difficult for irrigation districts to find people to serve on their boards who meet current statutory requirements. (See Exhibit 3)

QUESTIONS: Rep. Chavez asked for clarification regarding allowed votes based on acres of assessed land, and proportionate votes based on fractions of assessed acres (lines 28-30). Mr. Tominaga said the referenced language is already in statute and not part of the amendment proposed by RS16801. He said it is language passed by the Legislature last session that apportions votes based on the amount of water used and assessments paid.

**MOTION/VOTE
RS16801:**

A motion was made by Rep. Bedke to introduce RS16801 to print.

The motion passed by voice vote.

RS16821:

Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), presented RS16821 proposing to clarify procedures for irrigation districts to reserve title to water rights for nonpayment of assessments, to assure that the notice is filed in county records in the chain of title, and to clarify the time period for a right to redemption. If an irrigation district assessment is not paid, eventually a tax deed will be issued. (See Exhibit 4)

QUESTIONS: Rep. Eskridge asked if a water right might have more value than the tax lien against it. Mr. Semanko deferred the question to Albert Barker, Attorney, who said typically these tax deeds are issued for individuals who do not receive water, or do not wish to. A tax deed is only issued for non-payment of assessments after three

years. RS16821 allows an irrigation district to choose to take the water back from the land owner rather than go through the process of selling the property, and is usually done with land owner consent. There isn't a method to put a price on the water right; but typically assessments are on small parcels and are not large.

Rep. Eskridge asked if a landowner can sell a water right to someone else, rather than have it go back to an irrigation district. Mr. Barker said the irrigation district holds title to the water right. The land owner only has the right of use. Therefore, the water can't be sold independently on the market by a landowner. The irrigation district has a trust obligation to deliver water to people who have that right, and can't take water and give it to someone else. Rather there is an obligation to work with the landowner.

**MOTION/VOTE
RS16821:**

A motion was made by Rep. Raybould to introduce RS 16821 to print.

DISCUSSION/QUESTIONS: Rep. Chavez asked for clarification regarding the ownership of water rights in question. Mr. Barker said such a water right is an appurtenance to the real property. If the property is sold, the new owner has the right to receive water from the irrigation district. The new owner would also pay assessments in that sense, the water right does pass with the land, but title to the water belongs to the irrigation district. Mr. Semanko noted that the Constitutional founders established that once a system is established to distribute water, that water would not be denied except for failure to pay the assessment. He said the amendments proposed in RS16821 constitute "almost a voluntary arrangement."

Rep. Shively asked if, when land is annexed into a city, the water can then be used by the city. Mr. Semanko said how irrigation districts deal with urbanization was the subject of an Interim Subcommittee hearing a few years ago. It is typical to accommodate urban growth by including it in irrigation districts. For example, the city of Nampa is the largest account in the Nampa Irrigation District. Not every irrigation district adheres to this practice.

The motion passed by voice vote.

ANNOUNCEMENTS:

The Committee will meet tomorrow at 1:30 p.m. Idaho Department of Parks & Recreation will give their agency briefing.

Chairman Stevenson reminded members that the last day to hear RSs in Committee is February 9th.

ADJOURN:

The meeting adjourned at 2:28 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 1, 2007

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

ABSENT/EXCUSED: Rep. Shepherd (8)

GUESTS: George Bacon, Acting Director, Idaho Department of Lands (IDL); Stan Boyd, Legislative Advisor, Ridgeline Energy; Robert Meinen, Director, Idaho State Parks & Recreation (IDPR); Eric Milstead, Budget Audit, Legislative Services Office; Kathy Opp, Division Administrator, IDL; Rich Rayhill, Vice President, Ridgeline Energy; Dean Sangrey, Administrator, IDPR

See sign-in sheet for other guests.

CALL TO ORDER: A quorum being present, the meeting was called to order at 1:31 p.m. The secretary took a silent roll call.

IDPR REPORT: Robert Meinen, Director, Idaho State Parks & Recreation (IDPR), presented a report on Ritter Island, the newest addition to the Thousand Springs State Park Complex. (See Exhibit 1) Director Meinen referred to maps siting the new park relative to surrounding landmarks. The site is unique in that it is one of the oldest Idaho Power hydropower plants, and the spring is one of the first to be used for agriculture in Idaho. Historically, the site was the Minnie Miller farm, a top national breeder of Guernsey cows. Later it was purchased from the estate by Judge Ritter. In 1986 the island and additional Ritter property was purchased by the Nature Conservancy. The Conservancy has managed to property as a wildlife and wetland preserve. It has also been the location of the Thousand Springs Festival for 15 years.

The Conservancy gift to the state includes more than 300 acres of land, including Ritter Island, two miles of river front, and some of the most scenic springs and falls in the Thousand Springs area. It also includes a \$1 million dollar endowment to be used in the management of the gift.

The gift was presented late in the budgeting process. Therefore, a recommendation has been made to the Governor that the budget be amended to include some operational funding. Today, the Governor approved the amendment. The Governor is also recommending that a land parcel that was not included in the gift be purchased by the State. A substantially reduced price has been negotiated with the Conservancy—\$225,000 for approximately 70 acres. This parcel has potential for recreational use that would generate revenue to offset

management and maintenance expenses.

QUESTIONS: Rep. Saylor said the Conservancy has had a conservation and habitat emphasis for the property. He asked if the public would have access under State management, or if it would be "returned to a native state." Director Meinen said the Festival would continue, and the public will have more access. There will be interpretive facilities for educational purposes. The Conservancy has granted easements to Idaho Power for conservation and habitat.

Rep. Pence asked if the wetland property at the top of the grade was included in the gift. Director Meinen referred to the red-hatched area of the context map (See Exhibit 1), which is a demonstration wetlands area managed in cooperation with the North Side Canal Company. It is about 30 acres, and will continue to be managed by the North Side Canal Company.

Rep. Vander Woude asked if the \$1 million dollar endowment was sufficient to manage the site. Director Meinen said IDPR would like to use only the interest on the endowment, which would be about \$50,000 annually and not sufficient to cover management costs. The department would also like to develop public uses that would bring revenue to offset management costs. Rep. Vander Woude asked what the budget requirement was for the site. Director Meinen said the department is completing a master plan encompassing all the State parks. The process will be completed in about six months. He expected there will be a monetary requirement to manage Ritter Island, but it will not be large.

Rep. Raybould asked if the Ritter Island gift precluded IDPR's interest in a new State park in eastern Idaho. Director Meinen said it didn't. The Governor, however, is not recommending the eastern Idaho park.

Rep. Andrus asked the size of the island, in acres. Mr. Sangrey said the total land gift, including the option to purchase, is 384 acres. Director Meinen said the island, itself, is about 70 acres.

EXPERIENCE IDAHO:

Director Meinen presented an update of the Experience Idaho initiative. (See Exhibit 2) A total appropriation of \$11.5 million dollars has been received. The Director gave an overview of projects at Heyburn, Castle Rocks, Harriman and Ponderosa State Parks. He said IDPR sincerely appreciates the Legislative support they've received, especially for park renovation and rehabilitation.

QUESTIONS: Rep. Eskridge said there have been complaints about the new RV stickers not being available. Mr. Sangrey said the stickers and registration process went online January 1st. They are available in all counties, but are not being distributed to vendor locations. There is an aggressive education process directed to vendors and the public. Any questions that come to Legislators can be directed to IDL staff.

Rep. King asked directions to Castle Rocks. Director Meinen said near the City of Rocks, south of Albion. The campground is in a Pinon Pine forested area.

Chairman Stevenson thanked the Director for the "Experience Idaho" update.

H 65:

Stan Boyd, Legislative Advisor, Ridgeline Energy, presented H 65

proposing to amend the definition of “commercial purposes” as any commercial or industrial enterprise as defined by the state land board. Agricultural leases, grazing leases, oil and gas leases, mineral leases, geothermal leases, single family, recreational cottage site and homesite leases, and leases for other similar uses will remain as leases not considered leases for commercial purposes. The legislation has been drafted in close collaboration with the Idaho Department of Lands (IDL), who are represented today to answer questions. Mr. Boyd explained the economic realities preventing wind energy operations from locating on state land.

QUESTIONS: Rep. Bedke asked where, on state land, Ridgeline Energy was considering to locate. Mr. Boyd deferred the question to Rich Rayhill, Vice President, Ridgeline Energy, who told the Committee of locations that had previously been considered. Sites included: East of Taylor Mountain, and Cedric Peak south of Lava Hot Springs. A vast track of state land near Miner Creek is presently being considered. Ridgeline Energy and Windland, Inc. have both indicated an interest in Cottrell Mountain near Burley.

Rep. Chavez asked to be shown the locations on a map. Mr. Rayhill indicated where sites were now located, and where there was an interest in placing wind farms on State land in the southern part of the state through an east-west corridor. He said wind in Idaho was a fabulous resource, and could be used simultaneously for wind power, grazing and timber leases.

Rep. Raybould asked what advantage there was to the State to have wind tower leases. Mr. Boyd said there is a reluctance to make the large investment required to develop wind farms on short-term leases that come up for a conflict bid at the end of the lease term. Wind farms are compatible with other leases—grazing leases, for example. A grazing lease fee is determined by a formula. A wind tower lease would be determined by the State Land Board at the recommendation of IDL.

Rep. Pence asked if there was a rate schedule now. George Bacon, Acting Director, IDL, said H 65 is setting the stage to develop new land uses as they come up in Idaho. It would be a flat rate, making allowances for a % of profits. IDL is watching what other western states are doing relative to rate structures.

Rep. Eskridge asked if the lease would be a property tax issue. Mr. Boyd said it would under current law. There is legislation being considered that would make it a production-based tax. A production-based tax attributes to counties whether the lease is on private, state or federal land. Rep. Eskridge said he understands that, as the law is now, counties may not benefit. He asked for clarification that under the proposed legislation they would. Mr. Boyd said counties would receive payment en lieu of taxes under the proposed legislation.

Rep. Vander Woude asked the life expectancy of a wind tower. Mr. Boyd said there is generally a 20-year lease with a wind company. A tower has a life expectancy of at least 20 years, perhaps double that if maintained properly and well engineered.

Rep. Shively asked if wind consistency is a problem. Mr. Rayhill said wind is sometimes referred to as an intermittent resource; but it is a variable resource. Wind is always blowing somewhere. Power can be

generated at 5 mph; peak production is at 22.5 mph. If there were 10,000 megawatts (MW) in the area, there would probably be a steady production of 2,000-3,000 MW all the time.

Rep. King asked about the profit margin to the wind company. Mr. Rayhill said he didn't know, but the payout on a machine is 8-12 years.

Rep. Sayler asked if there are negative environmental impacts to be expected from wind power. Mr. Rayhill said the Altamount Pass Wind Farm in California has given the industry a bad reputation. If sites are well-located and the technology up-to-date, studies show an average of 1.4 birds are killed per turbine per year; and 1 raptor per 100 turbines per year. Bird kills by domestic house cats are much higher.

**MOTION/VOTE
H 65:**

A motion was made by Rep. Eskridge to send H 65 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. Eskridge will carry H 65 on the floor.

ANNOUNCEMENTS:

Chairman Stevenson reminded Committee members of the ICIE Gold Room Workshop, February 6th, 1:30 - 3:00 p.m.2/6

The last day to hear RSs in Committee is February 9th. There may be a Committee meeting Friday, February 9th.

ADJOURN:

The meeting adjourned at 2:22 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 7, 2007

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively

See sign-in sheet for other guests.

**ABSENT/
EXCUSED:** Rep. Bedke

GUESTS: George Bacon, Acting Director, Idaho Department of Lands (IDL); Albert P. Barker, Attorney; Stan Boyd, Ridgeline Energy; Jim Caswell, Administrator, Governor's Office of Species Conservation (OSC); Tom Perry, Legal Counsel, OSC; Norm Semanko, Executive Director, Idaho Water Users Association (IWUA); Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA)

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

**Minutes:
January 31, 2007** A motion was made by Rep. Pence to approve the minutes of January 31, 2007 as written. The motion passed by voice vote.

**Minutes:
February 1, 2007** A motion was made by Rep. Pence to approve the minutes of February 1, 2007 as written. The motion passed by voice vote.

**OFFICE OF
SPECIES
CONSERVATION:** Jim Caswell, Administrator, Governor's Office of Species Conservation (OSC), made a report to the Committee briefly providing an up-date in six areas: wolves, rare and declining species, caribou, slickspot peppergrass, the sage grouse state plan, and snails.

Wolves Wolves - Progress is being made. The Department of the Interior will release the delisting rule tomorrow. Mr. Caswell will deliver a copy to Committee as soon as it is available.

Mr. Caswell gave an overview of wolves in Idaho. Best estimates to-date, including those wolves that cross state lines, are: 713 individuals in 71 confirmed packs; 46 breeding pair; from 12-15 additional packs are suspected to exist but are not confirmed; 99 collars have been placed by IDFG; 54 of the 71 packs are being monitored with collars. There was a 20% population growth rate in 2006 over 2005. In terms of confirmed depredation kills this year, there were 27 cattle, 205 sheep, and 4 dogs; this figure doesn't include animals that "didn't come home." 70 claims were allowed; this figure doesn't include questionable claims, or those without good figures to substantiate a normal death loss. \$234,000 in claims has been established, with a

32% claim payment level. There has been lethal control of 69 wolves through December 2006.

Summary overview of the delisting effort: In October, 2005 a request was submitted to the U.S. Fish & Wildlife Service (the service) and the U. S. Department of the Interior (DOI) presenting five options to move forward to delist Idaho and Montana wolves without Wyoming. There was a fair amount of interest in the proposals initially, but interest waned about the time Governor Kempthorne was nominated for Secretary DOI. In July, 2006, Governor Risch met with the service and DOI telling them if delisting didn't move forward, legal action could be expected. There were two meetings in November: it looked like nothing would happen regarding wolves in the northern Rockies until Washington had "gone another round with Wyoming," and the final rule to delist in the lake states was released. Idaho was prepared to go to court, but a short time later the Governor was told there would be a rule by the end of January 2007. That rule is expected to be released tomorrow. It basically lays out an approach to move forward to delist wolves in Montana and Idaho with and without Wyoming. There will be a 60 day comment period, which can be expected to be extended at least 30 days. Six hearings will be held, including one in Boise March 6th. There should be a final rule by January 2008, giving Idaho management control of wolves. The next question is whether a judge will pass an injunction.

QUESTIONS/DISCUSSION re: WOLVES: Rep. Saylor asked if lawsuits would be more likely if Idaho moves ahead without Wyoming. Mr. Caswell said he didn't think it would matter. Idaho can expect to be sued "because we are Idaho." He doesn't know why, because Idaho has a good track record and has performed as required. The State has a policy to sustain a population of wolves classified as big game. The IDFG Commission is engaged in developing rules.

Rep. Andrus asked if he understood correctly that only a maximum of \$100,000 was available for depredation payments. He understood that when depredation occurred it would be compensated 100%. Mr. Caswell clarified, saying the Defenders of Wildlife pay 100% of confirmed depredations and 50% of probable kills. When a rancher has a kill, a call is made to Fish and Wildlife, and a claim is filed with the Defenders of Wildlife. The state, through IDFG, has established a program to pay for unconfirmed kills. There are always a certain number of animals that disappear for unknown reasons. When a rancher has established a normal death loss over time and has an unconfirmed kill, IDFG will pay depredation. 2007 is the third fiscal year where the funding level to manage wolves has been about \$720,000. Of that, about \$100,000 has been designated for depredation. The program started four years ago, and is discretionary.

Rep. King asked 1) for specifics about the March 6th hearing to be held in Boise, and 2) if a wolf tag would be \$26.50 or \$9.75. Mr. Caswell said more information would be forthcoming about the March meeting. The original recommendation from the IDFG Commission was \$26.50 for a wolf tag. The bill in the Senate (S 1086) is for \$9.75.

Rep. Saylor asked if the Defenders of Wildlife have made good on their pledge to pay for depredation. Mr. Caswell said yes. He believes they have paid \$154,000 to-date for confirmed and probable kills. This year there are claims filed as far back as July that haven't yet been

paid, but they are in process. Mr. Caswell said it is his perception that payments are slower, and that Defenders of Wildlife are “tighter in how to apply their program.”

Rep. Wood (35) asked 1) what the policy will be for collared animals with IDFG treating wolves as big game; and 2) if the service was going to let the State give out enough tags to make a difference in pack growth. Mr. Caswell answering 2) first, said the service will have nothing to do with wolf management after the rule is final. After that date, Idaho is obligated to monitor the wolf population and to report annually. He doesn't know yet about the policy for collared wolves. IDFG is in the process of beginning the discussion with the public and staff relative to seasons, bag limits, weapons, collars, and so on. Next session those final regulations will come before the Committee for review.

Rep. Wood (35) asked if Idaho would be held to 10 wolf packs. Mr. Caswell said the State plan allows for between 10-15 packs minimum. No one anticipated the growth that has occurred in the packs, even since 2000. If numbers ever get to 10 packs, then management flexibility shrinks. If there are ever fewer than 10 packs, the wolf is “heading back to the list.” He, personally, is in favor of zoning the State—indicating where and where not to have wolves; and to manage providing year-round take opportunities in some areas. The IDFG Commission will make the decisions.

Rep. Shively said numbers indicated there wasn't a breeding pair in every pack. Mr. Caswell said that was true for various reasons. A concerted effort is made to know which packs are breeding.

Questions pertaining to the rest of the presentation will be held until the end.

Rare and Declining Species

Rare and Declining Species - A few years ago the Legislature changed statute to include rare and declining species. Since then, OSC has brought a status report to Committee every session. Dialogue has been on-going, including with the timber industry. A methodology has been designed to prioritize species that frequent timbered areas of the state. The grazing industry is now interested in pursuing a similar approach. There is interest in forming a steering team, which will eventually lead to an executive board, to set a structure for collectively approaching germane issues. The goal is to keep species off the list in the first place.

Caribou

Caribou - Caribou have been on the list in Idaho since 1982 although there aren't any to speak of in the State. Three attempts have been made to reintroduce Caribou. All have failed. The majority of Caribou found in Idaho are Woodland Caribou coming from Canada. If Caribou come here, or are reintroduced, they tend to go back or die. The service is now engaged in a status review. Idaho has an opportunity now to provide good input. There is private money to hire a scientist to look at the record and the distinct population segment (DPS) question, and to make a case that Idaho doesn't need to have Caribou listed since any Caribou in Idaho are in the fringe areas of the range dipping down from Canada. There will be a progress report next year.

**Slickspot
Peppergrass**

Slickspot peppergrass - Listing slickspot peppergrass was avoided in 2004. In 2005, a judge overturned that ruling. A review has been underway since August 2005. Tom Perry, attorney, OSC argued in Federal court in October and won another 90 day review period. A decision was made in January not to list for the 2nd time. It's clear the population is not in decline. There is no scientific evidence of decline across the range. There is already a 60 day notice of intent to sue. The State needs to intervene and be a party to the case, as a judge will rule a 3rd time. Meantime, work is continuing with a steering committee to review and up-date the candidate conservation agreement (CCA) that was done in 2004. A good track record showing that there is a process that is working can be documented in court.

**Sage Grouse State
Plan**

Sage Grouse State Plan - The plan was signed by the Governor in July. There are active working groups, with funding for projects across the state. Working groups remain the focal point of the plan, receiving 99% of all funding. The West Nile virus is now a factor.

Snails

Snails - There has been a decision this year from the service to delist the Idaho springsnail. A rule is being developed to do this. Petitions are currently undergoing the review process for the Utah valvata and the Bliss Rapids snail. All are similar in the sense of distribution, habitat requirements, and population numbers. Their status is completely different than was thought when they were listed relative to distribution, populations, and habitats. Mr. Caswell said they need to be off the list. Idaho Power and the State have worked well together and are making good progress.

QUESTIONS/DISCUSSION: Rep. Wood (35) asked if results of the work groups the last three years will have weight in court. Mr. Caswell said the work groups have been functioning for seven years. Three new local groups are forming in areas of the state where there are none now. Whether their work will help to keep the sage grouse off the list remains to be seen. A negative outcome would be certain without the work.

Chairman Stevenson asked if there was latitude in the Endangered Species Act (ESA) for the West Nile virus and similar kinds of events. Mr. Caswell said the ESA considered 5 factors, and disease is one of them. He said West Nile will persist, and birds may need to be listed because of the disease issue.

Rep. Chavez asked what other 4 factors were considered in the ESA. The question was deferred to Mr. Perry, who said the 5 factor analysis included 1) a 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) inadequate existing regulatory mechanisms in place outside the ESA, and 5) other natural or manmade factors affecting a species continued existence.

Chairman Stevenson thanked OSC and Mr. Caswell for the report. He said OSC may yet be invited back to Committee this session. The Chairman requested that Committee members allow him to submit documents relating to wolves under the name of the Committee when it becomes necessary. There was no objection.

H 87: Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), presented H 87 that clarifies procedures for irrigation districts to reserve title to water rights for nonpayment of assessments, assures that the notice is filed in county records in the chain of title, and clarifies the time period for a right of redemption. Mr. Semanko explained the process, which presents opportunities for omissions in deed recordation to occur where the chain of title is not apparent. The process creates issues that could affect land purchasers and owners. (See Exhibit 1)

QUESTIONS/DISCUSSION: Rep. Wood (35) asked if, upon the sale of land by a county, the water right was also for sale; or if a person could retain the water when the land is sold. Mr. Semanko said he assumed once the water right reverted to the irrigation district, it stayed with the district. He deferred the question to Albert P. Barker, attorney, who explained the process. A tax deed is issued after three years non-payment of an assessment. Alternatively, within six months of that date the water right vests exclusively in the irrigation district, or within six months of the sale of the land by the county. Many times the county doesn't sell the land. The irrigation district has a list of people in the irrigation district asking for water rights, and the water is awarded to the next person on the list. If someone has a right of redemption when the property is sold, there is now a situation where the irrigation district doesn't know whether it can pass the water right on to the land owner. If the person pays their assessment, the irrigation district would then have to withdraw the tax deed.

MOTION/VOTE

A motion was made by Rep. King to send H 87 to the floor with a DO PASS recommendation.

H 87:

The motion passed by voice vote. Rep. King will carry H 87 on the floor.

H 86:

Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA), presented H 86 that proposes to remove acreage limitations that now apply to irrigation districts. About seven years ago, a statutory change was made establishing a provision to allow people who didn't live within the boundaries of an irrigation district of 15,000 acres or less to vote and serve on irrigation boards. This was done because farms were getting larger and the pool of people qualified to serve as board members was shrinking. Board members still had to own land and divert water from the irrigation district.

H 86 removes the acreage limitation, allowing all irrigation districts to have the option to change their voter qualifications. This has become necessary because farms keep getting bigger. For example, the Southwest Irrigation District includes 90,000 acres, divided into 3 subdistricts. One of the subdistricts has only 11-12 qualified voters.

H 86 is endorsed by the Idaho Water Users Association (IWUA) and the Food Producers of Idaho (FPI).

QUESTIONS/DISCUSSION: Norm Semanko, IWUA, said, in addition to the Southwest Irrigation District, there are other districts facing the same situation. (See Exhibit 2)

MOTION/VOTE

H 86:

A motion was made by Rep. Saylor to send H 86 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. Stevenson will carry H 86 on the floor.

RS16891:

Rep. Raybould presented RS16891, a resolution brought by President Pro Tem Robert Geddes and Speaker Lawrence Denney. RS16891 is exactly the same as legislation passed in 2005 allowing the creation of the Interim Committee to study natural resources issues, including issues relating to water, throughout the State of Idaho. RS16891 doesn't mandate the Interim Study Committee, but authorizes the Pro Tem and the Speaker to appoint members to the Interim Committee to study issues and report back to the Legislature. (See Exhibit 3)

MOTION/VOTE

RS16891:

A motion was made by Rep. Wood (35) to introduce RS16891, and refer it to the 2nd reading calendar.

The motion passed by voice vote. Rep. Raybould will carry the legislation on the floor.

RS16924:

Chairman Stevenson said RS16924 replaces H 65. He said something had been inadvertently excluded from H 65, and asked Rep. Raybould to introduce the change, which has been included in RS16924.

Rep. Raybould said, in a discussion he had with Rep. Lake, it was suggested to include lands eligible for the Federal Conservation Reserve Enhancement Program (CREP). This is being done with a new bill, rather than amending H 65.

Ordinary grazing and agricultural leases are limited to 10 years. Leases coming under the CREP program take land out of production for a period of 15 years. Providing this change to H 65 would allow lands in the CREP program to fall under this new definition of "commercial purposes" by creating an opportunity to extend ordinary grazing and agricultural leases out to 15 years. The lessee and the State and the aquifer all benefit: it is a "win, win, win situation." More land taken out of production means less water coming from the aquifer. As it now stands, where wells junior to surface water rights may be subject to a call, lands would revert to dry grazing if water is turned off. A lease for irrigated land might bring \$45/acre, where a lease for dry grazing land might bring \$3-4/acre. This change will guarantee that State endowment lands will produce revenue for 15 years. Idaho has been authorized 100,000 acres of CREP lands. The change included in RS16924 would help the State reach that goal, which it is not now close to achieving.

The change included in RS16924 has been discussed with the original sponsors of H 65, and with the Idaho Department of Lands. There are no objections to the change. (See Exhibit 4)

MOTION/VOTE

RS16924:

A motion was made by Rep. Eskridge to introduce RS16924, and refer it to the 2nd reading calendar.

DISCUSSION: Stan Boyd, representing Ridgeline Energy, had no comments. Director George Bacon, Idaho Department of Lands, said

the Department had discussed the legislation with the sponsors before it was reprinted. He had no comments.

The motion passed by voice vote. Rep. Raybould will carry the legislation on the floor.

ANNOUNCEMENTS: Chairman Stevenson thanked Daniel Cox for his service to the Committee as page. A card signed by Committee members was presented.

There will be a Committee meeting Friday, February 9th, immediately upon adjournment of the full House.

The Governor's Water Board Appointments are: Bob Graham, Bonners Ferry; Gary Chamberlain, Challis; Jerry Rigby, Rexburg; and Chuck Cuddy, Orofino (new appointment). Dick Wyatt, Lewiston was not reappointed.

ADJOURN: The meeting adjourned at 2:38 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** February 9, 2007
- TIME:** Immediately upon adjournment of the House
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively
- ABSENT/
EXCUSED:** Reps. Vander Woude, Wood (35)
- GUESTS:** Kent Kunz, Director of Governmental Affairs, Idaho State University; Norm Semanko, Executive Director, Idaho Water Users Association (IWUA); Brenda Tominaga, Idaho Ground Water Appropriators (IGWA), Idaho Irrigation Pumpers Association (IIPA); Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR)
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 12:11 p.m.
- RS16546C1:** Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR), presented RS16546C1 proposing to remove the requirement of notarization from the process to file a claim in a water right adjudication. The notarization requirement hinders the ability of a water user to file a claim using the Internet. The notarization requirement has not been seen to significantly benefit the process. Each claimant, through submission of a claim, shall solemnly swear or affirm under penalty of perjury that the statements contained in the notice of claim or amended notice of claim are true and correct. This language serves as a serious notice to claimants that they are engaging in an official act. (See Exhibit 1)
- MOTION/VOTE
RS16546C1:** A motion was made by Rep. Raybould to introduce RS16546C1.
DISCUSSION: Rep. Saylor asked if dropping the requirement of notarization would provide less protection for the claimant in any way. Director Tuthill said there is a second tier remedy providing protection to the claimant.
The motion passed by voice vote.
- ANNOUNCEMENTS:** Chairman Stevenson welcomed Austin Schaefer, Paul, Idaho to the Committee. Austin will be Committee page for the second half of the session.
A final thank you and goodbye was made to our Committee page for the first half of the session, Daniel Cox, Kellogg, Idaho.
The Department of the Interior, U.S. Fish & Wildlife Service Rule proposing to delist the gray wolf has been distributed to Committee

members in their work folders today. (See Exhibit 2)

ADJOURN: The meeting adjourned at 12:17 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 13, 2007

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively

ABSENT/EXCUSED: Rep. Bedke

GUESTS: Phil Homer, Legislative Advisor, Idaho Association of School Administrators; Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG); John J. Williams, Bonneville Power Administration (BPA)
See sign-in sheet for other guests.

CALL TO ORDER: A quorum being present, Chairman Stevenson called the meeting to order at 1:30 p.m.

**Phil Homer
IASA** Phil Homer, Legislative Advisor, Idaho Association of School Administrators was welcomed by the Chairman.

**MINUTES
February 7, 2007** A motion was made by Rep. Pence to approve the minutes of February 7, 2007 as written.
The motion passed by voice vote.

**MINUTES
February 9, 2007** A motion was made by Rep. Pence to approve the minutes of February 9, 2007 as written.
The motion passed by voice vote.

**OVERVIEW:
Bonneville Power
Administration** Chairman Stevenson welcomed John J. Williams, Bonneville Power Administration (BPA), saying BPA's requirements sometimes affect water issues on the upper and lower Snake River as well as the Columbia. He thanked Mr. Williams for coming to Committee to provide an update.
Mr. Williams gave a review of BPA and its current challenges. There are changes in power requirements within the industry as well as within the State of Idaho. He submitted a brochure, "A Better Environment, a Better Future" (Exhibit 1); "Factsheet: BPA fish and wildlife investments" (Exhibit 2); and "Spillway Weir" (Exhibit 3).
SUMMARY - Power Generation and Transmission: BPA is a steward of the Northwest's federal hydroelectric system. It owns 75% of the high voltage transmission system in the northwest, including 31 federal dams and one nuclear power plant. BPA is self-financing, receiving no federal appropriations. It pays the U.S. Treasury for debt, and for fish and wildlife calls and other calls associated with facilities operation and services. BPA is funded through the marketing of power, and sales of transmission services.

BPA has made changes since the energy crisis of 2001-2002. Many utilities went into debt at that time. Conditions were very unstable—both in terms of energy supply and fish and wildlife conditions. BPA found ways to reinvent itself in order to address internal and external costs. Its mission was to provide a low energy rate for customers, carry out fish and wildlife responsibilities, and to pay the U.S. Treasury. This was done by pursuing unique methods of financing bonds, cutting administrative costs, and rethinking administrative and philosophical approaches to management and production.

As a result, a Regional Dialogue Proposal was created. It outlines a plan to tier rates and services to meet future requirements by establishing a high water mark (HWM) for each preference customer. The three major issues are:

1. 20-year contracts are entered into with all customers in order to provide certainty in terms of price. In order to do that, it was necessary to allocate power using methods that were new both to BPA and in the northwest. Instead of going to market to acquire other generation resources, BPA proposed to allocate according to a 2-tier methodology to meet customer loads. Under the proposal, a customer chooses the level of BPA service needed to meet its Tier 1 load. The customer can choose to acquire Tier 2 resources on their own, or ask BPA to acquire the resource on their behalf. If they ask BPA, they pay a marginal cost so that BPA can keep the lowest possible rates for Tier 1 customers.
2. Proposed principles for the future role of BPA include offering a significant amount of the system as a “Slice” product, which distributes hydro risk and reduces the impact of hydro variability on the market. This product is still being discussed.
3. A Residential Exchange Program is still being debated. The intention is to provide access to the benefits of low-cost Federal power to the best-known utility companies in the Pacific Northwest. There is a settlement agreement with PacifiCorps now being negotiated. If it is not approved, BPA may have to revert to average system cost methodology in terms of connectivity. The settlement comes as a result of Klamath Falls using water for fish instead of for PacifiCorps’ hydro plant requirements. The settlement also provides a good example of inter-connectivity among system requirements.

QUESTIONS: Chairman Stevenson asked if the Residential Exchange Program issues with PacifiCorps was system-wide, or if Oregon would be identified separately from Idaho. Mr. Williams said Idaho has a service portion in Oregon. Chairman Stevenson asked if ramifications caused by closing the Klamath Falls facility would attribute to Utah Power and Light separate from the rest of the system. Mr. Williams said Utah Power and Light is not separate in terms of generation. Closing the facility in Oregon could definitely be used by PacifiCorps to make a case before BPA. Their average system cost will increase if the Klamath hydro power plant is terminated.

Rep. Eskridge asked if service costs, under average system costs, would be spread throughout Rocky Mountain Power as far as the northwest is concerned; and if the end result would be for Rocky

Mountain Power to maintain the status quo. Would the difference be compensated by BPA, and BPA customers be the net losers even though Klamath Falls is a private facility. Mr. Williams said that was his understanding. An investment has been made for transmission improvement to strengthen Montana, Idaho and the northern region in Washington. Other transmission projects are being considered where there is a concern for insuring adequate reliability in the power system. BPA also began to consider resource efficacy during the energy crisis of 2001-2002 when there wasn't enough power transmission or generation, and the load was growing. That was one reason BPA instituted the 2-tier system.

SUMMARY - Fish and Wildlife: Referring to Exhibit 2, Mr. Williams called attention to fish and wildlife (FW) investments made by BPA in 2005. BPA funds 350 FW projects in the Columbia Basin; reimburses the U.S. Army Corps of Engineers and the Bureau of Reclamation for a portion of operating and maintenance costs relating to improvements at dams for fish passage, reimburses the U.S. Fish and Wildlife Service for hatchery operations; and reimburses the U.S. Treasury for constructing capital projects such as hatcheries and fish passage projects at the dams.

A total of \$576.3 million dollars in fish and wildlife (FW) investments was made by BPA in 2005. The total for 2006 is \$851 million dollars. Lost opportunity costs (which is defined as that water spilled over the dams for fish representing lost electricity and money that could have been generated if the water had passed through the turbines) were \$182.1 million dollars in 2005.

Several environmental and fisheries groups have published a study predicting power losses should the four lower Snake River Dams be breached. The study indicates a range from a minimum of \$79 million dollars to a maximum of \$179 million. That study was done without input from BPA. BPA's estimates of power loss to replace the four lower dams is a minimum of \$450 million dollars and a maximum of \$650 millions dollars.

BPA has integrated wind farm into their transmission system. The most cost-efficient back-up system for wind power is hydro power. Hydro power also allows reservoirs to be used to save water for fish. BPA is committed to the conservation of fish, including salmon, and has optimized water withdrawals to improve fish runs. Twelve fish stocks are currently listed, but only four pass through the four lower Snake River dams. Mr. Williams said breaching the dams would not help the other eight fish stocks, and not really help the four passing through the dams. He cited the Fraser River as an example where the same problems exist with fish runs, and where there are no dams. Mr. Williams said the "4-Hs" need to continue: hydro, harvest, hatchery, and habitat; and there needs to be a better understanding of ocean conditions.

QUESTIONS: Rep. Wood (35) asked what new transmission lines BPA has planned; and where they're located. Mr. Williams said BPA is working to improve the line from Montana through Bonners Ferry into Spokane. There are two or three joint projects planned cooperatively with Rocky Mountain Power and Lower Valley Co-op in southeast

Idaho.

Rep. King, referring to Exhibit 2, page 7, noted that wind energy is 1% of BPA resources. She asked if there was a goal to increase wind energy in BPA's system. Mr. Williams said 1% looks small, but probably represents several hundred megawatts. Rep. King again asked if there was a goal to increase wind power, or if BPA was waiting for people to "just come on line and let it happen." Mr. Williams said within a few weeks BPA will release a wind integration study. A year ago there were so many wind requests that BPA couldn't integrate them in a manner consistent with maintaining reliable transmission in the system. He said that speaks volumes about how much wind power is developing in the system. Mr. Williams said he would provide the Committee with a copy of the study when it is released.

Rep. Raybould asked for clarification as to whether the northwest states were in agreement about transmission siting programs, an issue which was discussed last summer. Mr. Williams said, two years ago, BPA, Idaho Power, PacifiCorps, and others, worked on the concept of a regional transmission organization to develop a regional transmission entity. That entity would operate to dispatch power in a wholesale deregulated marketplace. The State of Washington kept BPA from moving forward, and a middle ground was not found to provide a solution. It doesn't look like it will happen. There is now another northwest tier transmission group made up primarily of eastside utilities in Montana, Wyoming, Oregon and Nevada. At some point, groups will have to work out seam issues in order to expand transmission and move power from east to west, and north to south.

Rep. Saylor asked what percentage of hydropower the four lower Snake River dams represents. Mr. Williams said it represents from 9-12% of the Federal-based system. Region-wide, it represents approximately 5%, accounting for all other resources.

Rep. Chavez asked if the prototype removable spillway weir (RSW) completed in 2001 on the Lower Granite Dam provided data on juveniles; and if it was effective in reducing "wear and tear." Mr. Williams said current data shows a 98% survival rate.

Rep. King, referring to Exhibit 2, asked if lost opportunity costs meant that the line item, represented by \$182 million dollars in 2005, would go away if the lower four Snake River dams were breached. Mr. Williams said, by definition, the effect would be that the \$182 million dollars would be gone if the dams area breached because there would be no turbines for water to go through.

Rep. Raybould asked Mr. Williams to explain the import of the four lower Snake River dams in backing up wind power, and the effect if the dams were gone. He said the four projects generate enough energy to meet the needs of Seattle. The energy can be called on for short periods to time to meet peak loads. This is extremely valuable in the Federal-based system, because the energy is not designated for any particular customer or state. Hydro power can decrease when the wind blows, but when the wind stops blowing or there is any emergency in the system, the hydro system from the dams and the nuclear plant can continue to meet loads in the northwest. Hydro power is the cleanest and most efficient energy. There is more

emission with natural gas. To deliver alternate energy sources, such as coal, would create environmental costs in terms of barge and navigation, or trucks.

Rep. Eskridge said if the four lower Snake River dams were removed costs would increase considerably for lost power which BPA would need to replace. Power replacement costs would be higher than power generated from the dams. The opportunity to sell excess power on the open market at higher prices during seasonal fluctuations would also be lost. Rep. Eskridge asked if, in actuality—and including lost opportunity costs and power purchases, the loss of the dams would cost substantially. Mr. Williams said yes, the impact would affect the region. There would be a cost to BPA in terms of lost revenue. BPA would still have to make U.S. Treasury payments and also might be required to pay for the termination of the projects. The burden would pass to ratepayers. It is also important to keep decisions concerning the operation of the Pacific Northwest water system in the Northwest, and not in Washington D.C.

Chairman Stevenson thanked Mr. Williams for his presentation.

S1010:

Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG), presented S1010 proposing to expand the scope of the current Wildlife Management Area (WMA) pheasant permit to include other stocked game bird species. S1010 does not change the price of the permit. A pilot program was done at C.J. Strike Reservoir last year. The legislation gives a hunter the choice to participate. Participation helps to pay for the program which expands the hunting opportunity. Two sections of code are amended to effect the change.

QUESTIONS: Rep. Raybould asked if the real reason for S1010 was that IDFG wants to change the pheasant permit because there aren't pheasants anymore. Ms. Kiefer said pheasants are stocked on WMAs, but hunter pressure exceeds the ability to stock them. The stocked birds are farm-raised, not wild birds.

**MOTION/VOTE
S1010:**

A motion was made by Rep. Wood (27) to send S1010 to the floor with a DO PASS recommendation.

DISCUSSION: Rep. Pence asked if birds other than pheasants would be introduced where pheasants are currently stocked on WMAs. Ms. Kiefer said the Commission would be reviewing programs relative to habitats and budgets, as well as considering farm-raised birds that may be available. She said the most likely bird to be stocked, besides the pheasant, is the chukar.

Rep. Shively asked if an effort was being made to stock hens in order to promote natural reproduction. Ms. Kiefer said long-term study information demonstrates that farm-raised birds have relatively low survival reproductivity. IDFG has other programs to improve natural reproduction of pheasants. Those deal with habitat improvement, securing appropriate habitat, and focused predator control.

The motion to send S1010 to the floor with a DO PASS recommendation passed by voice vote. Rep. Wood (27) will carry S1010 on the floor.

S1011:

Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish &

Game (IDFG), presented S1011 proposing to amend the description of disability criteria for a person to acquire a permit to hunt from a motorized vehicle. This change makes the description consistent with IDAPA rule 13.01.04.010.04. Physical disability criteria would be the same for persons seeking a disabled license to hunt and/or fish and a permit to hunt from a motorized vehicle. There are no new authorities or permissions being requested.

QUESTIONS: Rep. King said she was distressed to see that blind people can hunt. Ms. Kiefer explained the legal definition of "blind." Blind people hunt in many places across the country.

**MOTION/VOTE
S1011:**

A motion was made by Rep. Wood (35) to send S1011 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. Wood (35) will carry S1011 on the floor.

ANNOUNCEMENTS:

Chairman Stevenson gave Committee members an overview of upcoming meeting agendas. There will be a Joint Session of House and Senate Resource Committees Monday, February 19th, for the purpose of a report from the CDR Committee.

ADJOURN:

The meeting adjourned at 2:27 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** February 15, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively
- ABSENT/EXCUSED:** None
- GUESTS:** Senator Laird Noh, Kimberly, Idaho; Jonathan Parker, Idaho Water Users Association (IWUA); Suzanne Schaefer, Nature Conservancy/Landowner Conservation Incentive; Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR); Howard Weeks, Clearwater Timber Association; Jane Wittmeyer, Intermountain Forest Association
See sign-in sheet for other guests.
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:34 p.m.
- MINUTES
February 13, 2007** A motion was made by Rep. Pence to approve the minutes of February 13, 2007 as written.
The motion passed by voice vote.
- H 170:** Dr. David Tuthill, Acting Director, Idaho Department of Water Resources (IDWR), presented H 170 proposing to remove notarization as a statutory requirement for filing a claim in a water right adjudication. Implementation of H 170 will decrease the cost of an adjudication for the claimants, and not diminish the quality of claims.
Questions: Rep. Chavez stated that, to her, the notary seal has always been proof positive evidence of identity. She is not in favor of removing the notary requirement, and asked how H 170 would provide the same assurance. Director Tuthill said IDWR still requires a notary on certain forms where a water right is moved or changed in some manner. The notice of claim, however, does not take anything away. Abuse is unlikely because the filer is paying a fee. If any ownership question is later a cause for concern, there is opportunity to investigate. H 170 removes a costly process that has not been seen to be beneficial.
Rep. Raybould said all claims are reviewed by IDWR after filing and submitted to a court after departmental review. If errors are found, there is a process to have them corrected. The likelihood of someone filing a claim on someone else's land is low because a water right, ultimately, is based on land not on the person filing a claim.
Rep. Barrett said she shared Rep. Chavez' concern, and is more comfortable with the notary process.

Rep. Vander Woude asked if assurance could be provided that false claims wouldn't occur; or that if fraudulent claims occurred, they would be discovered. Director Tuthill said in his thirty years of field adjudication, including the 170,000 claims filed in the Snake River Basin Adjudication, he has never seen a falsified claim. There are enough procedural points to insure accuracy.

Rep. Wood (27), referring to page 2, line 26, said H 170 provides adequate protections, including signing to "solemnly swear or affirm under penalty of perjury."

Rep. Chavez asked if the Internet site would be secure; and how someone could solemnly swear on the Internet. Director Tuthill said since payment could be made over the Internet, entry to the site would be secure. Traditionally and currently, the oath to solemnly swear is made in writing. The notary signature affirms the identity of the person, but the oath, itself, is written.

Rep. Saylor asked what feedback had been received from northern Idaho, since H 170 comes to facilitate the northern Idaho adjudication. Director Tuthill said there has been no feedback from northern Idaho. Over the years, people have suggested that the Department upgrade their process to enable online filing. IDWR will still accept claims filed in other ways.

Rep. Barrett said a person without good intentions won't mind affirming he/she is not falsifying a document. She said time--that is making the process faster--should not be used as a reason to change the process. Sometimes it is better to move slowly.

Rep. Raybould said information on the claim is what is pertinent to IDWR. The notary is only affirming the identify of the person presenting the claim. There is no review for accuracy made by the notary. Anyone can now go to a notary and file a fictitious claim. H 170 makes the process easier for people who live some distance from Boise.

MOTION H 170:

A motion was made by Rep. King to send H 170 to the floor with a DO PASS recommendation.

Discussion/Questions: Rep. Wood (35), apologized for arriving to Committee late, asked how swearing under penalty of perjury can be accomplished without a notary. Director Tuthill said the on-line form is similar to the form now used by IDWR. Typically the notary assesses the identify of the person, but does not administer the oath. The on-line oath would be validated by signature, and printing a copy of the claim. The statement to be used on the e-form comes at the suggestion of the Idaho Water Users Association (IWUA).

Rep. Wood (35) asked if there are other filing choices. Director Tuthill said yes, the form could be filed over the Internet, in person, or by mail. All filings are subject to further review. Filing a water claim adds protection to the property and does not take anything away from it.

Rep. Barrett expressed a concern about identity theft over the Internet. She said the current system has worked well.

**PUBLIC TESTIMONY:
JONATHAN PARKER
IWUA**

Jonathan Parker, Idaho Water Users Association (IWUA), rose in SUPPORT of H 170.

Questions: None.

VOTE H 170:

The motion to send H 170 to the floor with a DO PASS recommendation passed by voice vote, with Reps. Wood (35), Barrett, and Chavez voting NAY for the record. Rep. Saylor will carry H 170 on the floor.

**REPORT:
The Ranch, Farm and
Forest Protection Act**

**SENATOR LAIRD
NOH**

Senator Laird Noh, Kimberly, Idaho, introduced the Idaho Ranch, Farm and Forest Protection Act (IRFFPA) which is intended to help keep Idaho's rural working lands working, and to give the State of Idaho a tool to meet the State's most important wildlife objectives. Idaho's working farms, ranches and timberlands offer the way of life, rural character, open space and outdoor recreation vital to maintaining Idaho's natural resource heritage. They also provide lands that sustain the state's fish and wildlife.

Former Senator Noh distributed Exhibit 1, a folder containing information pertinent to the Act. He said it was unlikely that legislation would be pursued this session. He noted the list of sponsors supporting the Act, including the Idaho Cattle Association, Idaho Farm Bureau, Idaho Forest Owners Association, Idaho Woolgrowers Association, Land Trusts in Idaho, Rocky Mountain Elk Foundation, Sportsmen for Fish and Wildlife, and the Nature Conservancy. Farmers and ranchers—the group with the highest credibility—are remarkably supportive, as are groups interested in protecting natural resources. What other states are doing has been taken into consideration. Twelve other states have mechanisms in place to try to protect farm and ranch land from subdivision development. The Act proposes to allow for a portion of conservation easements to be sold in the marketplace: If a rancher doesn't have any income tax against which to apply the tax credit, it can be sold to someone who does.

Exhibit 1 contains an overview of the Idaho Ranch, Farm and Forest Protections act, proposed legislation, eleven main elements of the Act, a statement of need, a list of supportive organizations, frequently asked questions, and press releases.

**JIM LITTLE
IRFFPA**

Senator Noh introduced Jim Little, IRFFPA said he's watched the concept develop with interest and a fair amount of skepticism. He has come to the conclusion that it has value. He noted that, where eight years ago there was hostility to the idea of conservation easements, today they are well-received.

**SUZANNE BUDGE
SCHAEFER
Nature Conservancy
Landowner
Conservation
Incentive**

Suzanne Schaefer, Nature Conservancy/Landowner Conservation Incentive, said the RS proposing the Ranch, Farm and Forest Protection Act will be introduced the Revenue and Taxation Committee in a few days. She said her intention in Committee today is to cover the main elements of the Act.

Summary: The five objectives the steering committee is working toward are to:

1. Provide state income tax credits to willing landowners who make a qualifying conservation contribution;
2. Allow recipients to sell tax credits to willing buyers;
3. Focus the allocation of tax credits on working lands that provide important benefits to fish and wildlife;
4. Create sufficient oversight to ensure effective use of tax credits and safeguard against abuses; and

5. Provide a sufficient incentive while minimizing the impact to the state budget.

Ms. Schaefer reviewed several maps indicating high growth areas which are also vital spawning ground and habitat for endangered and other species, corridors and winter range habitat, new domestic wells, and the areas of the state likely to be most interested in the voluntary conservation program. She said the question isn't "what would you expect Idaho to be in 25 years," but "what would you like it to be."

The Act would give the state and landowners another tool, and provide a mechanism to maintain control over lands that often have fish and wildlife value. Agreements with landowners would be voluntary; provide incentives, such as state tax credit for conservation donations; and propose sideboards, such as transaction limits, a statewide CAP, and an annual review. A large effect to the state budget is not anticipated. Benefits to be expected include: property continuing in private ownership by participation in a voluntary, market-based program; land staying in production; rewarding landowners for providing public benefits; no impact on county tax revenues; and allowing a provision to sell the tax credit.

By way of demonstrating potential demand for the program, Ms. Schaefer said historically, from 2000 through 2005, there have been from 9 to 17 conservation easement transactions annually, including both purchased and donated land. A Tax Credit Advisory Committee would be established for program oversight.

QUESTIONS:

Questions: Rep. Barrett noted that references were made to marketplace solutions; but also to credits and subsidies, which artificially skew markets. She said, "you can't have it both ways." Ms. Schaefer said the point was valid. Rep. Barrett said her honesty was appreciated.

Rep. Eskridge, assuming revenue to local counties would remain the same, asked if that meant property taxes would remain the same. Ms. Schaefer said yes, because the property would remain working land. Not changing the production value of the land has the benefit of maintaining its taxable value.

Rep. Eskridge asked if a conservation easement lien reduces value in terms of assessing property tax. Ms. Schaefer said because property remains working land, it remains taxable at the same level. There is a legitimate concern that if irrigated agricultural land becomes dry land, for example, there would be a decrease in value. The legislation will have explicit language that land will remain at the same taxable level as when the conservation easement went into effect. Any tax increases that may have resulted from development—for instance, condos along a river—won't be realized; but the result is consistent with the objective of keeping working lands in private ownership.

Rep. Chavez asked if land of any designation would be eligible for a conservation easement. Ms. Schaefer said yes, if it qualifies as working land. If there are many applications, the Advisory Board would chose those parcels most closely meeting program objectives.

Rep. Vander Woude said he just purchased land with a conservation easement where the water right had been sold off. He asked how the tax base would remain the same if water rights were sold independent

of the land. Ms. Schaefer said all conservation easements rely on professional appraisers working with various elements of the transaction. When talking about the value of land with-and-without a conservation easement, the integral between the land values is the purview of qualified appraisers.

Ms. Schaefer said a Gold Room workshop is planned for March 1st. There will be people at the workshop who have completed these transactions.

Chairman Stevenson noted that there are people on this Committee and the Revenue and Taxation Committee who will have a second opportunity to review the proposal.

**REPORT:
Fire Preparedness
Program**

**JANE WITTMAYER
Intermountain Forest
Association**

**HOWARD WEEKS
Clearwater-Potlatch
Timber Protective
Association**

Jane Wittmeyer, Intermountain Forest Association (IFA), said the report today will provide the Committee with current information on the Department of Lands' fire preparedness program; what activity is taking place in Idaho and nationally; and the ability to protect values associated with forest lands with the same programs as have been in place in the past. Ms. Wittmeyer said, ultimately, the fire preparedness program is an appropriations issue.

She introduced Howard Weeks, Clearwater-Potlatch Timber Protective Association (CPTPA), who made the power point presentation. (The Changing Paradigm of Wild Land Fire Fighting - Exhibit 2)

Federal forest land policy has changed. The "let it burn" policy has increased fuels build up, increased the risk of catastrophic wild land fire, and increased the risk to fire fighters. Costs are escalating due to Federal requirements and mandates, and are out of private and state control.

The fire program mission to put the fire out has not changed. Putting out small fires eliminates the risk of big fires, keeps costs down, lowers risk to wild land fire fighters and rural residents, and has less liability risk.

The Idaho Department of Lands (IDL) and the timber protection associations protect over 6 million acres of forest and range lands, including over 4.5 million forested acres. There is an average of over 400 wild land fires each year. 96% of these are suppressed at less than 10 acres. The cost of putting out a fire of less than 10 areas averages \$3,500; from 10-99 acres, \$58,000; from 100-300 acres, \$213,000; and if the fire escapes becoming a Type 1 fire, the cost goes to \$1 million dollars on the first day.

Mr. Weeks reviewed how fire fighting efforts are financed, and what costs mean to the state and private individuals. Costs have increased to the point of serious concern about preparedness funding. Budget priorities in Idaho need to reflect the realities of required equipment, machines and personnel. The Legislature can help by supporting IDL's Fire Preparedness Program and the recommended general fund appropriation of \$928,100.

QUESTIONS:

Questions: Rep. Chavez said she hoped a no-burn policy was not advocated; and asked if it was. Mr. Weeks said prescribed fires were used extensively to reduce fuels in managed forests and on smaller private lands.

Rep. Saylor asked for clarification regarding Ms. Wittmeyer's previous

comments relative to burning. She said the Federal forest service has a “let it burn” policy, but the state doesn’t. Over the years, the Federal forest service hasn’t been removing anything from the forests—a policy which has led to fuel buildup. When the “let it burn” policy intersects where there has been no removal, there is a tinderbox. The result can lead to catastrophic fires. There is a fire risk map available.

Rep. Vander Woude, relative to the 1.6 million acres currently being protected with no fee being paid by landowners, asked if there was a possibility to collect a fee. Ms. Wittmeyer said there had been an attempt to collect a fee by the previous director. The Legislature didn’t forward the legislation. Next session legislation will be brought forward again in an effort to capture those landowners who are not currently paying a fee.

Rep. King expressed a concern about noxious weeds. She asked if monitoring noxious weeds was part of fire protection procedure. Mr. Weeks said it was, depending on the nature and size of the fire and the type of fuels. Different fires and locations can be expected to have different noxious weed outcomes. He gave illustrations.

Rep. King, referring specifically to Atlanta, which has piles of slash, asked about removal policies. Mr. Weeks said for many years the operator or landowner has been required to clean up where the harvest operation occurs as a legal requirement. A fire warden inspects. Generally there is a two-to-three year compliance window. Quite often slash burning occurs the fall after the slash is piled.

Chairman Stevenson thanked Ms. Wittmeyer and Mr. Weeks for their presentation. He noted that Committee members included members of the JFAC Committee.

Rep. Shepherd expressed his personal thanks to the fire protection associations. Grangeville has had calamitous experience with the “let it burn” policy.

ANNOUNCEMENTS: The Committee will meet in Joint Session with the Senate Resources Committee Monday, February 19th, to hear a report on the Eastern Snake Plain Aquifer Comprehensive Management Plan Framework by CDR Associates.

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

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES
JOINT SESSION
HOUSE RESOURCES & CONSERVATION COMMITTEE
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 19, 2007

TIME: 1:30 p.m.

PLACE: Gold room

HOUSE MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

ABSENT/EXCUSED: Rep. Moyle

SENATE MEMBERS: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, Langhorst

GUESTS: Jonathan D. Bartsch, Senior Program Manager, CDR Associates; Jerry Rigby, Chairman, Idaho Water Resource Board; Diane E. Tate, Program Manager, CDR Associates
See sign-in sheet for other guests.

CALL TO ORDER: A quorum being present, Chairman Stevenson called the meeting to order at 1:31 p.m. He welcomed Senator Schroeder, members of the Senate Resources & Environment Committee, and members of the House Resources & Conservation Committee, meeting today in joint session.

INTRODUCTION: **Jerry Rigby**
Idaho Water
Resource Board Jerry Rigby, Chairman, Idaho Water Resource Board (IWRB), said pursuant the requirement of SCR 136 (2006 session), the IWRB today submits the Comprehensive Aquifer Management Plan for the eastern Snake River plain. Three of the eight IWRB member are present today: Leonard Beck, Vic Armacost, and himself. He noted that Acting Director David Tuthill and Hal Anderson were in attendance representing the Idaho Department of Water Resources (IDWR). Mr. Rigby said he was proud of stakeholders and legislators for their willingness to address the serious issues, and summarized how work proceeded forward from August 2006. The report provides a “skeleton” that still needs “meat on the bones.” This work provides a framework for work that can continue after the Idaho Supreme Court makes a decision on 5th District Judge Barry Wood’s ruling that the State’s rules for applying conjunctive management of water are unconstitutional.
Mr. Rigby said the process had to “begin anew, re-plowing old furrows,” in order to build consensus among stakeholders. It is necessary now to provide funding to continue the process. Until there is an actual contract, the best funding estimate is a requirement of \$850,000—expected to be split about \$400,000 to \$450,000 process to technical requirements. The IWRB asks for flexibility through the initial planning process.

Chairman Stevenson asked for questions to be held until the end of CDR Associates presentation of the report. At that time questions will be taken first from Committee members, followed as time allows by questions from other persons in attendance .

REPORT

CDR Associates:

Jerry Rigby, Chairman, Idaho Water Resource Board, introduced Jonathan D. Bartsch, and Diane E. Tate of CDR Associates. Committee members had questions about the acronym CDR. Ms Tate said CDR didn't stand for anything, per-se. The phrase "Collaborative Decision Resources" is used on business cards in order to have something to say when people ask.

Ms. Tate and Mr. Bartsch's comments followed a power point presentation (Exhibit 1). Eastern Snake River Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan: FRAMEWORK was distributed (Exhibit 2).

Over 350 interested and involved stakeholders from across the basin gave input, making a significant investment of time in the process. Stakeholder support for the process continues. The focus was to overcome obstacles that could limit recharge in the spring of 2007, if conditions exist; on CREP enrollment; and to take action in 2007 that will show forward momentum.

Summary: Main talking points included:

- Framework development process of the Comprehensive Aquifer Management Plan (CAMP)
- Stakeholder involvement and input
- Board recommendations
 - Goal and objectives
 - Management alternatives
 - Interim measures
 - Developing the Comprehensive Aquifer Management Plan
- Request to the Legislature

Stakeholders contributed many suggestions. They include the following—some of which are mutually exclusive:

- Recharge is critical, but can't be the only tool
- Existing levels of incidental recharge need to continue
- The role of administrative curtailment needs to be defined
- New storage options need to be explored
- Everyone benefitting from Eastern Snake Plain Aquifer management should contribute
- Seniors should not pay for impacts created by juniors
- The distribution of "who pays what" should be equitable
- The State should provide all of the funding
- Some funding should come from the State, some from Eastern

Snake Plain Aquifer

- Fund those activities that “solve the issue”
- One-time transfer from State government surplus or severance tax
- Portion of sales tax dedicated to a “water fund”
- Per acre or acre-foot levy for water users
- Creation of an Eastern Snake Plain Aquifer conservancy district with taxing authority
- Increase annual property tax to build a “water fund”
- Per-well fee for domestic well users in the Eastern Snake Plain Aquifer
- Surcharge for municipal customers in the Eastern Snake Plain Aquifer
- Statewide per-head tax

The aquifer management goal is to sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and water supply. CAMP includes five objectives:

- Increase predictability for water users by managing for reliable supply
- Create alternatives to administrative curtailment
- Manage overall demand for water within the Eastern Snake Plain
- Increase recharge to the aquifer
- Reduce withdrawals from the aquifer

Interim measures include:

- Spring 2007 recharge - the IWRB recommends using its water rights in priority and the existing canal system to deliver spring recharge; and to allocate \$150,000 to cover those recharge costs.
- Increase CREP enrollment - the IWRB will encourage needed modifications to the CREP program, and case-by-case exceptions in order to leverage Federal dollars connected to the program.
- Targeted demand reduction - specific areas are being identified where water demands can be reduced.

More management alternatives that will positively benefit the aquifer include:

- Managed recharge - water diverted deliberately to constructed recharge sites. This includes diverting water into the existing canal system this spring. More sites need to be constructed, and water needs to be purchased from storage. There is a need to start this effort now. It’s not a “silver bullet” (won’t solve every problem), but is a significant part of the solution.
- Incidental recharge - normal operation of canal systems result in significant benefits due to seepage. There needs to be a

discussion about ways to continue those things that already benefit the aquifer, and an effort not to set up incentives to change those things. People want credit for those things they already do that are beneficial, and don't want to be penalized.

- Site specific augmentation - short-term measures to satisfy current short-term shortages at specific locations.
- Additional surface water storage - comes with significant costs and environmental policy implications. There is a significant number of people who want to compare storage to other management options.
- Conversions—groundwater to surface water - already very effective for reducing dependence on groundwater. Given the limitations of canal systems, there may not be many opportunities without totally changing that system. Perhaps a part-time conversion could be accomplished, when water is available and/or needed.

In the plan development process so far, there has been broad public input with stakeholders identifying their concerns and making suggestions; so far, however, stakeholders have not communicated formally with each other. The IWRB recommends an Advisory Committee charged to make consensus recommendations, and to work with Eastern Snake Hydrologic Modeling Committee (ESHMC) and IWRB staff. Technical assistance will be contracted as required. The effort to-date has not been directed toward problem-solving forum, rather it has been to identify problems and facilitate process. The Advisory Committee will be a problem-solving forum, bringing together different stakeholders. Nominations to the Advisory Committee will be solicited by the IWRB. It will be comprised of thirteen members representing geographic and diverse interests. The recommendation for Advisory Committee make-up is as follows:

- Chairperson (1)
- Municipalities (2 - lower and upper valley)
- Business (Processors, equipment providers, dairies, bankers, etc.) (2)
- Land developers (1)
- Surface water users (2 - lower and upper valley)
- Groundwater users (2 - lower and upper valley)
- Spring water users (1)
- Hydropower (1)
- Domestic well owners (1)

Continuing to support the effort and to provide leadership is seen to be the most important Legislative function through the next phase. The IWRB requests an allocation of \$10 million dollars for targeted reductions in water demand through market-based mechanisms, and \$850,000 for continuation of the CAMP development process. A 16-month process is outlined in [Exhibit 2](#). The IWRB expects to present the final CAMP to the Legislature during the 2009 Legislative session.

While the final plan is being developed, technical issues can be addressed. The Modeling Committee will be used as much as possible, as it is an established group.

Involving and informing the public is a primary focus. A website has been created to this end. (www.espaplan.idaho.gov) Today's presentation will be posted on the site tomorrow.

**JACK
BARRACLOUGH:**

Chairman Stevenson recognized former Rep. Jack Barraclough, hydrologist, formerly a member of the House Resources & Conservation Committee, for his long service to water issues in Idaho and the northwest.

QUESTIONS:

Senator Little asked about the prior reference to a severance tax. Ms. Tate said the reference was not to a new tax. People referred to a surplus in connection to another severance tax. Mr. Bartsch said the portion of the presentation referring to a severance tax incorporated stakeholder input verbatim—which is different from making a recommendation.

Rep. Raybould asked about forming an Advisory Committee comprised of a representatives from different aspects of water use. He said people may not understand their stake in the water issues, or recognize that it involves more than just the agricultural community. Ms. Tate said untraditional water users did understand the broad aspect of water use. Domestic well users know the water table is changing. People understand that economic development depends on a secure, available, and reliable source of water. Mr. Bartsch said the aquifer management issue is broader than resolving some of the water calls. By looking at the aquifer and its management as a whole, non-traditional users of water are brought into the framework process. Ms. Tate said it was fascinating to learn the percentage of agricultural products coming from southeast Idaho. The ag economy trickles down to all industries, including services and recreation. Mr. Rigby said Judge Wood's decision, now in the Supreme Court, makes it clear that there is concern for domestic water. The issues are broader than agriculture.

Rep. Raybould said, up to now, talk about a funding mechanism has been about how to assess agriculture. He asked if funding from the General Fund of the State was justified, asking everyone to pay for the program. Mr. Rigby said the issue has been and will continue to be debated. He is convinced that the final plan will involve funding from the State and the General Fund, and that general consensus will be for that view.

Rep. Vander Woude asked if the request for \$10 million dollars was from both the State and the stakeholders. Mr. Rigby said it was from the State. The concept of stakeholder funding is included in the long-term plan. He said that is why meetings are being held in the Hagerman Valley area. A majority believe in order to make a plan work, given declining flows and the aquifer artificially high due to diversion in the 50s and 60s, the only sure way is to take some demand out of that area. Whether the State will be reimbursed is a question that is not addressed. For now, the request is from the State, itself.

Senator Cameron said there were always more demands on State

budgets than there were resources. He agreed that State resources were appropriate to help solve the problem, but questioned appropriating money ahead of a solution. He asked why the Legislature would want to appropriate now. Mr. Rigby said, after talking with stakeholders and speaking with experts, he believes some demand needs must be taken care of now. Relative to the Hagerman Valley or Thousand Springs Reach, flows are in such large quantities that even a significant curtailment would not completely meet the demands and increase the flows to what they were when the water rights were acquired. Action needs to be taken independent of what occurs otherwise. Reimbursement is a debate for another time. Now it's necessary to get out in front of the problem and to act immediately. Ms. Tate said she has not found confidence from stakeholders that flows will return to cover all permits. In order to resolve some of the pending calls and existing conflicts, it is necessary to reduce the demand in that area to begin to address the supply that will never come back. Mr. Bartsch said, from the stakeholders perspective, taking action in 2007 through targeted demand can create the forward momentum necessary for the process to succeed.

Senator Cameron said the appropriation seems to presuppose that the Supreme Court will not overturn any portion of Judge Wood's decision. An argument can be made that if the provision to include domestic wells and municipal and industrial use is overturned, then funding would be left to groundwater and surface water users. To fund \$10 million dollars is putting the cart before the horse. Mr. Rigby said he respectfully disagreed. He believes, given his legal background, that regardless of the court decision, it "won't be a home run for either camp." The funding is necessary to keep stakeholders involved.

Rep. Wood (35) said the whole problem is that there are more demands for water than there is water. She asked if the IWRB envisioned not encouraging domestic, municipal or industrial growth; or a plan to purchase water from those who do not have water. Mr. Bartsch said the short answer is no. Domestic and municipal use has priority status. Looking at aquifer management over the entire aquifer, there are ways to reduce consumption, to create alternatives to administrative curtailment, and to create a better context of how water can be and is being used. Ms. Tate said shareholder objectives from the first draft report indicated no support for an objective to limit growth. Mr. Bartsch said he envisioned an aquifer-wide plan to buy-in to a program to further the highest and best uses for water and enhance agricultural production.

Rep. Wood (35) said she was hearing that, eventually—where domestic, municipal and industry has a priority— there will be only one way to go: buying water from the ag community. That community now enjoys water rights, and has those businesses as an economic base across the State. She said it gives her great concern. She asked if there was an alternative. Ms. Tate said the alternatives are conservation and increasing efficiencies. It is a definite question whether the gains from those sectors will be enough. In all states, land is coming out of agricultural and going into development. Mr. Rigby said he shares Rep. Wood's (35) concern. Agriculture is the backbone of Idaho's economy. Even if the aquifer didn't need anything, it still needs to be managed. The goal is not to reduce agriculture just

because it's the highest water user.

Rep. Bedke said it was ironic to talk on the one hand of conservation, in response to Rep. Wood's (35) question, and on the other talk of increasing recharge. Those things seem to be mutually exclusive. He asked:

1. What "it would look like" if the State did fund the entire effort.
2. What would it cost.
3. How deficient is Dr. Tuthill's budget.
4. Is there a number representing an on-going commitment.
5. Is there a number for one-time itemized expenses.
6. What specific information and funds are needed to start allocating the "equitable utopian" approach that has also been suggested--where "all pay equally according to what they get out of it."

Rep. Bedke said numbers are the language of Rep. Bell and Sen. Cameron (JFAC). Ms. Tate said that process is beginning to happen. The IWRB staff is putting together a list of various approaches. In the next few weeks, those numbers will be integrated into the FRAMEWORK document (Exhibit 2), with the goal of providing a potential range of benefits and costs. The numbers will become better defined.

Rep. Bedke said the one firm number today is \$10 million dollars. He asked if that number was just a round number to show momentum, or if it was the "sum or the product of a list of willing sellers." Mr. Rigby said staff and State personnel have attempted to define possible water purchases. \$10 million dollars does not represent an actual computation. In response to Sen. Cameron's previous question, Mr. Rigby said something needs to be done now. The "cart is not before the horse." It's true that there will be better numbers after offers to sell are received, but the Legislature won't be in session to appropriate funds. The money is needed in order to take action.

Rep. Bedke said it was not necessary to remind Mr. Rigby that funds appropriated prior to receiving documentation to establish need become a floor, not a ceiling. He asked about public opinion relative to the water model. Ms. Tate said references to the model continually came up in discussions with stakeholders. Stakeholder opinions fall in the range between "it's the best tool we have" to "it's fatally flawed." More people tend toward the "best tool" end of the spectrum. Mr. Bartsch said even people supporting the water model see the need for additional refinements. As the process moves forward, model outputs will be used as inputs. Ms. Tate said its one thing to ask if the model is useful as a planning tool, and different to ask if IDWR should use the model to administer water rights.

Senator Coiner said he appreciated the previous comment about "going over plowed ground." This is the third attempt to move forward toward solutions. One advantage now is that the Legislature is listening and talking about funding. Senator Coiner reviewed the options:

1. Water withdrawals can be changed.

2. Water inputs can be affected somewhat.
3. \$10 million dollars can be applied toward changing demand.

Senator Coiner asked if there was anything else that can be done. Mr. Bartsch said “that’s it.” Senator Coiner said the one thing that hasn’t been discussed today is mitigation plans—mitigating for out-of-priority diversions, and cost-benefit ratios. He asked, considering the limited options available to effect the water budget, where it was being proposed to begin, and where did cost-benefit ratios come in relative to future planning? Ms. Tate said the water budget is a static model of a dynamic system. Time is also a factor that needs to be considered. There is support for looking at the costs and benefits of various alternatives. She said Senator Coiner’s questions lead toward asking “can we really get all the way to a balanced solution.” That question underlies much of the discussion. The answer is, first we need to exhaust the alternatives, answer the technical questions, explore the possibilities with managed recharge, and explore new storage options. Then there can be a discussion about the gap between the possible and the impossible. Mr. Rigby said it is possible that a statutory “tweak” could be made to enable mitigation for those who want to mitigate, and have the means to do so. There is now no statutorily defined mechanism to use as a “template,” make mitigation routine, and to provide for regularity.

Senator Coiner said there needs to be real thought about representation on the Advisory Committee. The domestic, commercial, municipal and industrial water interests (DCMI) actually use about 3% of the water budget; the Advisory Committee as proposed gives them 46% of the representation. It is proposed that surface water users have two representatives—one from the upper, and one from the lower valley—although all surface water users have vast differences in their systems. He asked if the constitution of the Advisory Committee had been given much thought. Mr. Bartsch said forming a representative committee is always a dynamic process. The effort has been to have a balanced, functional committee of manageable size and varied interests, able to solve problems. The proposal is for a constituent group, each member representing an interest group, and all with a point-of-view allowing collaborative work toward aquifer issues. He said the proposed committee function is “more about an attitude” than voting for specific interests.

Rep. Barrett said people like things to be simple, but they never are. Since water can’t be created, that leaves conservation approaches—which usually means reduced usage. Rep. Barrett, referring to Appendix D, Exhibit 2 (relative to pursuing targeted reductions in water demand through market-based approaches and a request for \$10 million dollars from the Legislature to implement this recommendation in 2007) asked what, exactly, was market-based that would target reduction. Mr. Rigby said there is precedent for the willing-seller/willing-buyer approach from other negotiations—even going back to the Nez Perce Agreement. If a simplified method was codified (to remove land from production), many willing sellers would be interested in enrolling their marginal ground. A strong agricultural base is still envisioned, but it is not essential to continue to water ground that doesn’t have high production value. The market would accomplish that objective if there was a program, allowing those who

have means to mitigate to do so. Just like recharge, this program by itself isn't the "silver bullet."

Senators will soon leave for another meeting. Chairman Stevenson said he would only take questions from Senators at this time.

Senator Andreason asked the consequences of not funding the \$10 million dollar request this session. Mr. Rigby said it would just delay what is believed to be inevitable. Solutions "won't get cheaper or easier to resolve."

Senator Cameron said the question can be raised as to who will ultimately pay the cost. He asked why the State is being asked to pre-fund what he thinks is an "unmeetable demand," rather than allow the problem-solving process to continue. Ms. Tate said there is momentum now. Funding would be a sign of the Legislature's commitment.

Senator Stennett asked about impediments to enrollment in the CREP program. Mr. Rigby said CREP is "fraught with red tape." There are many concerns about the present system. Participation in the program is low. The staff is being asked to review the issues raised by stakeholders, and to support IDWR's efforts to enroll land with both surface and groundwater rights. There is concern that (we) may have to "deal with the cards dealt." Senator Stennett said, with the State "in the middle of it," it doesn't sound like a market-based approach. Mr. Rigby said he didn't want to disassociate the purchase of the Thousand Springs from other actions. The reference to a market-based approach was made to the voluntary selling or subordination of other water—not necessary to the CREP program. CREP is large enough, and independent enough, to stand on its own. CREP is too big for individual water users to tackle at this time by themselves.

Rep. Raybould said JFAC is now in the budget process. If the appropriation has to be made this year, a funding schedule from the water board has to be produced very quickly. The \$10 million dollar appropriation was for only one thing—to buy down waters to alleviate the impact of the water calls on the aquifer. About six weeks ago, the figure suggested for developing a management mechanism for this operation was \$770,000 for an eleven year period, including this year. \$10 million dollars is approximately \$850,000 annually to operate a management program to monitors wells, measure return flows from canals on surface user waters back to the river, etc. Rep. Raybould asked if his calculations were in the ballpark. Hal Anderson, IDWR said there was an interest in monitoring and enhancing the Eastern Snake Plain Model, authorized in H 374, because that on-going process would be an assessment to the water districts. It is a separate activity. Currently there is a zero funding placeholder in the water board's budget. It is being proposed to replace the zero with \$850,000 to continue the planning. What Rep. Raybould is talking about is a separate assessment to the water districts.

Rep. Vander Woude said he was trying to understand the Advisory Committee structure. If the Chairman of that Advisory Committee could come from any of the stakeholders, there could be three people representing surface water or groundwater, for instance. He asked why not establish the stakeholder constituency of the Advisory Committee, and elect a chairman from among them. Ms. Tate said the

reason is that the IWRB wanted the flexibility to choose someone who may not belong to any of those groups, but who is well-suited to be chairman. That person could be someone who doesn't represent the interest groups, perhaps from a government agency or some group not articulated in the Advisory Committee makeup. Mr. Bartsch said the idea is to help establish credibility and an organized mechanism. The chair will work with the CAMP team, and provide leadership as the process moves forward. The chair will need credibility with water users, and will be an important nomination by the IWRB. Mr. Rigby said it was never intended for the chair to be a voting member of the Advisory Committee. A person representing many interests is necessary in order to form a manageable group. If it is found that this format doesn't work, it can be changed. As far as the number of people sitting on the Advisory Committee, 15 is seen to be the maximum number possible without incurring "management issues." A 13-member group is manageable.

Rep. Eskridge asked for help explaining to his constituents from northern Idaho why they need to help pay the bill to get people on the Snake River aquifer out of trouble caused by the over-allocation that has taken place. He made the analogy to the timber industry in northern Idaho that was lost. The solution in that case was to change the focus to other economic endeavors.

Rep. Barrett said she wasn't convinced anything presented today could be called market-based. When the State is being asked for \$10 million dollars, that's called a subsidy. Ms. Tate said the way it was explained to her is that the State will accept proposals for the price at which water rights will be purchased, and then purchase only those that are most appropriate. The competition among water rights holders will keep bid prices down.

Rep. Bedke said, relative to previous comments about northern Idaho, whether it is liked or not, the State has issued water rights on water that is not going to be there no matter what we do. Water right policy reflected the sentiment at that time. The water rights were given in good faith and the water isn't there now; the State can't walk away from that commitment altogether.

Chairman Stevenson asked if there were questions from the public.

Gerald Tews, rancher, asked if the work being done by the CAMP team and the proposed Advisory Committee duplicated the Governor's Summit meeting, proposed to take place when the Idaho Supreme Court makes a decision on the water case. Chairman Stevenson noted that while some people in the room had information coming from a recent meeting with the Governor, others may not. Director Tuthill said his sense of how the Governor would like to proceed is for this effort and his Summit to be coordinated. The Summit will have goals, objectives, and a purpose. The problem is a big one, likely to require both efforts.

ADJOURN:

The meeting adjourned at 3:10 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** February 21, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively
- ABSENT/EXCUSED:** None.
- GUESTS:** Eric Bastian, Director, Idaho Association of Soil Conservation Districts (IASCD); Paul Calverley, Chairman, Ada County Soil and Water Conservation District; Kyle Hawley, President, IASCD; David B. Johnson, Fisheries Program Manager; Sen. Mike Jorgenson (3); Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish & Game; Steve Miller, Vice President, IASCD; Jerry Nicolescu, Administrator, Idaho Soil Conservation Commission
- See sign-in sheet for additional guests.
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:35 p.m.
- MINUTES
February 15, 2007** A motion was made by Rep. Chavez to approve the minutes of February 15, 2007 as written. The motion passed by voice vote.
- S 1022:** Senator Mike Jorgenson (3) presented S 1022 relating to hunting licenses, and amending Section 36-1402 Idaho Code to provide for the revocation of hunting privileges based upon certain felony convictions relating to homicide, and to remove an obsolete term.
- Sen. Jorgenson said the intent is to permanently revoke a hunter's hunting license privilege if he/she negligently shoots someone. Hunting licenses are now permanently revoked for lesser violations—killing a moose, or taking big game animals outside of a legal hunt, for instance.
- Questions: Rep. Barrett asked what prompted the legislation. Senator Jorgenson related two personal hunting incidents resulting in death where the perpetrator still had hunting privileges. He said enforcement decisions would not be based on arbitrary findings, but on court determinations where in-depth reports are required to be submitted to a judge.
- MOTION/VOTE
S 1022:** A motion was made by Rep. Sayler to send S 1022 to the floor with a DO PASS recommendation.
- Discussion: None.
- PUBLIC
TESTIMONY:** Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG), rose in SUPPORT of S 1022, which admittedly addresses a rare circumstance. IDFG is interested in imposing a stiff penalty for those

**Sharon Kiefer
IDFG** instances resulting in manslaughter or involuntary manslaughter. (Exhibit 1)
Questions: None.

VOTE S 1022: The motion to send S 1022 to the floor with a DO PASS recommendation failed by a show of hands. 7:8:3 Voting NAY for the record are Reps. Moyle, Wood (35), Barrett, Andrus, Shepherd (8), Brackett, Vander Woude and Stevenson . Excused are Reps. Bedke, Bell and Eskridge.

HCR 16: Rep. JoAn Wood (35) presented HCR 16, a Concurrent Resolution to reject a subsection of a pending rule of the Idaho Fish and Game Commission pertaining to Rules Governing Licensing. The effect of this resolution, if adopted by both houses, would be to prevent subsection 505.02.e.i, relating to deer and elk tag allocation, from going into effect.

MOTION HCR 16: A motion was made by Rep. Wood (35) to send HCR 16 to the floor with a DO PASS recommendation.

**PUBLIC
TESTIMONY:** Sharon W. Kiefer, Legislative Liaison, IDFG, rose in SUPPORT of HCR 16, which is a “surgical strike” rejection to Departmental Administrative Rules. The Legislature will have an opportunity to review the replacement rule during the 2008 session.

**Sharon Kiefer
IDFG** Questions: None.

VOTE HCR 16: The motion to send HCR 16 to the floor with a DO PASS recommendation passed by voice vote. Rep. Wood (35) will carry HCR 16 on the floor.

**NEZ PERCE
FISHERIES:** Rep. Liz Chavez (7) introduced David B. Johnson, Fisheries Program Manager. Mr. Johnson has spent most of his career involved with tribal fisheries issues in the pacific northwest, and now oversees the largest fisheries program of any Indian Tribe in the United States. (Exhibit 2)

**David B. Johnson
Fisheries Program
Manager** Mr. Johnson distributed Nez Perce Tribe Fisheries Program (Exhibit 3). The presentation today focuses on two primary issues:

1. The importance of fish and fishing to the Nez Perce Tribe; and
2. The fisheries.

Providing a perspective: Historically 4,000 fish eggs resulted in 400 fish; of those 400 fish, 24 returned to spawn. Today 4,000 fish eggs result in 200 fish; of those 200 fish 0.4 fish return to spawn.

Fishing is central to Tribal culture. Mr. Johnson said changes have been “as sudden as turning off the light” in terms of the Nez Perce way of life. The impact of drastic cultural shock has resulted in unemployment, poverty, high suicide and alcoholism rates, and many diseases. The vast majority of fish the Tribe kills are part of the “collateral damage” of maintaining their way of life.

Mr. Johnson gave an overview of Tribal fishing rights, including treaties with the U.S. government. The treaty area covers a good portion of Idaho, as well as land in Oregon and Washington. A larger land area the Tribe uses to a lesser extent is identified as “usual and customary—and is located from Celilo Falls to the Columbia River, into Montana. Mr.

Johnson said there was never a misunderstanding about land ownership, but bitter battles have occurred about what the U.S. promised in return for Native Americans ceding land.

The fisheries: The Tribe uses all available resources to restore salmon runs, and makes an effort to track fish from birth to death. A ridge-top to ridge-top approach is taken to watershed protection, spawning and rearing habitats, and protection of water quality. It is not enough to manage the watercourse, because everything “runs down hill.” Hatcheries are tools to put fish in the river. The department released over 5.5 million fish in 2006 in streams and rivers where the fish will return to spawn. The focus is on restoring the runs and having a harvest. The tribe brings in more in restoration funding, though competitive funding with Bonneville Power Administration (BPA), than any other entity in the Snake River Basin. Efforts have been fairly successful, especially in recent years (see Exhibit 3, page 7).

Questions: Rep. Chavez asked Mr. Johnson to talk about the education programs in the schools. He said the Tribe is involved in outreach in local schools, where biologists have on-going programs. It is a struggle to find funding for the programs.

Rep. Moyle said he appreciated the Tribe not selling fish last year on the south fork of the Rapid River. It set a good example. He asked if there was anything that could be done to stop predator fish that are going farther than ever before up the Salmon. Mr. Johnson acknowledged the problem with predator fish. He said fish are counted leaving the stream, and only 60-70% make to the first counting at the Granite Dam. It can't be known if all loss relates to predation. The tribe supports the on-going predation BPA program, as well as efforts by the Corp of Engineers and others, in an effort to control predator fish and also sea lions. Mr. Johnson said selling fish is very important to the Tribe, but when fish runs don't support sales, they are curtailed. The Tribal fishing priority is always food for families.

**IDAHO ASSOC. OF
SOIL
CONSERVATION
DISTRICTS:**

INTRODUCTION:

**Kyle Hawley
IASCD President**

An introduction to the Idaho Association of Soil Conservation Districts' (IASCD) presentation was made by Kyle Hawley, IASCD President. The IASCD is a voluntary, non-profit association of 51 soil conservation districts in 5 Regions cooperating in the management of Idaho's natural resources. In conjunction with districts from other states, they form part of a national network. IASCD officials are elected locally. IASCD is funded by, and accountable to, State and local allocations. (see Exhibit 4 IASCD Presentation)

IASCD has a commitment to:

- Solve local state and national issues ahead of regulations and litigation;
- Employ decision-making at the lowest appropriate level;
- Maintain and enhance a grassroots delivery system;
- Build alliances and partnerships;
- Encourage economically viable environmental policies;
- Enhance, maintain and conserve natural resources and the environment.

The Soil Conservation Commission:

- Leads Idaho's total maximum daily load (TMDL) planning and implementation efforts;
- Endangered Species Act (ESA) issues;
- Plans and implements the Conservation Enhancement Program (CREP);
- Assists Soil Conservation Districts (SCDs) with local issues.

**NORTH IDAHO AFO
IMPLEMENTATION
PROJECT:**

**Kyle Hawley
IASCD President**

Kyle Hawley, IASCD President, gave an overview of the North Idaho AFO Implementation Project that was initiated in 2001 in five northern Idaho counties: Clearwater, Idaho, Latah, Lewis, Nez Perce (Exhibit 4, pages 7-8). The project goal is to install the best management practices (BMPs) on cattle operations to decrease sediment, bacteria, organics and nutrient loading to streams. The project affects four regional watersheds: the Clearwater, Palouse, Salmon, and Snake Rivers.

Phases one and two are completed; phase three is just underway. Funding for the project comes from 319 DEQ and water quality projects. Mr. Hawley said sometimes the only way to have the needed positive impact on streams is to relocate feeding operations. There are 34 active projects, involving over 4,000 head of livestock. 62,700 feet of riparian area has been restored. The average cost-share per project is \$16,800; with the cost share ratio 65% DEQ: 10% SCC: 25% operator.

**LAKE *A* SYST
PROGRAM:**

**Kyle Hawley
IASCD President**

Kyle Hawley, IASCD President, gave an overview of the Lake*A*Syst program (Lakeshore Assessment System protecting Pend Oreille Lake—Exhibit 4, pages 9-11). It is a voluntary educational and implementation program assisting shoreline property owners to make well-informed decisions in an effort to improve and protect lake water.

Landowner guides assist lakeshore landowners with storm runoff management, lawn and garden management, ensuring a safe drinking water supply, landscape, and new construction. It coordinates with other conservation efforts and storm water erosion education programs.

The Best Management Practices Demonstration Project is the first program of its kind in Idaho. Parking lot and athletic field runoff is treated using a series of mushroom mycelium inoculated grassy swales. The process breaks down oil, gasoline, and other hydrocarbons from the parking lot which would otherwise flow directly in the lake.

Questions: None.

**ROCKY MOUNTAIN
POWER WATER &
ENERGY:**

**Eric Bastian
IASCD Director**

Eric Bastian, Director, IASCD, gave an overview of the Irrigation Energy Savers Program, a collaborative effort between the Franklin Soil and Water Conservation District and Rocky Mountain Power Company (Exhibit 4, pages 12-13). The partners are a good fit, though not usual: both want to conserve water and energy.

In 2006, the partners invested \$232,244 of incentives to upgrade equipment, saving 3,652,507 kWh and 8,954 acre-feet of water. 53 energy and water management consultations have been completed, saving 169,000 kWh and 416 ac-ft of water.

Money comes from the State to help conservation on the ground.

Farmers in the global economy are going to need all available tool to help save energy and water. The project is administered for PacifiCorps, operating in Idaho as Rocky Mountain Power.

In 2006, the first year, nozzles, gaskets and drains were exchanged for equipment replacements and upgrades at a cost of \$232,244.00, resulting in 3,652,507 kWh and 8,954 ac-ft of water. The program is funded for 2007, and potentially for 2008.

Questions: Rep. Chavez asked how the money was made available to farmers. Mr. Bastian said a farmer goes to a dealer enrolled in the program, bringing in old parts to trade for new. Old parts traded out far exceeded expectations.

**DISTRICT & URBAN
SPRAWL ISSUES:**

**Paul Calverley
Chairman
Ada SWCD**

Paul Calverley, Chairman, Ada County Soil and Water Conservation District (SWCD), gave an overview, focusing on the changing objectives in urban counties (Exhibit 4, pages 13-18). Southwest Idaho now includes 43% of the State's population. The traditional focus no longer is relevant. As a result, the philosophy in urban counties has shifted to an "evolution vs. extinction" approach.

Traditional agricultural customers are giving way to urban development. The SWCDs are looking for ways to stay relevant. Aerial clips showing the transition from agricultural to urban use were shown: For instance, in 2001, a two square mile in Ada county had 57 agricultural fields totaling 870.7 acres; In 2005 that area had 22 agricultural fields totaling 225.0 acres.

There are currently 23 planned communities being considered in Ada County. Two years ago, at a strategic planning session, the Ada SWCD business plan was completely revised to take into consideration actual land use. The questions asked were: Why are we in business? What business are we in? What do we want to become?

A new vision statement resulted. Ada SWCD remains a leader of natural resource planning, conservation, and implementation in Ada County. A group of critical goals has been developed, the business plan budget reviewed, a district manager hired, and partners identified for outreach. A brochure has been developed emphasizing what is happening in Ada County. 37 project opportunities have been identified, of which 5 were selected at the November 2006 board meeting: the Treasure Valley Storm Water Pilot Project; Hubbard Reservoir, Hyatt Wetland, Julia Creek, and the Green Street Demonstration (see Exhibit 4, page 20). Ada SWCD will continue to identify and be appropriately involved in selected projects.

Questions/Discussion: Chairman Stevenson said he is not sure what we should be telling our grandchildren. Mr. Calverley said what is happening is altogether "a challenge and a shame in the Treasure Valley." It is one of the most productive agricultural areas in the intermountain region, but this shift in focus needed to be made. The SWCDs weren't going to survive where agricultural land was being rapidly developed. It is still possible to have something to offer and to protect natural resources, while being realistic.

**ACTIVITIES &
FINANCIAL NEEDS:**

Steve Miller, Vice President, IASCD, spoke about better management practices (Exhibit 4, pages 19-26). IASCD can be used as a delivery system where engineering and design is required to plan and implement

Steve Miller
IASCD Vice
President

projects; can access State and Federal project funds; and can act promptly when delays often affect compliance, conservation outcomes, and revenue.

The average State and Federal project funding from 2000-2006 was \$3,562,617, leveraging every \$1.00 to \$8.44 in resource conservation. The leveraged figure today is closer to \$15.00. Most SCD funds are allocated to employee salaries. Mr. Miller reviewed funding allocations in some detail, showing differences in funding allocations from 2006 to 2007 (see Exhibit 4, pages 23-26).

Mr. Miller said in order to see resource conservation grow in Idaho, the state has to fund at the individual district level where operations can be sustained. The most important focus for the future is to secure qualified local employees.

CLOSING
REMARKS:

Jerry Nicolescu
Administrator
ISC Commission

Jerry Nicolescu, Administrator, Idaho Soil Conservation Commission (ISCC), gave closing remarks saying the ISCC has no regulatory authority, but does have statutory mandates to implement (Exhibit 4, pages 27-34). The key programs are:

- Soil Conservation Districts (SCDs) support and assistance
- Conservation Reserve Enhancement Program (CREP)
- TMDL watershed planning & implementation
- Water Quality Program for Agriculture (WQPA)
- Resource Conservation and Rangeland Development Program (RCRDP)
- Conservation Improvement Grant Program (CIG)
- Upper Salmon Basin Program
- Clearwater Focus Watershed Project (CFWP)—funded by BPA Grant
- Carbon sequestration
- Idaho OnePlan

Mr. Nicolescu said the top three SCD accomplishments are locally-led conservation efforts in water quality; district operations; and rangeland, pasture and hay land. He reviewed each of the programs briefly (see Exhibit 4, pages 28-33). Greater emphasis in this oral report was placed on two programs:

The CREP Program has 93 contracts. 230,000 acres are in the process of coming into the program, which will put a total of approximately 100,000 acres in CREP by mid-FY—or about 50% of the goal.

An overview of the ISCC Water Quality Program for agricultural watershed projects depicts a three-way partnership among the State, Federal and landowners. 15 grant projects were put out in FY2006 totaling \$237,027. In FY2007, to date, the Commission has approved 39 projects for a total of \$475,838 in grant funds.

Questions: None

ANNOUNCEMENTS:

1. The 2005 BYIBC Annual Report is distributed in the folders today. (Exhibit 5)
2. There will be no meeting Friday, February 23rd.

ADJOURN: The meeting adjourned at 3:07 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 27, 2007

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

**ABSENT/
EXCUSED:** Rep. Bell

GUESTS: Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish & Game; Bill London, Commissioner, Idaho Conservation Officers; Senator Gary Schroeder (6)
See sign-in sheet for other guests.

CALL TO ORDER: The meeting convened upon adjournment of the House. A quorum being present, Chairman Stevenson called the meeting to order at 2:35 p.m.

**MINUTES
February 19, 2007** A motion was made by Rep. Pence to approve the Minutes of February 19, 2007 as written. The motion passed by voice vote.

**MINUTES
February 21, 2007** A Motion was made by Rep. Pence to approve the Minutes of February 21, 2007 as written. The motion passed by voice vote.

H 230: Rep. Bert Brackett (23) presented H 230, legislation to increase basic fees to help cover the Idaho Department of Water Resource's (IDWR) costs to review applications for geothermal production and injection wells. The bill comes after several years work. The concerns of many water resource interests have been addressed in this legislation. Rep. Brackett thanked Chairman Stevenson and Rep. Fred Wood (27) for their work and support in forwarding the legislation on behalf of geothermal interests in Idaho, including the U.S. Geothermal Project in Cassia County. The legislation is timely because there is a need now to increase power generation, and there is also an emphasis on renewable energy sources.

Rep. Brackett said H 230 does three things:

1. It increases filing fees;
2. It broadens the choice of financial instruments to include trust funds, letters of credit, insurance or other acceptable surety; and
3. It allows for a state-wide bond at the director's discretion.

Rep. Brackett reviewed specific changes proposed to amend Section 42-4003 Idaho Code.

Questions: Rep. Chavez asked if page 3, line 9 (requiring an application to be examined within thirty days of receipt) was new

language; and what the time line had been previously. Rep. Brackett said no time line was previously stated in Code. The thirty-day time line to examine an application represents a compromise. The Department wasn't comfortable with a thirty-day time line to complete their due diligence search. A thirty-day time line to respond to the applicant, stating that the application is, or is not, in order was acceptable to them. It still provides flexibility to continue to conduct necessary investigations diligently after the thirty-day period.

Chairman Stevenson told the Committee there were persons in the room available to provide expert testimony and answer questions if they desired. There were no further questions.

**MOTION/VOTE
H 230:**

A motion was made by Rep. Bedke to send H 230 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. Brackett will carry H 230 on the floor.

RECESS:

Chairman Stevenson put the Committee at ease at 2:44 p.m. Sen. Schroeder is delayed. The meeting was called back to order at 2:48 p.m.

Senator Schroeder apologized for coming late to Committee, and told the Committee that a delegation from Louisiana is in Boise to visit the Water Center. They are excited about the model and interested in collaborating in some way. Louisiana's water problem is different from Idaho's: they have too much water instead of not enough.

S 1055:

Senator Gary Schroeder (6) presented S 1055 proposing to require that any person who pleads guilty to, is convicted of, or found guilty for attempting to take simulated wildlife in an unlawful manner shall pay restitution of \$50 or more to help offset the high cost of repair or replacement costs. A court will determine the monetary penalty.

He said the concept for the legislation comes from Montana. Likewise, Montana is borrowing from Idaho legislation where meat from illegal kills is processed and donated to food banks, when that is possible.

Senator Schroeder said the bill was analogous to someone driving by a house and shooting into it, because safety and property issues are involved. Someone shooting illegally at wildlife may put people at risk, may damage houses and farm buildings, or injure or kill domestic animals. The Idaho Department of Fish and Game (IDFG) has commercial simulated wildlife (Exhibit 1). Equipment is expensive to repair and replace. When a poacher damages a simulated animal, the fine imposed will help pay for damages incurred. S 1055 provides for a \$50 minimum fine. If equipment is damaged during a legal hunt, where a simulated animal is mistaken for a real animal, there is no penalty.

Senator Schroeder said some people don't think young people can afford the fine, and don't think a penalty should be imposed when young people are learning to hunt. He said hunter's safety classes emphasize illegal hunting procedures. A fine given to a young

person might be an early lesson that will prevent later, more serious, infractions and penalties. The point of S 1055 is to stop illegal shooting. Safety issues are involved.

Questions: Rep. Wood (35) asked about the amount of restitution allowed (page 3, line26-28). Senator Schroeder said there is a minimum fine of \$50, but a judge can increase that amount. For instance, if a \$325 mechanism is destroyed, a judge might increase restitution to \$50 plus \$325. Rep. Wood said she didn't know why she found it amusing, but it seemed a "little bit funny to put simulated animals out to catch someone shooting at them." She will vote for the bill.

SHARON W. KIEFER
Administrative Liaison
IDFG

PRO

Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish & Game (IDFG), stood in SUPPORT of S 1055 (Exhibit 2). IDFG approved a motion supporting S 1055 during their legislative conference call on February 7th. Currently, there is no law requiring courts to impose restitution from those convicted of unlawfully taking or attempting to take simulated wildlife. IDFG officers have issued 20-25 citations each year over the last five years for violations of 36-1101(b)7.

IDFG owns several deer, elk and moose decoys. Each enforcement district may have from 2-4 deer and elk decoy. They are typically built by officers, and represent an investment of both time and money.

The act of shooting simulated wildlife is not the violation. There has to be a violation in addition to that act. The financial support resulting from fees will help fund the repair and replacement of equipment in a timely manner, and assist the mission of deterrence and detection.

The fee for restitution to repair damage to simulated wildlife is analogous to the restitution fee for processing big game where there is a conviction of illegal killing, illegal possession, or illegal waste of game animals.

Questions: Rep. Barrett said the discussion of entrapment has already occurred. Now the issue is different. She asked how an infraction of this sort becomes known; and if a stake-out is involved. John Haggren, Chief, Law Enforcement, IDFG said the standard protocol requires a known violation to have taken place in the area. Typically, there have been complaints by landowners of illegal hunting or trespass. At least two officers are staked out of sight. If illegal activity occurs, the stake-out allows everyone to be in the same place at the same time, and for officers to have observed the violation. If officers weren't there, there would be no detection and no deterrent.

Rep. Fred Wood (27) said most of the time stake-outs are set up when people are abusing private property rights and/or there is a threat to safety because the area is populated. People shoot animals on private property from the road, for example. He said videos are taken, and some of the movies are hilarious. There might be two or three trucks with flashing lights, and officers on the scene arresting people, when another vehicle comes along, sees the deer on the hill, stops, and shoots it with 25-30 witnesses

standing around. When questioned, some fellow might say he shot his wife's deer yesterday and was out to get his own today. Rep. Wood (27) said H 230 truly was intended as a deterrent to abuse and stupidity.

**MOTION/VOTE
S 1055:**

A motion was made by Rep. Pence to send S 1055 to the floor with a DO PASS recommendation.

The motion carried by voice vote, with Rep. Barrett voting NAY for the record. Rep. Moyle will carry S 1055 on the floor.

ANNOUNCEMENTS:

Dr. Steven B. Daley Laursen, Dean and Professor, College of Natural Resources, University of Idaho will be in Committee March 1st to speak on natural resource and conservation issues in Idaho. There will also be at least two pieces of legislation before the Committee.

March 7th, the IDFG Commission will meet with the Committee in the Gold Room. A panel discussion will allow Committee members to ask questions of the Commissioners, and make suggestions.

A report on the Idaho Ranch, Farm and Forest Protection Act will be held in the Gold Room tomorrow. This report has already been given to this Committee. The Gold Room report is not a Committee meeting.

ADJOURN:

The meeting adjourned at 3:10 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: March 1, 2007

TIME: 1:30 p.m. or upon adjournment of the House

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively

ABSENT/EXCUSED: Reps. Bedke, Moyle

GUESTS: Maria Barratt, Office of the Governor; Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG); Norm Semanko, Executive Director, Idaho Water Users Association; Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators; Dr. David Tuthill, Acting Director, Idaho Department of Water Resources, Jim Unsworth, Biologist, Big Game Bureau Chief, IDFG
See sign-in sheet for other guests.

CALL TO ORDER: A quorum being present, Chairman Stevenson called the meeting to order at 2:50 p.m. The secretary took a silent roll call.

MINUTES

February 27, 2007

A motion was made by Rep. Pence to approve the minutes of February 27, 2007 as written. The motion passed by voice vote.

INTRODUCTION:

**Maria Barratt
Office of the
Governor**

The Chairman introduced Maria Barratt, Senior Financial Analyst, Office of the Governor. Ms. Barratt has accepted a new assignment to cover natural resource issues.

S 1086 :

Rep. Fred Wood (27) presented S 1086 proposing to create a gray wolf tag. A tag may be purchased by holders of a resident or nonresident hunting license. Up to ten auction or lottery wolf tags are also authorized. They are intended to be used by incorporated nonprofit organizations dedicated to wildlife conservation for the purpose of raising funds for wildlife management. Rep. Wood (27) reviewed changes proposing to amend Sections 36-408, 36-409 and 36-416 Idaho Code.

The wolf management plan calls for the gray wolf to be considered as a big game animal and not as a predator, and for the Idaho Department of Fish and Game (IDFG) to manage the wolf as they manage other large carnivores. The tag fee will be \$9.75 for residents, \$150.00 non-resident, which is consistent with tags for other big game carnivores.

Questions: Rep. Shively asked if Idaho had wolves other than gray wolves; and do wolves come in many colors like foxes. Rep. Wood (27) said they may be colored from almost white to black, but all are known as gray wolves.

Rep. King asked if the legislation allowed for a specific number of wolves to be harvested. Rep. Wood (27) said the legislation does not stipulate numbers. The State wolf plan does. S 1086 only authorizes IDFG to issue tags.

Rep. Vander Woude noted that \$720,000 is estimated to cover wolf management program costs. He asked how long that money would cover those costs. Rep. Wood (27) said it was thought for a few years. After the five year period that the State is required to report to the Federal government, IDFG will be better able to estimate wolf management costs. Management expenses will go down when the wolf population is known to be stable.

Rep. Saylor asked for clarification about the ten special tags. Rep. Wood (27) said typically the tags would be made available to groups like the Rocky Mountain Elk Foundation, the National Rifle Association, or other organizations that hold fund-raiser auctions. The disposition of special tags will be left to the discretion of the Director, and by extension to the Commission.

Rep. Bell asked what formula was used to determine the number of tags to be made available, other than the ten special tags. Jim Unsworth, Biologist, Big Game Bureau Chief, IDFG, said the total number of tags to be offered hasn't been determined. It is likely that in some parts of the State, where wolves aren't wanted, there will not be a quota. In other parts of the State, wolves will be more carefully managed in order to maintain the numbers required by the U.S. Fish and Wildlife Service. The Service requires ten breeding pairs; the State plan calls for fifteen breeding pairs. It is likely that there will be more than fifteen breeding pairs because Idaho has so much back country.

**MOTION/VOTE
S 1085:**

A motion was made by Rep. Brackett to send S 1085 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. Barrett voted NAY for the record. Rep. Fred Wood (27) will carry S 1085 on the floor.

Chairman Stevenson told the Committee that Wyoming has accepted a bill proposing a wolf management plan, which is what Idaho hoped would happen. Newspaper articles are in folders (Exhibits 1 and 2).

H 241:

Rep. Dell Raybould (34) presented H 241 proposing to amend Section 42-620 Idaho Code. The legislation addresses concerns regarding an equitable method of assessment for the administration of water in the various water districts of the conjunctively managed water connected to the Eastern Snake Plain Aquifer. Rep. Raybould explained the history of legislation leading to H 241, and a summary of why legislative action is needed.

The section added to Idaho Code in 2005 provided for assessment based on a method called the "Straw Man Proposal." Costs for some of the measures in the proposal were to have been paid for by those receiving the benefit of those measures. Inequities have resulted from that method of assessment. For example, groundwater and surface water users were assessed in a ratio of about 5:1 respectively. The program didn't take into account incidental recharge to the aquifer that occurs naturally through surface water use. Rep. Raybould said It isn't

fair to require surface water users to pay almost all of the assessment, and not to take into account incidental recharge. Beginning in fiscal year 2008, H 241 provides for each water district to include in their budget their assessed portion of costs to administer water on the Eastern Snake Plain Aquifer (ESPA), providing those costs are not otherwise funded from other sources.

Because of the impossible task of measuring usage and collecting assessments from users this year, the Director has requested an appropriation from the General Fund to cover costs—which are estimated to be \$557,000 for FY 2008. The Statement of Purpose has been reprinted to reflect the Director’s request.

An interim committee on resources will meet this summer to develop a program to address future methods of assessment and appropriation in the administration of water policy. This issue will affect all of the State’s aquifers, not just the ESPA. The Treasure Valley Aquifer is approaching a very critical state.

Questions: Rep. Chavez asked for clarification of the language stricken on page 1, lines 33-36. Rep. Raybould said that language has been stricken because, in the original language, the composition of the advisory committee was based on diversions. If the IDWR is going to reduce the diversion by factors, a huge advantage will attribute to surface water users. Removing that language provides for a more equitably constituted advisory committee.

**PUBLIC
TESTIMONY:**

**Norm Semanko
IWUA**

PRO

Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), rose in SUPPORT of H 241. The legislation is needed because current law doesn’t and cannot work. Idaho Code 42-620 was to take effect in 2006, but hasn’t yet been implemented. The key now is to move forward with an advisory committee involved in the process—which has happened. Agreement is close to being reached. IWUA wants certainty with regard to the formula to be applied, and wants to know how much each district will be assessed. There is a motivation to reach an agreement before H 241 becomes final.

Questions: None.

**Lynn Tominaga
IGWA**

PRO

Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA), rose in SUPPORT of H 241, saying he agrees with the bill and the concept. IGWA has been part of the on-going negotiation. There has been an inequity which is addressed conceptually in H 241. The advisory committee is close to reaching an agreement.

Questions: None.

MOTION H 241:

A motion was made by Rep. Fred Wood (27) to send H 241 to the floor with a DO PASS recommendation.

Chairman Stevenson called attention to a new Statement of Purpose (Exhibit 3) that will be reprinted and attached to the bill. It represents a larger fiscal impact.

Discussion: Rep. Barrett asked what line items were included in the \$557,000 total fiscal impact; and what cost would be assessed to an individual or an irrigation district. Rep. Raybould said \$557,000 is the outside cost to the State, and is predicated on the State paying the

total assessment for one year. The fiscal impact statement has been corrected to reflect the total estimated cost. \$257,000 reflects only the estimated cost of domestic, commercial, municipal and industrial (DCMI) users; and only half of the total estimated assessment. The new fiscal impact statement reflects that, for one year, there will be no assessment to any water users.

Rep. Barrett asked for clarification as to whether the Idaho Department of Water Resources (IDWR) would require this funding every year. Rep. Raybould said the State will have to manage water, and water management will impact the General Fund. If the allocation doesn't come from the General Fund, a method of assessing water users will have to be developed. H 241 allows "breathing room" for discussion and the development of a plan. The completion of the management plan for the Eastern Snake Plain Aquifer is contemplated this summer. Recommendations will have to be made for the Treasure Valley, Rathdrum-Prairie, Moscow, and Mountain Home aquifers.

Rep. Bell said it was her understanding there was already a method of assessment in place, and that H 241 was intended to fund only the DCMI users at a cost of \$257,000. She asked for clarification. Rep. Raybould said the total amount for one year was estimated to be \$557,000. It can't be known exactly how the costs will be spread among users. Rep. Bell said she thought a method for use assessment had been determined, and would be used except for DCMI users. Rep. Raybould said that is what is now being discussed by the IWUA and the IGWA. The one-time General Fund appropriation for \$557,000 will "make it work this year."

Rep. Andrus asked what expenses a water user assessment offsets. Rep. Raybould said water management costs are incurred. IDWR gathers information and pays personnel, among other expenses in their work to implement management practices. To set up the program for surface water users, funds might be used to measure return flows to the river and to find better systems to assess diversion. There have been many meetings with water users in the last two months. More meetings will be held throughout the State. It is generally agreed that there is a State obligation, and that water is a product of the State because it is used by all. The nature of the water situation in Idaho is critical, and becoming more critical.

VOTE H 241: The motion to send H 241 to the floor with a DO PASS recommendation passed by voice vote. Rep. Raybould will carry H 241 on the floor.

RS 17120: An RS will be presented in State Affairs tomorrow morning for the purpose of bringing a Concurrent Resolution authorizing \$850,000 as recommended in the Eastern Snake Comprehensive Aquifer Management Plan Framework (presented to Committee February 19th). The RS is being brought at the Speakers request. Chairman Stevenson asked if it was the Committee's desire to have another hearing, or to send the legislation directly to Second Reading. It was the Committee's pleasure to send the legislation to Second Reading.

ANNOUNCEMENTS: Chairman Stevenson said he is aware of three bills still coming to

Committee from the Senate, and no further legislation from the House.

The presentation expected today by Dr. Steven B. Daley Laursen, Dean, College of Natural Resources, University of Idaho has been cancelled. Dr. Daley Laursen is unable to be in Boise because of difficulties with Horizon flights. He will try to reschedule his report before the end of the session. A copy of the Dean's presentation is in folders today (Exhibit 4).

Also in folders today, is the Summary of Results of the 2007 Rules Review and Follow-Up (Exhibit 5).

ADJOURN:

The meeting adjourned at 3:27 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** March 5, 2007
- TIME:** 1:30 p.m. or upon adjournment of the House
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively
- ABSENT/EXCUSED:** Reps. Barrett, Bedke and Brackett
- GUESTS:** Nate Helm, Legislative Advisor, Sportsmen Fish & Wildlife-ID (SFW-Idaho); Jack Vander Hulst, Assistant, Western Dairy Business Solution
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 1:19 p.m. The secretary took a silent roll call.
- MINUTES
March 1, 2007** A motion was made by Rep. Pence to approve the minutes of March 1, 2007 as written. The motion passed by voice vote.
- U.S. FISH &
WILDLIFE
HEARING:** Chairman Stevenson asked Committee members to review a letter in work folders today addressed to Dale Hall, Director of U.S. Fish and Wildlife Service (USFWS). This letter constitutes testimony he will give tomorrow evening at the USFWS hearing proposing to delist the gray wolf in the northern rocky mountain states. If you agree with the testimony and would like to add your signature, the secretary has a signature sheet for your endorsement (Exhibit 1).
- SJM 103:** Nate Helm, Legislative Advisor, Sportsmen for Fish & Wildlife-ID (SFW-ID), presented SJM 103, a memorial proposing to support a federal appropriation application for the South Central Idaho Isolated Wildlife Tract Cooperative Habitat Program for up to \$1 million dollars as authorized under the Sikes Act, and urging Congress to grant the request. Mr. Helm has submitted Exhibits 2, 3, 4, and 5, which together are the complete appropriation application (a summary sheet; a letter of support from Acting Director Cal Groen, Idaho Department of Fish and Game (IDFG), and Cameron Wheeler, Chairman, Idaho Fish and Game Commission; a summary of current conditions and work completed in FY06; and the application form).
- The request is for a one-time appropriation of \$1 million dollars, which will be added to money currently being spent by the Bureau of Land Management (BLM) and IDFG to manage and improve habitat on isolated tracts now being managed under the Sikes Act.
- SFW-ID now tries to improve habitat. That effort would be greatly enhanced with adequate funding to “jump-start the effort.” Mr. Helm referred to maps, showing the Committee where most of the subject land is located—in the Twin Falls area. Much of it borders private land and larger BLM tracts. Part of the objective is to enhance recreational opportunities in the Twin Falls area.

IDFG:
Sharon Kiefer
Legislative Liaison
IDFG

Mr. Helm read Sharon Kiefer's statement in SUPPORT of SJM 103.
(Exhibit 6)

PRO

Questions/Discussion: Committee questions and discussion revealed that SJR 103 was mistakenly substituted for SJM 103 in the work folders. Due to that mistake, SJM 103 will be placed on the Committee agenda for March 7th for action.

ANNOUNCEMENTS: Chairman Stevenson reminded Committee members that the secretary has a signature page to endorse testimony to be presented tomorrow at the USFWS hearing to delist the gray wolf. There is no obligation to sign, and any member wanting to give their own testimony is welcome. The hearing will be held at the Centre on the Grove at 6:00 p.m.

The Owyhee Cattlemen's Association has submitted two resolutions for your information and review: 1) in support of OCA pursuing a captive breeding program to augment the Sage Grouse population, and 2) opposing legislation to eliminate or curtail elk ranching as an agricultural enterprise in Idaho (Exhibit 7).

You have been given a news release announcing that the Wyoming Senate has passed a wolf management bill. Chairman Stevenson said he understands the Governor has agreed to the plan, as of today (Exhibit 8).

Next Tuesday, March 13th, Deputy Attorney General Clive Strong will be in Committee to go through the recent decision of the Idaho Supreme Court. Rep. Raybould told the Committee that the Court has reversed the decision of Idaho 5th District Judge Barry Wood, finding on all counts in favor of the State of Idaho. This decision "puts the State back in the business of managing water."

The Fish and Game Commissioners will be in Committee Wednesday, March 7th for a panel discussion. This is an opportunity for the Commissioners to talk about the direction they're headed, and for the Committee to ask questions that might be helpful to them.

ADJOURN: The meeting adjourned at 2:44 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** March 7, 2007
- TIME:** 1:30 p.m. or upon adjournment of the House
- PLACE:** Gold Room
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Saylor, Pence, Chavez, King, Shively
- ABSENT/EXCUSED:** Reps. Barrett, Bedke
- GUESTS:** Brad Compton, State Big Game Manager, IDFG; Cal Groen, Acting Director, Idaho Department of Fish and Game (IDFG), Rep. Marv Hagedorn (20); Sharon W. Kiefer, Legislative Liaison, IDFG; Jim Unsworth, Chief, Bureau of Wildlife, IDFG; Idaho Fish and Game Commissioners (see below)
See sign-in sheet for other guests.
- CALL TO ORDER:** Chairman Stevenson called the meeting to order at 2:10 p.m. The secretary took a silent roll call.
A motion was made by Rep. Raybould to approve the minutes of March 5, 2007 as written. The motion passed by voice vote.
Chairman Stevenson asked for unanimous consent to rearrange the agenda to place the Idaho Fish and Game Commission (IFGC) first on the agenda because Commissioners have an appointment with Governor Otter at 3:00 p.m. There was no objection.
Chairman Stevenson asked Cameron Wheeler, Chairman, IFGC to introduce the new department Director and staff.
- INTRODUCTIONS:** Commissioner Wheeler introduced Cal Groen, Acting Director, Idaho Department of Fish and Game (IDFG), Sharon W. Kiefer, Legislative Liaison, IDFG; Jim Unsworth, Chief, Bureau of Wildlife, IDFG; Brad Compton, State Big Game Manager, IDFG.
- Cal Groen
Director, IDFG**
- IFG Commissioners**
All seven Commissioners were present: Messrs. Tony R. McDermott, Panhandle Region; Alex Irby, Clearwater Region; Bob Barowsky, Southwest Region; Dr. Wayne Wright, Vice Chair, Magic Valley Region; Randall Budge, Southeast Region; Mr. Cameron Wheeler, Chair, Upper Snake Region; Gary Power, Salmon Region.
- PANEL:** Chairman Stevenson told the Committee the format for today's meeting will be to address questions and comments to Chairman Wheeler, who will answer or direct to whichever Commissioner he feels will best be able to respond.
Chairman Stevenson said he wasn't a big game hunter but missed the pheasant hunting he enjoyed in the 1960s and 1970s. He asked if
- IFG Commissioners**

IFGC had addressed pheasant hunting issues. Commissioner Wheeler said the pheasant effort is tied to the Magic Valley Pilot Program, Access Yes!, and Landowner Appreciation Permits (LAP) Programs. The up-coming Conservation Reserve Enhancement Program (CREP) will provide a real opportunity to improve pheasant populations, in that large parcels of land will be involved. Commissioner Budge said Pheasants Forever, dedicated to the conservation of pheasants and other wildlife, has been active in addressing the pheasant problem. There is no question that there has been a dramatic decline in the pheasant population for decades, for a number of reasons. Habitat loss can significantly be attributed to changing farming practices. Irrigation ditches have been lost as sprinkler irrigation systems have increased. Increased efficiency in the new systems translates to less habitat for pheasants. Commissioner Budge said "it comes down to habitat." The Clearwater Pheasant Initiative is a cooperative program with landowners with the objective to increase local bird populations, improve hunting, and stimulate rural economic growth derived from bird hunters. The success of the initiative in northern Idaho has led to a second demonstration area in the southwest region along the Snake, Boise, Payette and Weiser Rivers. CREP is also a critical program with potential to involve large blocks of land for habitat. Funding for the CREP program will be a "real challenge for the department."

Rep. Raybould agreed that habitat was an extremely important aspect of maintaining the pheasant population, but said predators were also. Anecdotally, he said, on his farm in the upper valley, he has seen 5-6 foxes at a time in the morning. He asked what effort was being made to control predators. Commissioner Budge said there have always been lots of predators. Pheasants are more vulnerable to predators on small tracts of land because they congregate and are more susceptible when there isn't adequate habitat for nesting and brooding cover. The problem isn't as significant where there are large tracts of habitat. Predator control is still a key part of the pheasant issue. Commissioner Wheeler said habitat and predator issues are also being targeted as part of the Mule Deer Initiative (MDI).

Rep. Moyle said his farms have large tracts of habitat and flood irrigation, and there are still declining numbers of pheasants. He doesn't allow pheasant hunting on his land because there are so few. He would like to know of a pheasant population study that compares losing large tracts of habitat and predation as proportional factors. He asked if predators are being controlled for pheasants as they are for deer. Commissioner Budge agreed that predators are part of the pheasant problem, and that controlling them is important. They exist in greater numbers than previously. There are studies done by fish and game departments and Pheasants Forever showing that good nesting and brooding cover in large land tracts is key, because the birds are not as susceptible when they can disperse over larger areas.

Rep. Fred Wood (27) asked Commissioner Wheeler to comment on budgetary issues that obviously affect dedicated fund agencies, and any new funding ideas the Commission may have. Commissioner Wheeler said they are looking forward to the formation of an ad hoc committee comprised of commissioners, House, and Senate members. It is clear that "we can't continue like we're doing." The budget problem is prevalent among all commissions in western states. Funding issues

make Legislative directives and support necessary. What the department can accomplish is tied to money. If the department needs to be "leaner," changes shouldn't be made "herky, jerky." The Commissioner thanked JFAC for the recent \$1 million dollar appropriation.

Rep. Fred Wood (27) said the things that get dedicated fund agencies in trouble are changes in employee compensation (CEC), benefits, and inflation. He asked, if those three things could be controlled and/or if the Legislature quit handing down unfunded mandates, how long fee increases would be adequate to cover costs. He said when fees are raised, the Legislature needs to address these issues in order to maintain long-term departmental viability. IFGC input is needed in the process. If this is done in an ad hoc committee, the intermittent "battles between the Legislature, constituency groups and the department" will be solved in a manner that would apply to all dedicated fund agencies. Commissioner Wheeler said it is difficult to set a budget when there is no control over spending. The information Rep. Wood (27) requested will be provided, but the Commissioner couldn't provide it "off the top of his head."

Rep. Andrus said there is a perception among hunters and sportsmen that the department "coddles coyotes." Rep. Andrus emphasized that he wasn't saying that is true. The department puts money toward an animal damage control program. He asked for comment regarding predator programs. Commissioner Wheeler said he was aware of the perception, but predator control is a big part of the MDI. A mapping system is in place, and money available has been directed to control coyotes. From 400-500 coyotes have been taken out by the Wild Life Service "behind my place last year." An effort is being made to be more precise in their control efforts, because timing is important in coyote control.

Rep. Chavez asked for information relative to department funding. Commissioner Wheeler said the three primary sources of fish and game funds are federal excise taxes, Pittman Robertson, and Dingle Johnson funds. They come with spending restraints.

Rep. JoAn Wood (35) asked who coordinated predator control for IDFG. Commissioner Wheeler said each region has a person responsible for predator control. Director Groen said the regions carry out predator control using their conservation officers.

Rep. Moyle said the Commission has "done an excellent job on bonus points." He asked what plans the Commission has for bonus points, now that the effort has been "derailed last year by the Senate." Commissioner Wheeler said it was the consensus of the Commission that someone in the Legislature needs to bring bonus point Legislation forward.

Rep. Shively asked that an explanation of bonus points be given for the benefit of new Legislators. Commissioner Wheeler said bonus points are allowed in different formulas in many states. They accrue each time someone buys a license. Over time, a person has a better chance of drawing in a hunt. When hunters have bonus points, they tend to continue to hunt in that state. Idaho loses multi-state hunters because there is no point system. The Commission thought a bonus point system was a good idea, and consistent with their directive to be

creative in raising money.

Rep. Saylor asked about changes in regulations relating to muzzle loaders. Commissioner Wheeler said it involves very technical issues that only a “gun sort of person” appreciates--ballistics, trajectories and penetration. It is difficult to create special hunting opportunities without someone objecting. There has been controversy, especially in Regions 1 and 2. In some states, hunters just go hunting with whatever weapon they have--Montana, for instance. Since this meeting today is the first time Commission members have been together since rule changes were made, no decisions have been made.

Rep. JoAn Wood (35) thanked the Commission for their responsiveness relating to outfitter rules. She asked if issues had been satisfactorily resolved. Commissioner Wheeler said yes.

Rep. Stevenson asked for comment relative to IDFG’s relationship with the Foundation. Commissioner Wheeler said the memorandum of understanding (MOU) has been revised with legal counsel. He believes there is full transparency on the voting board. Staff can provide the MOU to the Committee.

Rep. Stevenson asked about the status of the winter feeding program. Commissioner Wheeler said the Commission would like the ad hoc committee to look at all set-aside accounts. Groups of sportsmen have different expectations, all of which can’t possibly be delivered. Flexibility will be needed in order to respond to the CREP program. In order to work with farmers for positive CREP outcomes, the Commission will need more authority from the Legislature. The Magic Valley Pilot Program, LAP, and Access Yes! programs all address winter feeding issues, trying “to do magic things without money.” Ways to fund Access Yes! need to be found. Private property is some of the best habitat left.

Rep. Stevenson asked for comments regarding sportsmen’s access, including comments about large properties in northern Idaho that appear to be “locked up for private use.” Commissioner Wheeler said value attributes to access, and stockholders want something for it. Commissioner Wright said access is a primary reason for the declining number of hunters and fishermen in the state and across the nation. There were 50 million people licensed to hunt and fish twenty years ago; now there are 38 million. The “critters are public,” but private land contains most of the water and habitat. Access Yes! is a very good program providing what other programs can’t--a bidding process. A rancher submits a proposal to be reviewed by IDFG, which may be accepted for a nominal sum--perhaps \$1/acre. In return, the public receives access on that landowner’s private property. The problem is that the program has only \$400,000-\$500,000 for the entire state, which doesn’t buy much access. On the other hand there is a lot of competition for access: large corporations, willing and able to pay more than the state, are coming in and buying access. It is hoped that the Magic Valley Pilot Program will be successful. Sportsmen now realize that landowners “hold the cards,” and are willing to provide services in lieu of money for access. A volunteer program could be established where a person could donate money or time to IDFG for Access Yes! Commissioner Wright said utilizing LAP tags continues to be a controversial area. According to current statute up to 25% of tags can be used in draw hunts for landowner appreciation. Part of

those—perhaps 15% of the total 25%—could be used as a resource instead of money to purchase access as part of the program. The obstacle has been being able to transfer or sell tags to someone outside the immediate family. Internet and mail-out surveys are being conducted to determine how landowners and sportsmen's group want to proceed. The Magic Valley has a totally different set of circumstances with access than northern Idaho, where the corporate problem is paramount.

Commissioner Irby said Potlatch Corp. recently announced it would begin collecting fees for access on their lands April 1st. This became an issue last year when Potlatch, the largest landowner in Idaho, asked for \$50,000 from the state for access on their lands. The state didn't come to an agreement with Potlatch. Recreation has a high value. Potlatch Corp. wants more revenue from their lands. Commissioner Irby said paying for recreation access wasn't what concerned him, it was the idea that paying for access to corporate lands might lead to corporations selling access to the highest bidder—as has already occurred in Arkansas. Since the Idaho Department of Lands (IDL) has land intermingled with Potlatch land, there is also the question of whether IDL will charge fees too. "We need to look at where we've been and where we're going," because without a state-wide policy one of the state's best resources will be lost. For over 100 years Potlatch has allowed people free access; now recreation fees will be assessed. Forest Capital Partners, the second largest Idaho landowner, wants some money and some services from the Access Yes! Program, but seems to view access differently from Potlatch.

Chairman Stevenson reminded Commissioner Wheeler that Commissioners would soon need to be at the Governor's office.

Rep. Raybould suggested the Commission establish an Ask For Access Yes! Program. He said he, personally, has never denied access to any of his farms to people who have asked. Commissioner Wheeler said he followed the same practice.

Commissioner Wheeler told Committee members that the current Commission had "good thinkers" who want to make a difference by working on serious problems in partnership with the Legislature. Because a problem is controversial doesn't mean there is no solution.

Chairman Stevenson again reminded Commissioner Wheeler that three commissioners needed to leave for the Governor's meeting, and he still hoped Commissioner Powers would give his assessment of the U.S. Fish and Wildlife Service hearing on the gray wolf delisting, held last night. Three commissioners left the room.

Commissioner McDermott agreed that access would be a tremendous problem in the future; and that the general sporting public didn't understand the issue. He said that in the future access to Forest Capital Partners land may go in the direction taken by Potlatch Corp. Commissioner McDermott has attended meetings in other states which has provided him an opportunity to compare how fish and wildlife agencies are funded: New Mexico has a habitat stamp; all users of state and public lands purchase a \$6.50 stamp that generates about \$2 million dollars revenue. Colorado and Montana also have stamps. Arizona and Colorado direct money from the lottery for conservation. "In Idaho, we do nothing." He said the main concern is "how to operate

within a budget that is shrinking due to inflation.” Regarding access, Commissioner McDermott said the department purchased habitat units through the mitigation funds the dams created, which have never been converted to money. Land values were never attached to the habitat units. Meanwhile land values have increased. Commissioner McDermott asked how the increase in land values was to be handled. The north Idaho settlement figure is \$100 million dollars. The Coeur d’Alene and Kootenai Tribes are involved in that settlement, and do not want it for various reasons. The state does want the settlement. \$100 million dollars would solve access problems with Potlatch Corp. and Forest Capital Partners. In this regard, Representative Crapo is working to set up a meeting with the BPA. As a point of historical reference, Montana settled in the 1990s for about \$30 million dollars. With that money, essentially to buy access and habitat, a program was created partnering with farmers and ranchers that “did wonderful things for hunters and fishermen.”

Commissioner Powers, reporting on the U.S. Fish and Wildlife wolf delisting hearing, said there is a more than adequate number of wolves in Idaho. The state is ready to assume full management of wolves. Funding issues are not totally answered. Chairman Stevenson, Senator Gary Schroeder, Chair, Senate Resources and Environment Committee, and Jim Caswell, Administrator, Office of Species Conservation, also testified at the hearing. Overall, 33 people testified against delisting, and 13 testified in favor of delisting. Those against say they don’t trust the state to manage wolves—there is distrust throughout the system from the Governor’s office to IDFG. Those who are distrustful think the management program seeks to eliminate 75-90% of wolves. In fact, there is a state-approved plan intending to manage wolves as every other species is managed in a professional manner.

VOTE SJM 103:

Chairman Stevenson asked if any member had further questions or discussion regarding SJM 103, Legislation that was previously presented in Committee on March 5th. No member did. Chairman Stevenson told the Committee that the Resolution of the same number, SJR 103, was still in a Senate Committee.

A motion was made by Rep. Raybould to send SJM 103 to the floor with a DO PASS recommendation.

Questions/discussion: None.

Nate Helm, Legislative Advisor, Sportsmen Fish & Wildlife-ID (SFW-Idaho), had no closing remarks.

Sharon Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG) had nothing to add to her testimony.

The motion to send SJM 103 to the floor with a DO PASS recommendation passed by voice vote. Rep. Marv Hagedorn (20) will carry SJM 103 on the floor.

**ANNUAL REPORT
IDFG:**

**Sharon W. Kiefer
Legislative Liaison**

Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG) presented the Department’s Annual Report (Exhibit 1). It is not intended to be comprehensive, but is a brief overview highlighting major programs and accomplishments.

- Idaho Deer & Elk Management - 141,714 licensed deer hunters

harvested 50,600 deer, and 98,786 licensed elk hunters harvested 20,300 elk, with an economic impact of \$315 million dollars in 2006.

- Idaho Mule Deer Initiative - An overview for 2006 and 2007 to-date in terms of “accomplishments on the ground,” meaning those things accomplished.
- Pheasant and Quail Initiative - An annual progress report. This program is overseen by the Habitat Improvement Program (HIP), focused in the Clearwater Region near Potlatch, Genesee, and Lapwai; and in the Southwest Region along the Snake, Boise, Payette and Weiser Rivers. Leverage expertise through HIP also is used to leverage technical assistance for the CREP program.
- Access Yes! - An overview of 2006 and 2007 accomplishments including: partnering with 92 private landowners; generating \$120,000 through the Super Hunt Lottery; and maintaining a viewable and searchable on-line registry.
- Noxious Weed Report - An overview of 2006 accomplishments and expenditures.
- Fisheries Management Plan 2007 - 2012 - A comprehensive, multi-year work plan to manage the public’s fisheries resources, and establish the department’s goals, objectives and management direction. The plan will be submitted to the Commission at the March, 2007 meeting for approval.
- Yellowstone Cutthroat Trout Management Plan - The species occupies 61% of its historical range in southeast Idaho, demonstrating a decline in abundance and distribution. There is a proactive management plan that will be submitted to the Commission at the March, 2007 meeting.
- Hatcheries - Resident fish hatcheries are an important component of the program. With the exception of Lake Pend Oreille, the resident hatchery program is dedicated to producing fish for angling, with production funded by anglers. 26 million fish were released in about 500 waters statewide during 2006. The hatcheries are only one aspect of the residential fish management program.
- Spring/Summer Chinook and Steelhead Runsize - Graphs by hatchery and natural origin show trends that peaked in 2001 and have since been declining. It is hoped that the good water year in 2006 will result in good fish runs over the next few years.
- Anadromous Fish Management - Idaho’s non-tribal anadromous hatcheries released 9,048,800 chinook , 7,811,400 steelhead, and 86,0000 sockeye smolts in 2006. Hatcheries are the mitigation tool for private and federal hydropower projects.
- Budgeting - License sales history is an expression of participation in hunting and fishing activities. Salmon and steelhead run sizes can be tracked to license sales. The largest license groups have been grouped in a chart to depict revenue. The combo resident hunting, fishing and sportsman's

package is regularly the highest revenue source.

- Dollars and Sense - A comparison of revenues generated in fishing and deer/elk hunting respectively: \$437.6 million dollars statewide in 2003 to \$137.8 million dollars statewide in 1996.
- 2006 Volunteer/Reservist Program Summary - Statewide total monetary value in these programs were the equivalent of \$1,521.226 to the department and the resource. The list of diverse projects is comprehensive, and couldn't be accomplished without volunteers and reservist.
- Highlights - Programs not discussed today include lands, enforcement, trophy species, non-game, and hunter education.

Ms. Kiefer reviewed other materials in the handout (Exhibit 1). She requested a point of personal privilege to ask Committee members to find a person in the room pictured in the handout. Rep. Saylor identified Ms. Kiefer, herself, and won the prize.

Questions: Rep. Saylor asked, in light of the recent court decision in his area, how the shooting range at Farragut State Park fit into the IDFG mission; and how it will in light of the expansion decision. Ms. Kiefer said there hasn't yet been an opportunity to brief the Commission. The topic is on the agenda for the March, 2007 meeting. Commissioner McDermott said he is reviewing the 80-page ruling. The court decision will be carefully reviewed. Clearly, until it can be shown how the put baffles in to stop bullets, expansion at the shooting range is limited. Hopefully, the judge will allow expansion as time goes on. It hasn't been determined if the decision can be appealed. The majority of people in the Bayview area supported the range.

Rep. Shively made a general comment about pheasants saying that spraying is a big factor in declining populations, and one that wasn't mentioned previously today. It is his personal opinion that land set aside for pheasants should not be sprayed. Commissioner Budge said the comment was good. Spraying is one of the farm practices that has changed, and impacted pheasant populations. Brooding requires bugs to be available when chicks hatch. Large land tracts have that type of cover without pesticide/herbicide applications.

ANNOUNCEMENTS: There will be no Committee meeting Friday, March 9th.

At the meeting of Tuesday, March 13th, a report on the recent water decision will be presented by Deputy Attorney General Clive Strong. At least one piece of Legislation will also be on the agenda.

ADJOURN: The meeting adjourned at 3:40 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** March 13, 2007
- TIME:** 1:30 p.m. of upon adjournment
- PLACE:** Room 412
- MEMBERS:** Chairman Stevenson, Vice Chairman Wood (35), Representatives Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Shepherd (8), Brackett, Wood (27), Vander Woude, Sayler, Pence, Chavez, King, Shively
- ABSENT/EXCUSED:** Rep. Shepherd
- GUESTS:** Hal Anderson, Administrator, Planning and Technical Services Division; Rich Dinges, Big Wood Legacy Project (BWLP) Advisory Board; Lynn Harmon, Manager, Big Wood Canal Company (BWCC); Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish and Game; Senator David Langhorst (16); Rep. Tom Loertscher (31); Rich McIntyre, Crystal Consulting Group, Wood River Legacy Project; Carl Pendleton, BWCC, BWLP; Norm Semanko, Executive Director, Idaho Water Users Assoc.; Clive Strong, Deputy Attorney General, Natural Resources Division; Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators; Dr. David Tuthill, Acting Director, Idaho Department of Water Resources
See sign-in sheet for other guests.
- CALL TO ORDER:** A quorum being present, Chairman Stevenson called the meeting to order at 2:15 p.m.
- MINUTES
March 7, 2007** A motion was made by Rep. Pence to approve the minutes of March 7, 2007 as written. The motion passed by voice vote.
- BRIEFING:** Clive Strong, Deputy Attorney General, Natural Resources Division, presented a briefing of the recent Idaho Supreme Court Decision affecting conjunctive water management in Idaho: Reader's Digest Version of American Falls Reservoir District No.2 v. IDWR (Exhibit 1). He cautioned that although the summary today remains faithful to the language of the opinion, summaries by their nature exclude details.
- Clive Strong
Deputy Attorney
General**
- Idaho Supreme
Court Decision,
Conjunctive Water
Management**
- What the decision does and doesn't do: There are dramatically different opinions about whether this opinion is significant, and whether or not it changes water law. The opinion restates existing law and in large measure is a confirmation of many aspects of Judge Wood's ruling. There are some changes to that ruling.
- The most fundamental issue before the Supreme Court was whether the conjunctive management rules promulgated by the Department of Water Resources (IDWR) are constitutional. The case was brought originally by a consortium of surface water users. The plaintiff in that case was American Falls Reservoir District No.2. The argument was made that IDWR, in the process of applying rules, was applying rules that were either facially unconstitutional, or that the rules were unconstitutional as being applied. The distinction between the two is important. When a rule or statute is challenged as being facially unconstitutional, the governing

legal principal is that no constitutional application of the rule exists. In the instance of the implied challenge, the constitutional issue is whether the particular facts and the way IDWR applies the facts in that context are constitutional.

At the center of the debate, as the case was before Judge Wood, the State took the position that IDWR rules could only be attacked on the facial constitutional challenge because of the pending administrative hearing the Board was engaged in regarding the application of the rules. The plaintiffs took the position that the current application of IDWR rules, up to the point of time of the Director's order, could be considered part of the constitutional challenge.

Judge Wood agreed with the plaintiffs. His ruling was that not only could the court consider whether the constitutional facts to support the rules, but also if IDWR's application of the rules were constitutional.

Judge Wood's ruling was overturned in the Idaho Supreme Court. The ruling was that, in this context, before pursuing an "as applied" challenge to the constitutionality of the conjunctive management rules, a water user must first exhaust administrative remedies. Because plaintiffs had not exhausted remedies, the ruling it was not proper for the court to go beyond the constitutional challenge. When the Court ruled on the facial basis of the case, it ruled that there were a conceivable set of facts to support the constitutionality of IDWR rules. That is one aspect of Judge Wood's ruling that was affirmed in the Supreme Court.

The Wood Court, in considering the rules, looked to the substance of the rules: whether the futile call doctrine, reasonable means of diversion, and optimum use rules were sufficient to pass constitutional muster. Judge Wood ruled that, facially, those rules would withstand the constitutional challenge. The deficiency was not so much on the substance of the rules, but whether procedural tenants of the prior appropriation doctrine were properly admitted to the rules. Because of that aspect of the rules, there is no requirement that the procedural tenants of the prior appropriation doctrine be restated in rule. In fact, rules are an incorporation of all existing Idaho laws.

Where we stand today: The rules are found to be facially constitutional. Existing laws regarding the procedural tenants of the prior appropriation doctrine are incorporated by reference to rules. Not resolved by the Idaho Supreme Court ruling are facially-applied challenges to the constitutionality of IDWR rules. Those challenges remain to be resolved. Mr. Strong will say more about potential challenges later in his briefing.

There are three other important aspects of the Idaho Supreme Court Decision:

1. The concern was, in the plaintiff's view, that the rules did not state a time certain to act, that they resulted in unnecessary delay, and did not provide timely relief. The Supreme Court ruled that the Director has a duty to provide timely relief, but the constitution and statutes are not specific. Most importantly, the Director has a duty to take expeditious action. It is applicable to determine whether the Director is moving in an appropriate and deliberate fashion to respond to the rules. The Director also has a duty to "do it right." The two duties must be balanced.
2. Another aspect of particular importance is whether the standard of

applying substantive provisions of the rules is sufficiently adept to withstand constitutional scrutiny. Specifically, do the rules provide that a water user use a reasonable means of diversion to capture water for a delivery call, not an inefficient means; and do they consider whether water will be available to a senior user in a reasonable time and reasonable amount. The Supreme Court ruled that the “reasonableness” standard provides sufficient certainty for the Court’s review, and is an objective standard for evaluating the Director’s exercise of discretion. Decisions in the future will be applied on the “reasonableness” standard.

3. Another issue that was important to the plaintiff was, in the context of administration of water rights, whether a substantive diversion of water rights constituted re-adjudication of water rights. The presumption under Idaho law is that the senior is entitled decreed water rights, and that the Director administers decrees without questions. The Supreme Court ruled that the Director has some discretion when using authority to curtail a junior right. The “reasonableness” standard again applies, and decisions should not be inconsistent with actual beneficial use of water. It is important to note that the Director’s discretion is not unfettered discretion. There is a clear presumption in favor of senior water right holders. This decision does not undermine the principle of first in time/first in right. The Supreme Court finds for the priority doctrine when there is sufficient water available to meet the needs of the senior water right holder and the Director does not need to exercise discretionary authority.

There are two other substantive issues:

1. There has been a question about whether a senior water right holder has the right to make a water call even though water is still available through access to storage water. Typically, surface water rights, when insufficient, have been augmented from some other water supply. The two water sources, together, are sufficient. The Court finds that the Director is entitled to consider the extent of water available to the senior water user, including storage water. A senior water right holder can’t call out a junior only to satisfy a surface water right. The deciding principle is beneficial use. Nevertheless, the senior water user is protected to the extent necessary.
2. Part of this dispute concerns domestic use specifically. The proposition, citing Article 15, Section 3, is that exempting domestic use may result in a taking. Domestic users do have priority in times of shortage. Typically domestic users are thought to be minimal users, not having an important impact on the system. The Court clearly suggests that moving into the next phase of the conflict, domestic users will have some responsibility and accountability in terms of resolving this issue.

Where do we go from here: There are two paths:

1. Go back to the administrative process. There are now orders issued on four water delivery calls in effect. Those orders are still in effect and are in the third year, and are accelerating. The Director phased—in the duty of groundwater users to provide curtailment in order to satisfy injury done to senior water users. There is now an opportunity to have a hearing on those orders challenging the

Director's determination. There is an opportunity now for the parties to return to discussions toward the end of finding resolution. The Governor's water summit will provide impetus for surface and groundwater users to "come back to the table" to find some accommodation. The Supreme Court decision has no clear winner. Senior water right holders are entitled to a certain degree of protection, and groundwater users have some duty to "step forward and provide mitigation for injury being caused" to the senior holder.

2. It is in the interest of both groups to find some accommodation; otherwise, there will be more court challenges. It is indisputable that the historic high water flows of the 1960s are not going to return, due primarily to increased pumping, sprinkler irrigation systems, and drought. The water budget needs to be evaluated in terms of those three factors. Some combination of actions need to be instituted: 1) reduce pumping demands, 2) reduce stream flow demands by compensating senior water holders for subordination agreements or purchasing their interests, and 3) recharge to infuse more water into the aquifer. Supply and demand is not in balance. There is not a one-time solution. An on-going, dynamic process is needed to keep supply and demand in balance. The management planning process is the "heart and soul" of any solution that works for all. CDR Associates have been working on a management framework, and will continue.

Questions: Rep. Bedke said the way he understands domestic preference, specifically relating it to Article 15, Section 3, a domestic use has preference over other uses even though the priority date might be junior. He asked if it was "still the law of the land" that domestic water scarcity could trigger a condemnation process. Mr. Strong said it is correct that domestic use has preference. It is not the type of user, but the use made that has preference. The domestic water right user(s) would be required to compensate senior water right users for the impact of any diversion.

Rep. Bedke asked for a status report on the recharge program, including if the State is in a position to recharge the aquifer if there is water this year, and what's left to be done. Mr. Strong said, the partial answer is that the water board holds two valid permits to divert water with priority dates from the early 1980s: 1200 c.f.s. out of the Snake River; and 800 c.f.s. out of the Big Wood system. The dilemma is they carry priority dates in the early 1980s. To the extent the water rights are diverted at a time they would cause injury to a senior surface water holder, those rights cannot be diverted. The big issue right now is how those permits relate to the Milner permit. There is a water right for hydropower purposes at Milner that is subordinated to upstream consumptive uses, but excluded recharge. To the extent that the Milner permit has priority, it would take precedent in terms of delivery under prior appropriation law. That limits, to a certain extent, the use of those rights. Mr. Strong said the opinion is that this is the major legal impediment, along with issues that exist with the Bureau of Reclamation regarding diversion of water into the canal system. Diversion into the canal system might impact provisions of contracts with the upper Snake River reclamation programs if winter stock watering rights were ceased or curtailed in order to provide for storage in those reservoirs. There has been discussion between the prior Director of IDWR, the Bureau of Reclamation, and Bill McDonald on this issue. Some understanding has been reached providing that if the water

is used for recharge there is no violation of the contract provisions. "I think we are working our way through that issue." In addition to those two issues, there is the issue of canal capacity, and there are water conveyance agreements that need to be executed to fully implement a recharge program. Those are the major impediments.

Rep. Bedke asked how Mr. Strong sees the Legislature's role going into the future with regard to this Supreme Court decision, if major voids exist in the law or rule-making process, and what Legislators should be doing and thinking about. Mr. Strong said, at the general level, the most important thing for the State as a whole is to make sure the executive and legislative branches coordinate effectively on issues, and have a clear vision. In the past, there has been debate about where authority is vested to make water policy decisions. The Governor, the Legislature, and the Court all have authority, along with water users. A solution will come about by way of law, technical expertise, politics and use—in a collective fashion—in an on-going dialogue with all factions. More specifically, not having answers to all the questions "is a good thing," because parties are forced to find resolutions. When things are clearly defined, there are winners and losers. Maintaining flexibility in terms of water policy is very important. Mr. Strong said "if we think we know what the future looks like today, I can assure you twenty years from now it will be different." Swan Falls provides a good example of the need to maintain policy flexibility. At Swan Falls a remarkable shift in water policy has occurred. There was a battle to preserve the opportunity to develop an additional 84,000 acres of groundwater-irrigated acreage. Need has shifted in twenty years from developing 84,000 acres of new irrigated agriculture for groundwater, to a position of buying out 24,000 acres of highland pumping water to accommodate the upper basin. The CREP program is also going to reduce groundwater pumping—potentially by 200,000 ac-ft.

Rep. King asked if senior water rights would have to be compensated as domestic use increases—for instance in the Treasure Valley. And would they be compensated with money. Mr. Strong said yes. The tendency has been to think of the water issue as a southeast Idaho problem when it is statewide. Some of the same elements are now being seen in the Moscow-Palouse aquifer, the Rathdrum-Prairie aquifer and in Mountain Home. As water supplies become more scarce, domestic users will have the right to demand water but will have to compensate senior water holders for that supply. That is what can be expected in the future.

Rep. King asked, assuming the Treasure Valley now uses 20% of its domestic water supply from the Boise River and 80% from the aquifer, if a requirement to purchase surface water rights to meet increased demand would result in pumping more water from the aquifer—which also is not an infinite supply. Mr. Strong said many water sources are hydraulically connected. Taking from one source affects the other. Compensation for increased domestic demand will primarily come from groundwater pumping, which will affect surface water flows. The surface water users will be seeking compensation. In the final analysis, it is the same water supply.

H 290:

Rep. Tom Loertscher (31) presented H 290, legislation proposing to provide for management and monitoring of aquifers of the state and to provide for an appropriation request. The fiscal impact could be \$557,000

for fiscal year 2008. H 290 is concerned with the topic just addressed by Mr. Strong. Aquifer problems are not unique to one area of the state. In fact, all are experiencing problems. Attention has been so focused on the Eastern Snake Plain aquifer, that problems facing other aquifers haven't been addressed.

Rep. Loertscher said he thought it was interesting that he received a phone call Sunday from a constituent from the Teton Valley about an aquifer issue there, because it lends itself to this discussion. The Teton Valley aquifer is being negatively impacted because of development that is occurring. There is less irrigating; some canals have not been cleaned for a long time and, as a result, carry less water. Wetlands are drying up in that valley—the very thing that people favoring development in the valley want.

All H 290 proposes is to recognize the aquifer issue is a state-wide problem. It removes all reference to the Eastern Snake Plain Aquifer with regard to modeling, study and management efforts because they all will need to be duplicated state-wide eventually. Rep. Loertscher said this is only the beginning of potential conflicts in the Treasure Valley and other parts of the state. H 290 removes all reference to the Eastern Snake Plain Aquifer. Rep. Loertscher called attention to the similarity between H 290 and H 241 which has passed the House this session. Funding for H 290 would be from the state.

Questions: Rep. Chavez asked if money to monitor state aquifers would need to be on-going, beyond FY08. Rep. Loertscher said the fiscal note is the same as for H 241, and is the impact for the coming year. As time goes on, funding requirements will change and will be on-going.

Rep. Bell said legislation was just passed that provides for a one-time appropriation, intended as funding until “we get things sorted out and in order.” Another \$850,000 appropriation was funded to help with aquifer management. She asked if it was correct that on-going funding requirements would be needed. Rep. Loertscher said H 290 recognizes that aquifer issues are a state-wide problem. The funding mechanism used in H 241 would probably not work in the Treasure Valley, because there would not be enough irrigators or water districts. As the state moves forward, the long-term funding mechanism will have to be identified.

Rep. Bell said she thinks H 290 is premature. There is no reason to “layer at this point,” having just funded H 241 for one year; or to “jump in with on-going (appropriations) until we see what the aquifer study comes back with.” The water supply is finite, but so is the money.

Rep. King asked for clarification: Is H 241 the study by CDR Associates, and H 290 for administration. Rep. Loertscher said he isn't sure what was involved with funding, but thinks the CDR report is a minor part. Chairman. Stevenson said HCR 28 was the funding mechanism for the CDR Report. H 241 funded administration and the aquifer study, which is what is also being addressed in H 290. Rep. Loertscher said he had no illusions about H 290 going forward this session. The intention is provide a vehicle for serious discussion during the interim in the Natural Resources Interim Committee.

Rep. Fred Wood (27) said both HCR 28 and H 421 have been appropriated already this year. He asked if a further appropriation this year for H 290 was anticipated, or was the intention only to put the issue

before the Interim Committee. Rep. Loertscher said H 290 is not to request an additional appropriation this year. It is for discussion during the interim.

MOTION H 290:

Rep. Bedke said House and Senate leadership met this morning, both minority and majority leadership, and agreed that the discussion was appropriate for the Interim Natural Resources Committee.

Rep. Bedke made a motion to HOLD H 290 in Committee and recommend the issue be referred to the Natural Resources Interim Committee for evaluation.

Discussion/Questions: Rep. Raybould said he agreed wholeheartedly with the content of H 290, but the critical nature of aquifers in the state other than the Eastern Snake Plain Aquifer is just coming to light. Plans are being put together now on the Eastern Snake Plain Aquifer—how it can be managed and how the law affects it. The recent Supreme Court decision has somewhat stabilized what conjunctive management rules can do. Rep. Raybould wanted to reiterate, more forcefully, that further expansion in Ada County requires planning. He is not advocating that expansion and/or progress stop, but that planning is necessary. The Boise River, the water supply for the valley, only has so much water in it. It, and the aquifer, has to be managed correctly. The aquifer is receding due to a lack of surface irrigation because houses area being built on that ground. People living in those houses use water from the aquifer, but don't put water back. The Pullman aquifer is probably also being overused and needs a management plan. The Rathdrum-Prairie aquifer is critical to the economy of the state, due to the burgeoning population in that area. The state needs to evaluate its water resource, especially because the Spokane River runs out of the state of Idaho. Demands are being put on the Spokane River by people in Washington. The objectives of H 290 are at least as appropriate as many programs now being funded from the state general fund. "You can turn off an end gun on a circle in eastern Idaho and dry up a few acres around that circle, but you can't turn off one of the kids." Rep. Raybould supports the motion. The Interim Committee is the place to voice the objective of the state in managing its water resource for the benefit of the people of Idaho.

Rep. Vander Woude asked if money already appropriated this year for the Eastern Snake Plain Aquifer can be used to study aquifers in the Treasure Valley or north Idaho; and if there is money to study aquifers other than the Eastern Snake Plain Aquifer. Chairman Stevenson said the legislation that has passed this session applies where there are water districts. H 290 is to determine a mechanism to include all aquifers—not just the Eastern Snake Plain Aquifer.

Rep. Vander Woude asked if money has been appropriated to study any other aquifers. Chairman Stevenson said money has been appropriated for adjudication in the Rathdrum-Prairie aquifer in northern Idaho; and there has been only a limited amount of money spent studying aquifers in northern Idaho. One aquifer plan is needed for the state.

Rep. Andrus asked if the motion was to appropriate \$557,000 money to be used in FY08. Rep. Bedke said two aquifer appropriations have been made this year: H 241 appropriates the same amount of money as H 290, but on a one-time basis; H 290 makes that funding on-going, and removes the specific reference to the Eastern Snake Plain Aquifer from Section 42-620. HCR 28 authorizes an aquifer study plan to be

completed, and includes a one-time appropriation of \$850,000 to complete the plan. Rep. Bedke agrees with having the Interim Natural Resource Committee consider a state-wide approach to aquifer management, as is stated in his motion.

Rep. Eskridge asked for clarification that the motion on the table doesn't appropriate money, but only recommends the substance of H 290 to the Interim Committee. That committee can then make a recommendation. Rep. Bedke said yes.

Rep. Saylor asked, when talking about administering water rights in other aquifers, if other management plans up north would be superceded. Rep. Loertscher said as a plan is developed, it could serve as a template to work with other aquifers. Whatever effort is expended now is not going to be wasted, and probably will lower costs. The management plan will probably not be the same for every aquifer, but there will be some experience and basis for evaluating them.

Rep. Bedke said "we can't push down on the accelerator any faster than we are." Passing H 290 won't redouble our efforts. We're already going as fast as we can. When more money is needed as specific issues come up around the state, it will be there.

Rep. Bell said she didn't understand why a "clone" of legislation that has already been through Committee is appearing now—except looking much better because it adds all the other aquifers in the state while still asking for the same amount of money. She said maybe H 290 is the piece of legislation to have started with, rather than H 241.

**WRITTEN
TESTIMONY:**

Written testimony: Idaho Ground Water Users Association submitted Resolution No. 2007-25 supporting legislation directing the state to dedicate a percentage of the existing sales tax or other existing revenue sources to fund various aquifer management plans and actions (Exhibit 2).

VOTE H 290:

The motion to HOLD H 290 in Committee and recommend the issue to the Natural Resources Interim Committee for evaluation passed by voice vote.

S 1128a:

Senator David Langhorst (16) presented S 1128a, proposing to restrict the shooting at, or killing of, any bird or animal in Idaho with any gun or other device accessed via the Internet.

When Senator Langhorst was visiting Texas a couple of years ago, visiting with sportsmen's groups, he learned that an individual in Texas put up a gun with a camera mounted on it with remote control apparatus that a person could control over the Internet with a mouse. Internet hunts were being sold on a 40-acre enclosure. This immediately caused a backlash. Many groups are united in opposition to this practice. Hunting by remote control draws fire from all quarters, an article from the Christian Science Monitor (Exhibit 3).

Legislation like S 1128a has been passed in almost 30 states. Senator Langhorst reviewed the bill with amendments. The amendments clarify a possible misinterpretation of the legislation, making it clear that the prohibition is to acts that a person accesses and controls over the Internet.

Questions: Rep. JoAn Wood asked, when talking about penalty, if the

penalty is a misdemeanor already in the Code. Senator Langhorst said that was correct.

Sharon W. Kiefer, Legislative Liaison, Idaho Department of Fish and Game (IDFG), said IDFG approved a motion to SUPPORT S 1128a during their meeting of March 8th (Exhibit 4).

**WRITTEN
TESTIMONY:**

Written testimony:

1. Conservation Voters SUPPORT S 1128 because Internet shooting violates Idaho's fair chase hunting ethic (Exhibit 5).

**MOTION/VOTE
S 1128a:**

A motion was made by Rep. King to send S 1128a to the floor with a DO PASS recommendation.

Discussion: Rep. Barrett asked if the amendment broadened the legislation to include domestic cervidae. Senator Langhorst said yes, domestic cervidae are meant to be included. The bill writers thought the language "all birds and animals" to be adequate, but because the law amends Title 36, it was thought it would be better to also include Title 25 by reference to eliminate all confusion. There is no problem like this in Idaho now; it's easier to "put it to rest before it starts." Rep. Barrett said she had no problem supporting the bill with regard to wild game, but can't support it when it "dictates to private game farms."

The motion to send S 1128a to the floor with a DO PASS recommendation passed by voice vote, Reps. Barrett, Bell, and JoAn Wood (27) voting NAY for the record. Rep. Shively will carry S 1128a on the floor.

S 1136a:

Richard McIntyre, managing partner, Crystal Consulting Group; Project Director, Wood River Legacy Project, and Norm Semanko, Executive Director, Idaho Water Users Association, presented S 1136a, proposing to amend Chapter 15, Title 42, to add a new section 42-1508 to Idaho Code. The new section authorizes and directs the Idaho Water Resource Board (IWRB) to appropriate minimum stream flow water rights in designated reaches of the Wood River Basin to facilitate the use of water rights that are donated in the basin; and to add a new section 42-1765B to authorize the IWRB, through a local committee, to accept and hold donated water rights in the Wood River Basin for purposes of enhancing stream flows and down basin water supplies.

Mr. McIntyre asked support for S 1136a, saying it had bi-partisan support; and the support of irrigation districts, governments, conservation organization, business interests and ordinary citizens. The legislation accomplishes three objectives: 1) enhance agricultural water supplies down basin, 2) enhance stream flows, and 3) provide water for recreational purposes. The program uses donated water. To quote one potential contributor, "I don't care if they play in my water before I irrigate with it." (Exhibit 6.)

Norm Semanko, Executive Director, Idaho Water Users Association (IWUA), said the legislation was originally brought to IWUA's legislative committee in January. It was opposed in that form. A work group was formed to consider ways to increase flows into the Magic Reservoir to study ways to enhance supplies and allow flows to go downstream. Mr. Semanko recalled that John Keyes, when he was commissioner, used to say "our job as water managers moving water from one place to another

to satisfy the deliveries for irrigators, to make as many uses of that water along the way.” That is what S 1136a tries to do, along with not injuring other water users on the system in the Wood River Basin.

The work group thought a public meeting ought to be held in the Wood River valley to provide an opportunity for people to vent concerns and discuss the issues. That was held in Hailey. A water users meeting was also held. As a result, a number of amendments are now incorporated in the legislation.

Some people asked if the objectives could be met with the existing laws. It was recalled that in 2001 there was a strong consensus group from the Lemhi basin that proposed to put water in the water bank to be rented out to meet a minimum flow for the salmon in order to prevent prosecution under the endangered species act; and that no one testified against that legislation. That is the approach used in S 1136a, rather than what was originally proposed. The existing laws are almost sufficient. The pieces that are missing are:

1. In order to have water go to the water bank to meet minimum flows, minimum flows have to be set. S 1136a sets minimum flows, establishing a process through the IWRB, and requiring publication. There are now no minimum flows set in the area where it is needed below Glendale. There is one set above Glendale, but it is not completely adequate. There is one set on Silver Creek, but not on Little Wood.
2. The water must be donated. This is different from what has been done in the past. A local advisory committee will be appointed. Ex officio members to the local advisory committee will be the water master, who has a constitutional responsibility; the people who actually manage the water; and others the advisory committee may appoint. Local water users want to be sure the historic recharge is maintained. The amendments to S 1136 specifically require the director to condition rights to maintain historic recharge. Not all of a water right will stay in the stream; only the consumptive portion is allowed to do that, in order to accommodate whatever is provided in recharge.
3. Existing rights are protected. If a change is made to the way water is managed in the river, water users must not be injured in the process. S 1136a clearly provides that those advocating the change must show that injury by clear and convincing evidence; that burden does not attribute to the water user.
4. If water is donated, those who receive the benefit of that water downstream will make up for lost assessment costs.
5. The only way to know if this will work is to try it. A sunset has been put on the legislation of December 31, 2012. If the legislation is not continued it will expire on that date.

This legislation only allows for the donation of water in the Bid Wood for the purpose of meeting minimum flows; and is not intended to apply state-wide. There is no one here from the affected area in opposition to S 1136a.

Questions: Rep. Chavez asked where the sunset provisions were in the bill. Mr. Semanko said they are in the amendments.

Rep. JoAn Wood (35) said she was curious that no reference was made in the legislation to a moratorium on wells. Mr. Semanko said it is not an accident that basin 37M is the last basin to be reported in adjudication, because it is the most complicated. There are many issues with regard to groundwater development that impact the basin. But those issues will have to be addressed in adjudication, and are separate from S 1136a.

Rep. JoAn Wood (35), said she supports the bill, but in order to achieve the stated objectives groundwater users must be included in the solution. She asked why the groundwater impact was not taken into account. Mr. Semanko said the local advisory committee would do that. No matter the outcome of adjudication, it will shape management in the area for the next five to ten years. S 1136a comes in the middle of this controversy, and is not the place to address groundwater issues.

Rep. Andrus said it appears that if a 51% vote in the canal company allowed water to be taken from the Big Wood River, a stockholder in the canal company would be prevented from irrigating his land. Mr. Semanko said it was the opposite. Under the law as it is now written, a canal company could decide to put water in the water bank to be rented. Other than an after-the-fact petition that could be filed, there is no recourse for protest. S 1136a allows for the local advisory committee to consider the objection and make a recommendation to the director.

Rep. Vander Woude asked, if the process is found not to work, in 2012 do people get their water rights back. Mr. Semanko said yes. Minimum stream flows set under the statute will expire, and everything goes back as it was.

Rep. Vander Woude asked if there was a possibility, if S 1136a passes and proves not to be successful because of insufficient donations, that the Legislature will then be asked to fund the minimum stream flows. Mr. Semanko said he didn't see that happening. If this vehicle doesn't work, people in the area are contemplating direct leases. Mr. McIntyre said the answer is no.

**PUBLIC
TESTIMONY:**

Carl Pendleton

PRO

Carl Pendleton, Big Wood Canal Company (BWCC), Big Wood Legacy Project (BWL P), stood in SUPPORT of S 1136a (Exhibit 7). The potential for increased stream flows proposed in S 1136a is made possible by the donation of water rights to the stream by individuals who place a high regard on the recreational and esthetic values of the upper valley streams. Significant protections have been incorporated within the legislation to minimize any adverse change to upper valley agricultural operations.

Questions: None.

Lynn Harmon

PRO

Lynn Harmon, Manager, Big Wood Canal Company (BWCC), stood in SUPPORT of S 1136a on behalf of BWCC and water users in basins 37 and 37M (Exhibit 8). This is an important piece of legislation for all water interests in the Wood River valley. It provides for potential increases in flow for both the Silver Creek and Big Wood Rivers. It is also a vehicle to help resolve conflict in the area.

Questions: None.

Rich Dinges

Rich Dinges, Big Wood Legacy Project (BWL P) Advisory Board, stood in SUPPORT of S 1136a. He said the legislation will benefit him directly

PRO and is a win-win proposal, which is a rare thing. He sees no downside.
Questions: None.

WRITTEN TESTIMONY: Lloyd Knight, President, Food Producers of Idaho, submitted written testimony in SUPPORT of S 1136a representing the agricultural commodity and farm organizations in Idaho. Food Producers members have had weekly updates on the development of the legislation, and ask for the Committee's support (Exhibit 9).

PRO

MOTION/VOTE S 1136a: A motion was made by Rep. Pence do send S 1136 to the floor with a DO PASS recommendation.

The motion passed by voice vote. Rep. Pence will carry S 1136a on the floor.

ANNOUNCEMENTS: There will be no Committee meeting Thursday, March 15, 2007.

Dr. Steven Daley-Laursen has sent information, that is in work folders today, that would have been presented had he been able to come to Committee.

ADJOURN: The meeting adjourned at 3:50 p.m.

Representative John A. Stevenson
Chairman

Mona Spaulding
Secretary