

Senate Resources & Environment Committee

Minutes
2007



MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 10, 2007

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Coiner, Siddoway, Stennett, and Langhorst

MEMBERS ABSENT/ EXCUSED: Senator Andreason

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

INTRODUCTIONS: He introduced the committee secretary, Juanita Budell, and the committee page, Matthew Braden. Matthew is from Weiser and is sponsored by Vice Chairman Pearce.

ANNOUNCEMENTS: The **Chairman** announced there will be a joint meeting with the House Resources & Conservation Committee regarding water issues and challenges Thursday, January 11, in the Gold Room at 3 p.m.

On Friday, January 12, at 9 a.m., there will be a joint meeting with the Senate and House Agricultural Affairs Committees and the House Resources & Conservation Committee. This meeting will be an update on the Eastern Idaho Elk Situation.

The regular committee meeting will be held Friday, in this room, at 1:30 p.m.

Chairman Schroeder said that his job, as chairman, is to make sure that all of you have all the information that you need, on any issue, that comes before this committee, to make wise and judicious decisions. If there is some information that you do not have and wish to have before you vote on an issue, let him know and he will do everything he can to obtain the information.

The **Chairman** then asked each committee member to briefly state their interests and concerns regarding this committee.

RULES ASSIGNMENT: **Vice Chairman Pearce** assigned the rules as follows:

Pending Rules - Department of Environmental Quality
Senator Little – Water Quality Standards;
Senator Andreason – Ground Water Quality Rule;
Senator Langhorst – Wastewater Rules;
Senator Coiner, Chairman – Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater.

Pending Rules - Idaho Fish and Game Commission

Senator Stennett – Rules Governing Licensing; Fishing Contests;
Senator Siddoway, Chairman – Rules Governing the taking of Big Game
Animals in the State of Idaho;
Rules Governing the taking of Game
Birds in the State of Idaho;
Rules Governing Fish.

Pending Fee Rules - Department of Lands

Senator Cameron, Chairman – Rules Governing Grazing Leases and
Cropland Leases.

Pending Fee Rules - Department of Environmental Quality

Senator Pearce, Chairman – Rules for Administration of Water Pollution
Control Loans.

Vice Chairman Pearce requested each chairman to be prepared to report to the committee within the next ten days on the status of the assigned rules. Working within this time frame will allow enough time to meet the deadline, should there be a problem.

**REQUEST FOR
RS's:**

Chairman Schroeder asked that RS's be given to him as soon as possible so that they can be put on the agenda.

**COMMITTEE
COMMENTS:**

Senator Cameron said he has some concerns regarding the budget and asked if the Chairman is planning to have the agencies present their budget to JFAC. The Chairman indicated he planned to do that. Senator Cameron also has concerns regarding a possible fee increase request from the Fish and Game Department. He suggested, at some point, this committee, the Legislature, and the department come to grips with how some of the issues are to be resolved. Senator Cameron feels the hunting and fishing public cannot continue to pay more and more fees, but the employees cannot be left out of pay raises. Chairman Schroeder suggested the Governor's Office is the place to start, as the Department of Fish and Game is a member of the Executive Branch.

Senator Cameron said the Department of Water Resources has also been hit hard with budget impacts.

Senator Stennett expressed his appreciation to Senator Cameron for allowing the committee to come before JFAC and present their budget recommendations for the agencies.

It was requested that a genetic presentation on DNA be presented to the committee, as well as an over-all discussion on disease management of wild game. It was suggested that Dr. Ledbetter be contacted to lead that discussion.

SPEAKER:

Chairman Schroeder welcomed **Clive Strong, Division Chief, Natural Resources Division, Attorney General's Office**, who will update the committee on Judge Wood's order voiding Idaho Department of Water Resources (IDWR) Conjunctive Management Rules.

Inserted into the minutes is a Summary of Judge Wood's order of June 2,

2006 and a Synopsis of Arguments, prepared by Mr. Strong.

SUMMARY OF JUDGE WOOD'S ORDER OF JUNE 2, 2006
VOIDING IDWR'S CONJUNCTIVE MANAGEMENT RULES
(Text taken *primarily* from pages 2-3 of the court's order)

HOLDINGS

1. The Director **acted outside his legal authority in adopting the Rules**, which are not in accord with Idaho's version of the prior appropriation doctrine.
2. The Rules are constitutionally deficient for failure to integrate the required legal tenets and procedures regarding **burdens of proof** and **evidentiary standards** that apply when the Director responds to a water delivery call.
3. The factors and policies contained in the Rules and to be applied by the Director can be construed consistent with the Prior Appropriation Doctrine. The principles and factors include:
 - a. reasonable use and reasonable diversion,
 - b. material injury,
 - c. full economic development,
 - d. right of junior to provide replacement water to avoid injury to senior,
 - e. water right represents a right to use water, not ownership of the water,
 - f. right holder only entitled to divert the amount that can be beneficially used, regardless of the quantity decreed, and
 - g. requirement for a written delivery call is valid and necessary.
4. The Rules are **facially unconstitutional due to** the omission of necessary components of the prior appropriation doctrine, including:
 - a. presumption of injury,
 - b. burden of proof,
 - c. objective standards for review, and
 - d. failure to give due effect to the partial decree for a senior water right.
5. The Rule's exclusion of domestic **water** rights from ground water sources is both facially unconstitutional and is in violation of Idaho Code §~ 42-602, 42-603, and 42-607.
6. The "**reasonable carryover**" provision of the Rules is unconstitutional, both facially and as threatened to be applied.
7. The Rules disparate treatment of the holders of junior ground water rights and junior surface water does **not violate Equal Protection**; serves a legitimate state interest; and is rationally related to that interest.
8. Under the Rules, the **untimely administration** of water rights, and in particular irrigation rights, constitutes an unconstitutional taking without just compensation.

Synopsis of Arguments in AFRD2 Case

SURFACE WATER USER PERSPECTIVE:

“[J]unior water rights must therefore be curtailed in times of shortage unless the junior can prove, by ‘clear and convincing evidence,’ that his diversion and use of water does not injure a senior appropriator. *Moe v. Harger*, 10 Idaho 302, 305 (1904).” Surface Water Coalition Brief at 13.

“The Rules reverse ‘first in time, first in right’ by forcing seniors to make a ‘delivery call’ and proceed through administrative ‘contested cases’ before any administration occurs... while a senior suffers through the administrative gauntlet at great expense and delay, junior priority ground water users are free to deplete the senior’s water supply without consequence.” Surface Water Coalition Brief at 16.

“[T]he Rules permit the Director to ignore elements of decreed and licensed water rights and force a senior to re-prove and justify his use through various ‘determinations.’” Surface Water Coalition Brief at 21.

“A senior’s stored water does not, as argued by the IOWA and the Defendants, have to be applied to the senior’s land to be put to beneficial use.” Surface Water Coalition Brief at 40

“I.C. § 42-607 is a self-executing statute whereby the watermaster simply curtails junior diversions when ‘it is necessary to do so in order to supply the prior rights of others.’” Thousand Springs/Rangen Brief at 23.

“Where the statutory or regulatory scheme already provides for a recognition of a supply shortage, the Director’s duty to administer the water rights in priority is self-evident, and a call for delivery is not required. ...This approach is mandated by the prior appropriation system in Idaho, under which junior appropriators are entitled to divert water only at such times as all prior appropriators are being supplied in full.” Idaho Power Brief at 17.

“Until lack of material injury is shown by the junior, the senior is entitled to continue fully diverting its decreed entitlement, while the juniors must curtail their diversions.” Idaho Power Brief at 21.

“Senior surface water right holders...are not subject to the Ground Water Act, nor to the policy of optimal development as enunciated

in the act.” Thousand Springs/Rangen Brief at 21.

II. GROUND) WATER USER PERSPECTIVE:

“The Legislature brought ground water rights into the priority system.... on the express condition that ‘full economic development of underground water resources’ would be a factor for consideration, along with other established prior appropriation principles.” Idaho Ground Water Appropriators Brief at 12.

“The fact that Chapter 6 [of Title 42] is not intended as a rote, ask-no-questions application of priority in all cases is reflected in the Legislature’s instruction to the Director to adopt rules implementing procedures for delivery calls.” Idaho Ground Water Appropriators Brief at 14.

“There is no support for the conclusion that once ground water rights have been decreed with a general provision indicating that they are hydrologically connected with a surface water source, administration requires a presumption of injury and only a review of priority dates without consideration of beneficial use, hydrologic facts, or anything else.” Idaho Ground Water Appropriators Brief at 22.

“[Plaintiffs] seek a decision by this Court that will convert their usufruct right into an absolute entitlement beyond State purview that, therefore, must be administered independent of actual current need or use.” Idaho Ground Water Appropriators Reply Brief at 11.

“Idaho’s Constitution does not assign burdens of proof or evidentiary standards in water right administration.” Idaho Ground Water Appropriators Brief at 20.

“When it comes to administering water rights in a delivery call the procedure begins with the decree, but ultimately is governed by the facts found by the Director and the principles of Idaho law, not the bare allegations of the senior water right holders.” Idaho Ground Water Appropriators Reply Brief at 17.

III. IDWR PERSPECTIVE:

“[T]he state has a sovereign interest in both protecting priorities and in securing the maximum beneficial use of the state’s water resources. These principles of priority of right and beneficial use have always existed side by side, and the Plaintiffs’ view that priority overrides beneficial use once a water right is decreed is contrary to a hundred years of Idaho law.” IDWR Reply Brief at

29 (citation omitted).

“[T]he Director is statutorily directed to distribute water not simply by priority but ‘in accordance with the prior appropriation doctrine,’ Idaho Code § 42-602, which ‘recognizes various principles that protect junior water rights which should be incorporated into the administration of water rights.’ IDWR Reply Brief at 31 (quoting SRBA District Court Order on Basin-Wide Issue 5).

“A water right is a property right regardless of whether it is senior or junior in priority to another water right, and both senior water rights and junior water rights are entitled to protection in accordance with the prior appropriation doctrine as established by Idaho law.” IDWR Reply Brief at 16.

“The Plaintiffs’ challenge is predicated on the argument that the Director must mechanically distribute the full decreed quantity of water under a water right on demand solely on the basis of priority, without considering how much of the decreed quantity of water is needed to fully achieve the authorized beneficial use, or whether curtailing junior rights would provide the water needed by the senior right.” IDWR Reply Brief at 1-2.

“Let there be no mistake, the Director cannot change or ignore decreed priorities and the other elements of water right decrees when administering water rights...the Director’s consideration of a senior water right holder’s actual need for water at the time of a delivery call, and whether curtailing a junior right would provide the water needed under the senior right, relates to how the water right is exercised and does not constitute a re-definition of the right. Such factual determinations are necessary incidents of determining the extent to which a senior right holder is entitled to administration under the circumstances existing at the time of the call.” IDWR Reply Brief at 2.

“Existing Idaho law provides the ‘procedural components’ the district court identified, and the Rules incorporate ‘all elements of the prior appropriation doctrine as established by Idaho law.’ IDWR Brief at 25 (quoting CM Rule 20.02).

“[The district court’s reasonable carryover holding] would also allow water to be wasted while junior rights are curtailed, and would surrender public control of Idaho’s public water resources.” IDWR Brief at 16.

Mr. Strong then provided the Committee with statistics relating to various claims. They are as follows:

Summary of Federal Reserved Instream Flow Claims

Total flow claims filed - 5,970

Allowed - 7

Summary of Federal Reserved Water Right Consumptive Use Claims

- Shoshone-Bannock On-Reservation Claims - final settlement
- Department of Energy/INEEL - final settlement
- National Park Service
 - a. Craters of the Moon - final settlement
 - b. Yellowstone National Park - final settlement
 - c. Nez Perce National Monument - pending

Summary of Federal Reserved Water Right Consumptive Use Claims

- Shoshone-Paiute On-Reservation Claims - final settlement
- Nez Perce On-Reservation Claims - settlement approved by SRBA Court
- General Service Administration - pending
- Mountain Home Air Force Base - final decree dismissing claims

Summary of Federal Reserved Water Right Consumptive Use Claims

- Public Water Reserves Entitlement Decision on Quantification - decreed
- Corps of Engineers/Dworshak - pending
- City of Rocks - pending

That concluded Mr. Strong's presentation and he entertained questions from the committee.

Senator Stennett asked if a surface water user makes a demand and it is determined a futile call - is it made due to water not being delivered that season? **Mr. Strong** said that was one of the huge questions they have to deal with.

Senator Stennett also asked if the court upholds Judge Wood's decision, what happens next. **Mr. Strong** said that no one knows the answer. The court will not have a decision before March 15.

Senator Coiner asked if it was true that a futile call in the state of Idaho is not defined. **Mr. Strong** said it was partially true. A futile call is a common law doctrine and the law is developed as the facts come before the court. **Senator Coiner** then asked about Colorado's futile call. **Mr. Strong** said that Colorado has some

rules in which they have promulgated to deal with what constitutes a futile call between surface and ground water. However, Colorado has a shallow aquifer that is directly associated with a stream.

Senator Stennett inquired about impediments with the Federal Government in the rules regarding the Conservation Reserve Enhancement Program (CREP). **Mr. Strong** said there is close to 100,000 plus acres subscribed and he is of the belief that we need patience and we need to give the program a chance to work.

Senator Stennett asked about state money and if there is a point in time when federal money is cut off. **Mr. Strong** said there is a sign-up deadline and it was in October.

Senator Pearce said there have been a lot of acres dried up in Idaho over the past five to ten years. He asked as to how many acres are needed to be dried up before the aquifer can respond or has there been a response already? **Mr. Strong** said that to the extent that we curtail ground water diversion, we will see the benefit of that through the aquifer. It is of such a large magnitude that it is hard to know exactly what effect it has on a particular spring, but over-all, we are seeing a response.

Senator Pearce inquired about the prioritizing of water, according to the Constitution, with domestic, mining, and agriculture the top three. He asked if the court is looking at how the canal companies have taken water and are using it to generate electricity. **Mr. Strong** replied that in 1928, it was added so that the Legislature has the right to regulate the use of water for hydro power purposes and the authority to deal with it. The canal companies also have the right to extend any other water use.

Mr. Strong emphasized that hydro power is different regarding state regulation, to the extent the water right has been subordinated, it does not entitle the holder to that right to compensation.

Senator Pearce said that when the state gives water rights to canal companies and individuals per acre, etc., then when dams and storage areas are created in upper valleys, he wondered if "double dipping" of the water rights occur. **Mr. Strong** said no, that does not occur, because storage areas were created as insurance against dry cycles. If there is a conflict, one of the biggest things that has affected us over time is the change in irrigation practices, going from gravity irrigation to sprinkler irrigation.

Senator Cameron asked what Judge Wood's ruling was on the

department's definition of injury on storage rights. **Mr. Strong** said that once water is captured, it then becomes private water. The Judge said the rule was unconstitutional because it required the senior surface water user to use part of the storage before making another call. Mr. Strong said there would be a ruling on this point as it is before the court now.

Senator Cameron said that before Judge Wood's made his decision, the Director made a decision that the leasing of the loss of the ability for the Twin Falls Canal Company to lease water did not constitute injury. He asked how Judge Wood's ruling affected this decision. **Mr. Strong** said that Judge Wood's ruling didn't expressly address that point, but it did resolve it, in a sense, as he said it is up to the senior surface water users to use the water as they see fit.

In the closing remarks of **Mr. Strong**, he said they are actually making progress. About 170,000 claims have been filed and all but 30 of those have been resolved.

Chairman Schroeder invited Mr. Strong to keep the committee informed on the water issues.

**AD-
JOURN-
MENT;**

The Chairman adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 11, 2007

TIME: 3:00 p.m.

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

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Little, Coiner, and Siddoway

MEMBERS ABSENT/ EXCUSED: Senators Cameron, Andreason, Stennett, and Langhorst

MINUTES: The Joint meeting was chaired by **Chairman Schroeder** and he called the meeting to order at 3:00 p.m. He said the purpose of this Joint meeting was to apprise the committees of the water issues facing the state. At the present time, there is a water case in the Supreme Court. With water law being very complex, the program today will be conducted by people who have expertise in water law and conjunctive management.

INTRO- DUCTIONS: The **Chairman** introduced **Representative Stevenson, House Resources and Conservation Chairman and Representative Raybould, House Environment, Energy & Technology Chairman**. He said the three of them worked together to arrange this meeting and he thanked them for their efforts.

The **Chairman** then introduced **Dr. John Tracy, Director, Idaho Water Resources Research Institute at University of Idaho (IWRRI)**.

Dr. Tracy said that IWRRI was created by the Legislature in 1963. Each state has a water resources institute and they work with researchers across the state to focus on issues of importance to the state of Idaho and the region. One of the on-going projects by Dr. Gary Johnson, Dr. Donna Cosgrove, and Mr. Bryce Contor, along with the Department of Water Resources, has been ways of understanding how water moves through the Eastern Snake Plain of Idaho. That will be the prelude to the discussion that Dr. Johnson will give. Prior to that, the **Interim Director of the Idaho Department of Water Resources (IDWR) Dr. David Tuthill**, will give a brief description of the agency's role in dealing with this difficult issue and some of the major challenges that the agency will be facing in the coming years.

SPEAKER: **Dr. Tuthill** referred his remarks to a PowerPoint presentation consisting of 23 slides.

He gave an overview of issues facing IDWR. They are:

- IDWR organization
- Issues with identified solutions
- More challenging issues
- Where we go from here

He said they are organized basically in three divisions: Energy; Planning and Tech Services; and Water Management.

The Energy Division works on renewable resources and alternative fuels; agriculture - municipal and industrial; and financial assistance. Dr. Tuthill said they are seeing a nexus between water and energy, so it is appropriate that the Office of Water Energy has been put in with IDWR.

In the Planning and Technical Services Division, the Technical Services are responsible for the following: Hydrology; geospatial technology (GIS); water supply; groundwater flow/level monitoring; regional groundwater modeling; and river/reservoir systems modeling. The Planning component serves to develop water plans in assistance to the Idaho Water Resource Board. There are five areas of interest which are:

- CREP
- Rathdrum
- Moscow
- Mountain Home
- North Ada County

The Conservation Reserve Enhancement Program (CREP) agreement was enacted by Governor Risch and U.S. Secretary of Agriculture Johanns in May, 2006. The goal is to set aside up to 100,000 acres of irrigated crop land to reduce consumptive water use from the Eastern Snake Plain Aquifer (ESPA) by up to 200,000 acre-feet annually, for a period of 15 years. To date, 143 contracts have been approved for a total of 19,399 acres. Sign-up has been extended to December 2007.

The Spokane Valley-Rathdrum Prairie Hydrologic Project began in 2003. A Memo of Understanding has been developed among Idaho, Washington, and USGS. This project is on time and on budget, with a completion date of Spring 2007.

In the Palouse Basin, funding was provided by the Legislature for hydrologic projects. The total amount of funds was \$450,000. The Monitoring Well Nest (\$299,000) was sponsored by the Palouse Basin Aquifer Committee (PBAC) to develop understanding about the Basin. Four wells have been completed. The Hydrogeologic Characterization (\$151,000) was sponsored by the Latah County Commissioners and conducted by University of Idaho staff, and it has been completed also.

The Mountain Home Plateau activities include periodic ground water level monitoring - 58 wells. The Draft Management Plan from the Advisory Committee is awaiting action from the Director. The Committee plans to take action this year to further the management of the aquifer in the Mountain Home area. Chairman Stevenson was involved in some of the early work of this plan.

The North Ada County Hydrogeologic Characterization Project proposed study will be done in three phases.

- Assemble existing data and develop preliminary conceptual model.
- Identify data gaps, develop work plan, conduct fieldwork, modify conceptual model, develop water budget for each basin margin aquifer.
- Ongoing data collection and periodic revisions to hydrogeologic conceptual model and water budgets.

In the Water Management Division, the Resource Protection is responsible for the safety of dams, stream channel protection, well construction, and floodplain management. The Water Allocation is responsible for the distribution of surface water and ground water. They are also responsible for the applications, licensing, and transfers of water rights. In 2006, there was a slowdown in this process because they concentrated extra effort on completing adjudications.

Regarding adjudications, there are two - the Snake River Basin Adjudication and the North Idaho Adjudication. The Snake River Basin Adjudication is nearly complete and progress is being made on the North Idaho Adjudication.

Dr. Tuthill said the two big issues, and the main reason for this meeting today, are Conjunctive Administration (Management) and Recharge.

They are working specifically on the Eastern Snake Plain now, but other Basins will need to follow along in a similar way. The Idaho Supreme Court is presently considering a case related to Conjunctive Management Rules. The CDR Associates is a group that is building a framework for potential resolution for this issue. That framework was funded by the Legislature last year asking the Water Resource Board to shepherd that process. He said his understanding is that it is going well.

The second issue, Recharge, still has a number of questions and concerns, such as availability, appropriate use of water, and the relationship of recharge to hydropower use.

Dr. Tuthill said the next step is to define "where we go from here". The challenging issues will require broad-based participation from Stakeholders, the Executive Branch, the Legislative Branch, and the Judicial Branch. Phase One is the development of understanding of the issues and a good step is the presentation to be made by IWRRRI.

SPEAKER:

Dr. Tracy introduced **Dr. Gary Johnson, Professor at the University of Idaho, Idaho Falls** and is with the **Idaho Water Resources Research Institute (IWRRRI)**.

Dr. Johnson said his PowerPoint presentation (43 slides) will consist of four topics. They are Hydrology Basics; Conjunctive Management Challenges; Snake Plain Example; and Aquifer Management Opportunities.

Dr. Johnson made an analogy of the aquifer system to a large, leaky tank. Inflows represent recharge from streams, rivers, canals, precipitation, and irrigation. Discharges from that system would be represented by spring discharges, seeps, and ground water pumping. The aquifer is nearly 200 miles in length and 80 miles in width, treating it as a flow resource, not as a stock resource. They believe most of the flow is occurring in cracks, fractures and contact between one basalt flow overlying another.

Relating to aquifer discharge, the common sources of discharge are:

- Plant evaporation
- Seepage to rivers or lakes
- Subsurface outflows to nearby aquifers
- Ground water pumping
- Spring discharge

Dr. Johnson said the water budget is a lot like keeping a check book balance. As managers of the resource, they look at the balance (inflow compared to the outflow.) It changes from year-to-year and decade-to-decade.

The next topic related to river/aquifer interconnection. In the past, systems were looked at individually. In most cases, Dr. Johnson said they are relatively tightly interconnected. A gaining river or lake is said to be 'hydraulically connected'. If an aquifer elevation is well below river elevation, the river is a 'losing' reach. Streams gain water when the stream stage is below the surrounding water table. Streams lose water to the aquifer when stream stage is higher than the water table. Streams are 'perched' when the stream beds are well above the water table.

Dr. Johnson then talked about aquifer storage - the different levels. He had a chart of a well in Jefferson County that he used as an example to show the changes of levels from 1970 to 2000. He said there is no one single cause for the variations - it is a complex interaction of many things. However, it is certainly driven by weather.

The next topic covered was Conjunctive Management. Dr. Johnson said Conjunctive Management is the simultaneous management of the surface water resource and the interconnected ground water resource. Not all aquifers are interconnected with rivers or lakes; however, the Eastern Snake Plain Aquifer is interconnected with the river. He then asked the question - why is Conjunctive Management so difficult and why is there a problem? He said that Water Law (prior appropriation doctrine) originally was intended to manage surface water. The effects are immediate and visible and only affects those downstream. In the aquifer system, things are more complicated and the effects are not immediate and are not visible. Management of the aquifer system is something that needs to be done with a vision that goes years to decades into the future. That is how long it takes for some of the effects to be manifested in the surface.

Dr. Johnson gave some background about the Eastern Snake Plain Aquifer system and some of the problems there. He said it extends from up near Ashton down to 40 or 50 miles west of the Twin Falls and King

Hill area and extends from the mountain range on the north to the mountain range on the south. It includes the Thousand Springs area and the American Falls area. The recharge and discharge mechanisms that exist in this system are associated with that tributary underflow along the northern boundaries of the Plain. Precipitation, directly on the Plain, especially the exposed basalt, and spring discharge are the major discharge mechanisms. Surface irrigation is the major recharge mechanism for the system. Approximately 6.5 million acre-feet of water recharges the aquifer annually. Dr. Johnson discussed man's influence - is it managed or incidental? He feels surface water irrigation is man caused. On the discharge side, ground water pumping is significant and man influences that entirely.

In the first half of the 19th Century, spring discharges increased 4,000 cfs up to 7,000 cfs. This was man caused by surface water irrigation on the Plain. Since the 1950's, there has been a different trend. Water levels in the aquifer have fallen, and because of that, water coming out of the springs has decreased as well. It has decreased back down to 5,000 cfs. The decline is based on several things: (1) Surface water irrigation has evolved. (2) There is lining in some canals to reduce seepage. (3) Sprinklers have become the dominant irrigation mechanism, rather than furrow or flood irrigation. (4) Ground water pumping has thrived.

As far as historic changes, surface water irrigation diversions from the Upper Snake have not been constant. They peaked out in the middle of the century and have declined in recent years. This contributes to the rise and fall of the springs. The history of ground water irrigation in the Eastern Snake Plain increased dramatically in the 1950's and 60's. Since 1980, the number of acres irrigated by ground water has remained fairly stable.

Dr. Johnson said the ground water model is a tool for them to be able to understand the cause and effects between the ground water system and the surface water system. He said the model is a mathematic equation in the computer meant to represent, do calculations of ground water flow in the aquifer system and calculate the exchange of water between ground water and surface water systems. He said they have incorporated in it their best understanding of the boundaries of the aquifer system, the properties of the aquifer on how it stores water, how it transmits water, as well as their understanding of what the recharge and discharge are at every location within the Eastern Snake River Plain. Some things they leave alone, but the recharge and discharge are things they can vary. With that, they can ask the model questions - if they vary recharge and discharge, how does that effect the water levels in the aquifer?; how does it effect the spring discharges from the system?; when and where does it effect? The model gives them the ability to address those kinds of questions and, hopefully, the answers will enable them to better understand the aquifer.

Dr. Johnson said they have been working with IDWR, USGS, Bureau of Reclamation, and private consultants in a collaborative atmosphere over the past five years to develop, what they believe, is a good representation

of the ground water flow model and unbiased as possible. Historic data has been used in an attempt to make sure that the model is appropriately built that is calibrated and matched with historic water levels over a 22 year period (15,000 different water levels).

Dr. Johnson stated that they recognize they are dealing with a system that has been changing since 1900 and more changes are coming - changes in irrigation practices, land use, and species protection. He then asked the question - is this just an Eastern Idaho problem? The answer was that the Snake Plain is ahead of other basins in the state facing similar challenges. How they sort out the problems in the Snake Plain will have far-reaching impacts throughout the state. He said some of the things they can do are: (1) manage recharge; (2) use of CREP program; (3) groundwater banking; (4) reconversion of some groundwater irrigation back to surface irrigation; (5) partial or full curtailment of groundwater rights; (6) buy-out of some threatened water rights; (7) some options may require legislative action.

In summary, Dr. Johnson said the spring discharge and aquifer water levels are changing. Part of that has been natural through weather patterns and part has been due to man-induced changes. He said they have some technical tools to deal with these things and there are opportunities in terms of management. Dr. Johnson went on to say that the protection of existing rights versus the full economic use of resources places the State in the position of balancing priorities and where the State places the fulcrum in that balance will make all the difference in the world.

Time was allowed for questions from the committee members.

ADJOURN:

Chairman Schroeder thanked Dr. Tracy, Dr. Tuthill and Dr. Johnson for their contributions to today's program. He then adjourned the meeting at 4:45 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 12, 2007
- TIME:** 9 a.m.
- PLACE:** Gold Room - Joint Meeting with Senate and House Agricultural Affairs Committees and House Resources & Conservation Committee
- MEMBERS PRESENT:** Chairman Schroeder, Senators Little, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Pearce, Senators Cameron and Andreason
- MINUTES:** **Senator Gannon, Senate Agricultural Affairs Committee Chairman**, chaired the Joint meeting, calling the meeting to order at 9 a.m. He said the purpose of the meeting was to brief the committees on the Eastern Idaho Elk Situation. He stated that it was a briefing, not a hearing, so therefore, no public testimony will be taken.
- SPEAKER:** He then introduced **Mr. John Chatburn, Deputy Administrator, Division of Animal Industries for the Idaho Department of Agriculture**. Mr. Chatburn presented a PowerPoint presentation consisting of 14 slides. It was a chronology of the domestic Cervidae program, starting with 1991. Prior to that year, the program was with the Idaho Department of Fish and Game.
- **1991**, a herd of Fallow deer were imported from Montana to Hammett, Idaho and tested positive for Tuberculosis. The Idaho State Department of Agriculture (ISDA) and the Idaho Department of Fish and Game (IDFG) depopulated the infected herd in a joint disease-control effort.
 - **1994**, the domestic Cervidae authority was transferred by the Legislature from IDFG to ISDA.
 - **1995**, ISDA publishes first domestic Cervidae rule, 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 were added to IDAPA 02.04.03.
 - **2001**, the Idaho Legislature authorizes ISDA to issue civil penalties, effective March 23, 2001. That legislation had an emergency clause.
 - **2001**, ISDA issues a Notice of Violation with civil penalties to a hunting ranch located in Madison County, for various violations, including operating without a Cervidae Farm License.
 - **2001**, a CWD trace revealed that 37 domestic Cervidae imported from Colorado to a domestic Cervidae farm in Salmon 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**, the 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.
- **2002**, ISDA publishes the domestic Cervidae rules as a separate chapter in IDAPA 02.04.19, "Rules Governing Domestic Cervidae." The requirement to license domestic Cervidae farms is removed from this rule because the Attorney General 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. The bill is not passed by the Idaho Legislature.
- **2006**, numerous elk escaped from a domestic Cervidae farm in Eastern Idaho.

2006 Eastern Idaho Elk Escape

- August 14 - an elk escape is reported to ISDA by a neighbor of the elk farm.
- August 14 - ISDA contacts the owner of the elk farm to determine if any attempts are being made to retrieve the escaped elk. The owner said he was unaware of the situation.
- August 15 - ISDA inspects the elk farm and finds where a breach in the exterior fence has been repaired.
- August (during the month) - the owner reports to ISDA that he is making progress on retrieving the escaped elk.
- September 7 - Governor Risch signs an Executive Order directing IDFG and ISDA to destroy as many of the escaped elk as possible.
- September 9 - IDFG and ISDA began a concerted effort to kill the escaped elk.
- September 19 - IDFG authorizes a depredation hunt in the area where the escaped elk were located.
- December 7 - ISDA receives the last report of an escaped elk being killed.

More than 63 elk escaped from the Chief Joseph Elk Farm enclosure. During this time, the owner of the elk farm harvested 33 bulls inside the enclosure, all testing negative for CWD. Outside the enclosure, hunters, IDFG, and ISDA harvested 14 bulls, 24 cows, and five calves. There were 22 negative CWD tests; 29 negative Brucellosis tests; and 29 negative Red Deer Genetic Factor Tests. The reason that there is not 100 percent testing is because samples were not always available from landowners or hunters.

The elk that were inside the enclosure were moved to another elk farm because the Chief Joseph farm has been sold and dismantled. Five bulls, 34 cows and 22 calves all tested negative for Brucellosis. The bulls and cows tested negative for Tuberculosis. Sixty of the animals were negative to the Red Deer Genetic Factor testing, with the one suspect ordered to be destroyed. It was slaughtered on December 22, 2006.

Of the escape totals, there were:

- ! 63+ escaped
- ! unknown number retrieved by owner
- ! 76 harvested (inside and outside the enclosure)
- ! 61 inventoried
- ! 20 unknown status

Mr. Chatburn said that concluded his presentation. He noted that his department had provided a copy of the Agency's rules governing domestic Cervidae to each legislator, as well as a copy of the slides.

Time was allowed for questions from the committee members.

SPEAKER: **Chairman Gannon** introduced the next speaker, **Mr. Jim Unsworth, Chief of the Bureau of Wildlife for the Idaho Department of Fish and Game.**

Inserted into the minutes is an Issue Statement regarding Domestic Elk Farming as presented by Mr. Unsworth.

ISSUE STATEMENT Domestic Elk Farming January 12, 2006

Background: Idaho is home to approximately 125,000 wild elk that provide hunting opportunity for approximately 100,000 resident and nonresident hunters. In 2005, elk hunters spent approximately \$67 million dollars on fuel, motels, restaurants, tags/licenses, guides, etc. These direct expenditures resulted in an estimated economic impact of over \$170 million to Idaho. Many of Idaho's rural family businesses are dependent on wildlife-based recreational dollars.

The number of domestic elk in Idaho has increased substantially since 1994 when the Idaho legislature deemed the possession of domestic Cervidae (elk, fallow deer, and reindeer) as an agricultural pursuit to be administered by the Idaho State Department of Agriculture. Currently, there are 78 elk farms in Idaho possessing 5,843 elk, not including calves. Historically, domestic elk were raised primarily for velvet antlers, meat, and breeding stock. Recently, operations offering shooting opportunity for domestic bull elk have increased. The Idaho State Department of Agriculture (ISDA) believes 14 elk farms currently offer shooting opportunity.

Many of the new shooting operations are located in areas important to wild elk. The increase in domestic elk farms near or in wild elk habitat, particularly shooting operations, has increased the risk of

contact between domestic and wild elk. Domestic elk can be an attractant for wild elk, particularly during mating season. Single fences do not prevent contact between domestic and wild elk. Nose-to-nose contact through fences and escape of domestic elk are common occurrences where domestic elk farms are within wild elk range. Additionally, domestic elk farms have resulted in confinement of wild deer, elk, and moose.

Issues: Disease Diseases of primary concern to both the Department of Fish and Game (IDFG) and ISDA are the “regulatory diseases” including chronic wasting disease (CWD), brucellosis, and bovine tuberculosis (TB). Additionally, IDFG is concerned about diseases and parasites not endemic to Idaho wild elk including meningeal worm, paratuberculosis, giant liver fluke, and others (known and unknown). Idaho State Department of Agriculture only maintains a monitoring and control program for the regulatory diseases. Domestic elk from areas endemic for meningeal worm are prohibited from being directly imported into Idaho by ISDA rules. However, the rules do not prevent the importation of any elk originating from areas endemic for meningeal worm.

Giant liver flukes were discovered a couple of years ago as a mortality cause in a domestic elk operation in eastern Idaho. In September 2006, an unmarked yearling bull elk, harvested while standing with escaped domestic elk, was found to have giant liver flukes. It is unknown whether this unmarked elk was wild or domestic. There is no evidence to indicate these two cases of giant liver flukes are related. Additionally, wild elk in portions of eastern Idaho carry brucellosis.

The risk of disease or parasite transmission can be minimized if contact between domestic and wild elk doesn't occur. Additionally, comprehensive and enforceable regulatory mechanisms must exist to prevent importation of diseases and parasites not endemic to Idaho. Because disease control in wild, free-ranging populations is problematic, disease prevention is preferable.

Genetic Interchange The long-term consequences of genetic interchange between domestic and wild elk are unknown. However, experiences with interbreeding of other domestic and wild animals indicate survival and reproduction of offspring can be compromised.

Current state law prohibits the importation and possession of Eurasian red deer or red deer hybrids. However, the recent discovery of an elk with red deer genetic influence suggests the current screening processes and regulatory procedures are inadequate to

prevent introduction of red deer genes into wild elk. As with diseases, comprehensive and enforceable regulatory mechanisms that prevent contact between wild and domestic elk are necessary to prevent genetic interchange between wild and domestic elk.

Confinement of Wild Cervids - Idaho State Department of Agriculture rules prohibit wild cervids from being confined within domestic elk farms. However, ISDA defers management of wild cervid confinement to IDFG. Routinely, IDFG works with ISDA and domestic elk farmers to remove wild cervids from inside enclosures. Attempts to haze wild cervids from inside domestic elk enclosures have had limited success, especially in large enclosures with rugged terrain and thick cover.

Inadequate fence design or maintenance, drifting snow, and fence damage caused by falling trees commonly create opportunities for wild cervids to enter fenced facilities.

If contact occurs between wild and domestic cervids, and disease or genetic interchange is a concern, IDFG lethally removes the wild cervids. Lethal removal has been conducted by domestic elk farmers (with IDFG approval), agency personnel, and in very limited circumstances, sportsmen.

Loss of wild cervids that become confined, or are lethally removed, represent lost hunting and viewing opportunities for Idaho hunters and wildlife enthusiasts.

Impacts on Native Cervids Many domestic elk farms are located in agricultural areas and pose minimal threat to wild cervids. However, the increase in domestic elk shooting operations has increased the number of elk farms located in wild cervid habitats. Concerns exist over high fences excluding wild cervids from important seasonal habitats (i.e. winter range) and altering important movement corridors.

Use of Sportsman's Funds - The Idaho Department of Fish & Game is almost entirely funded by license funds and federal funding derived from excise taxes on sporting goods. IDFG receives no general state fund revenues. Idaho Department of Fish & Game costs associated with responding to wild cervids inside domestic elk farms or escapes of domestic elk are paid with existing revenue sources. Since July 2003, IDFG has documented a minimum of \$75,000 spent on attempting to remove wild cervids from inside domestic elk farms and assisting with efforts to capture escaped domestic elk.

Public Support for Hunting - In Idaho, and throughout America, wildlife is owned by the public. Uses of wildlife, including hunting,

are dependent on public support. Numerous surveys have indicated that public support for hunting is largely contingent on principles of fair chase. Several sporting organizations have adopted definitions of fair chase, some of them different. However, a common theme among the definitions is that an animal has a reasonable chance of eluding a hunter.

That concluded Mr. Unsworth's presentation. He said that he presented this program (PowerPoint presentation - 10 slides) to the Fish and Game Commission yesterday. The Commission prepared a Statement of Policy regarding domestic elk. A copy of that statement was made available to all committee members. It states:

1. The Commission encourages the state of Idaho to enact legislation and establish and fund appropriate policies to protect wild cervids from disease and genetic risks posed by domestic elk.
2. The Commission does not recognize the shooting of domestic elk for recreational purposes within confined facilities as "hunting".
3. The Commission advocates the principles of fair chase and ethics in the harvest of wild game.
4. The Commission is opposed to spending sportsmen's dollars on the management or control of domestic elk.

Time was allowed for questions from the committee.

**CLOSING
REMARKS:**

Chairman Gannon thanked Mr. Chatburn and Mr. Unsworth for their professional presentations and said he looks forward to their participation in further activities. The Chairman said the legislation should appear as it relates to the Department of Agriculture and the time line is to start the hearings on various proposed legislation in early February. He also suggested that if you have proposed legislation, get it in early and make it realistic.

Chairman Stevenson thanked Chairman Gannon for the invitation to participate in this meeting.

Chairman Trail said they would be working very closely together on this issue and he reinforced Chairman Gannon's suggestion to be realistic and to get the legislation in early. He said the House Agricultural Affairs Committee also plans to start hearings in early February.

Chairman Schroeder thanked the other three Chairman, as well as Jim Unsworth and John Chatburn for their contributions, and the public for being here. He said some of the Legislators serve on both the Resources

and Agriculture Committees and they will stay apprised of the elk situation.

In closing, **Chairman Gannon** thanked the four committee secretaries and the Pages for maintaining protocol for the meeting and the set-up of the room.

ADJOURN: **Chairman Gannon** adjourned the meeting at 10:35 a.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 12, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. and welcomed the **two Gubernatorial appointees to the Idaho Fish and Game Commission** to the Committee meeting. They are **Randall Budge and Robert Barowsky**. He then asked Mr. Budge to speak, to be followed by Mr. Barowsky.
- GUBERNATORIAL APPOINTEE:** **Mr. Budge** is succeeding Mr. Marcus Gibbs on the Commission and his term is from July 8, 2006 to June 30, 2010.
- Mr. Budge said he was raised on a cattle ranch along the Bear River between Soda Springs and Montpelier and that's where he gained his initial love for fishing and hunting.
- Some of his activities that involve hunting and fishing are:
- Southeast Idaho Pheasants Forever
 - Trout Unlimited
 - The Nature Conservancy
 - Ducks Unlimited
- Other activities are:
- National ski member
 - Rotary
 - Church
- Mr. Budge is a practicing lawyer in Pocatello and has practiced for 30 years. Some of his practice has dealt with resource issues, property matters, and water rights. He feels this experience has provided him with a good background to serve on the Fish and Game Commission.
- At the conclusion of Mr. Budge's remarks, Chairman Schroeder invited questions from the committee.
- One of the questions asked Mr. Budge was regarding the concern of potential disease among big game animals and if he was in favor of mandatory testing. Mr. Budge stated that the charge of the Commission

is to protect, preserve and perpetuate all the wildlife in the state. The domestic elk is a situation where the Department of Agriculture has full authority over them. The Commission is determined to protect the wild elk against the risk of disease and genetic impurities. He said that he would personally support legislation that addresses those particular risks.

Another question was - "What is the disease prevalence in the state of Wyoming and Utah, as far as CWD, brucellosis and tuberculosis?" Mr. Budge said he did not know, but he is concerned about those diseases.

Mr. Budge was asked how he would control sick wild animals entering our state. He indicated that the Commission has not dealt with that particular issue, but they do have concerns; however, they have policies and personnel to deal with it.

Mr. Budge was asked to express his views on landowner tags and bonus points. He said the two biggest challenges facing the Commission is to make sure sportsmen have (1) habitat and (2) access, as it is the key to the future. The Access Yes Program has been successful with 1.3 million acres enrolled. Another successful program is the Hunter Appreciation Program and he is personally opposed to landowners selling the permits. When asked about bonus points, he said it is always a balancing act and is challenging.

Upland game birds was the next topic of discussion. He stated that they have asked for a comprehensive review on the pheasant initiative and it was positively received in November. To restore some pheasant hunting, it will take commitment and habitat, with both things requiring money. What he would like to do is to have a comprehensive review of what there is now and try to come up with a habitat stamp or habitat fee. He feels there are some funding issues that can be addressed to help this issue, but he does not know how much money would be required.

An inquiry was made as to the role of predators, especially the red fox, affecting upland game. Mr. Budge said the red fox was just one of many predators and the biggest way to deal with predators was to have adequate habitat.

Chairman Schroeder thanked Mr. Budge, then called on Mr. Barowsky.

**GUBER-
NATORIAL
APPOINTEE:**

Mr. Barowsky is succeeding Mr. John Watts on the Commission and his term is from July 17, 2006 to June 30, 2010.

Mr. Barowsky said he is a native of Idaho, growing up in Payette and Fruitland, was educated in the Fruitland school system, then attended Treasure Valley Community College. His career has been in law enforcement, with 35 years in law enforcement and 24 years as elected sheriff.

He served one term on the Fruitland City Council. Other civic and community activities include membership in:

- Lions Club
- Masons
- Board of Directors for Valley Family Health Care

- Board of Directors for Fruitland Old School

Mr. Barowsky said he is now able to take his grandchildren (six and eight years old) fishing and he is enjoying spending time with them. Stream fishing is primarily the sport he enjoys, but he has hunted big game and has done some bird hunting.

At the conclusion of Mr. Barowsky's remarks, Chairman Schroeder invited questions from the committee.

He was asked about the wolf population in his area and Mr. Barowsky replied that the Commission would have the numbers by March 7. Wolves have been seen within a mile of the city of Council. Another question posed to him was at what level would he like to see the wolf population in the state of Idaho. Mr. Barowsky said his personal view (the state has obligated the Commission to maintain 15 packs) is 15 packs, no more than approximately 300 animals, and maybe even less than that.

Senator Pearce said he wanted to let the committee know that Bob (Mr. Barowsky) ran the Sheriff's Department in Payette County for 24 years and during that time he never heard a complaint about relationships between officers and people. Senator Pearce feels the Commission can use his influence and expertise.

Chairman Schroeder thanked Mr. Barowsky and said the committee would vote on the appointees' confirmation on Monday, January 15.

SPEAKER:

The **Chairman** then introduced **Mr. Jeff Allen, Policy Advisor for the Office of Species Conservation**, who will provide an update on wolves and rare and declining species.

Mr. Allen noted that Mr. Jim Caswell, Administrator for OSC, being absent is due to his working on the roadless issue for the state. The Secretary has accepted Idaho's roadless petition and now Mr. Caswell is in the process of helping to write the roadless rule with the Forest Service in Ogden, Utah.

Mr. Allen provided the committee two handouts. They were a letter written by Governor Risch to Lynn Scarlet, Assistant Secretary of the Department of Interior, and a map of Idaho with documented and suspected locations of wolf activity.

Mr. Allen provided the committee with the following statistics:

Wolves: There are an estimated 650 wolves in the state, 71 confirmed packs, 41 breeding pair, 12-15 suspected packs, 20% growth rate in 2006, 99 monitored radio collars with 54 packs monitored. The estimated regional numbers now stand at 1,264 wolves in 165 packs and 91 breeding pair.

Wildlife Services took 39 wolves, ranchers operating under the amended

10j rule took 7, legal kills took 8, natural or undetermined causes took 15 – for a total of 69 wolves taken in 2006.

With Governor Kempthorne's promotion, Governor Risch met with Director Dale Hall of the U.S. Wildlife Service in July, 2006 and Mr. Hall said he thought he could delist the wolf in 60 days if he could get the Department of Justice to cooperate. After 120 days with no action and no explanation, Governor Risch wrote a letter to the Assistant Secretary of the Department of Interior. In late November, some members of OSC traveled to Washington D.C. Mr. Allen said they left disheartened because of two things: (1) Idaho delisting and Rocky Mountain delisting will not proceed until the Great Lakes states have delisted their populations and (2) Wyoming remains a crucial component to Idaho's delisting. On December 19, they met with Director Hall and members of the Department of Interior and they promised a proposed rule to delist wolves in the Rocky Mountain region within 60 days, with or without Wyoming. They did not offer the normal qualifiers. OSC has been assured that progress is continuing, with action possible as soon as next week.

Mr. Allen said the proposed rule will follow the Administrative Procedure Act (APA). It will be presented in late January, followed by a 60 day comment period. With the process period, Mr. Allen said it could take 10 to 12 months. Federal biologists' plan says that recovered wolf population exists when there are 30 breeding pair fairly distributed throughout the Rocky Mountain Range. There are presently 91 breeding pair.

It was mentioned that Wyoming did not opt into Idaho's plan and has opposed the federal government, but now it seems they are better off than Idaho. The question then was should Idaho join Wyoming in their wolf plan. Mr. Allen said if you look at our state plan, Idaho has the same options available, if they choose to do so. He feels Idaho is better off because private producers can protect their private property.

There was a question about the protection of dogs after delisting. Mr. Allen said dogs will be protected, because the public has the right to protect their private property.

Slickspot Peppergrass: Mr. Allen provided a timeline for slickspot peppergrass and it is as follows:

- January 2004 - USFWS withdraws the proposed rule listing slickspot as endangered, primarily based on a lack of science and the conservation efforts of the Candidate Conservation Agreement (CCA) developed by OSC and others.
- August 2005 - Judge Williams invalidates USFWS's decision to withdraw in response to Western Watershed Project's (WWP) lawsuit. Remands decision back to USFWS.
- October 2006 - Governor's Office and OSC win critical extension of time in court to provide for an additional comment period.
- January 2007 - USFWS determines, following a reevaluation of the species, slickspot populations stable and a listing of species is

not warranted.

OSC will continue to work with the partners in the CCA to incorporate the most recent science. OSC expects WWP to file another lawsuit challenging USFWS's decision not to list.

Caribou: The next topic covered by Mr. Allen was caribou. He said they have been working with a group of concerned citizens in North Idaho. Legal actions, based on the ESA listing, may displace snowmobile activity and impact local economies. He said it is time to question the validity of the listing itself. There is an ongoing status review as required by the ESA. The review will look at both population viability and how the "new" DPS policy affects the caribou which were listed prior to the DPS policy. They are searching for a qualified candidate to conduct a literature review and provide guidance for comments for the status review.

Funding: Mr. Allen said it was important to apprise the Committee about the Department's funding. Historically, Idaho's delegation has earmarked federal funds to assist Idaho's management and conservation efforts with wolves, salmon, sage grouse, and slickspot peppergrass. Congress passed a CR to fund FY07 which stripped all earmarks. Now, federal agencies have the same levels of funding, but no direction from Congress as to priorities. No one can say with certainty how this will play out or how it will affect the funds to implement the SRBA Agreement. He stated that they are vigilantly monitoring all developments inside the Beltway Legislative Update.

Rare and Declining Species: In 2005, the Legislature amended OSC's statute to consider rare and declining species. At the same time, IDFG was undertaking a scientific "Comprehensive Wildlife Conservation Strategy" as required by Congress. The state has a draft, and always undated, listing of rare and declining species in Idaho. The question they continually ask is - how do we proceed to conserve native species of Idaho? Mr. Allen said the answer is to do it voluntarily and keep these things off the endangered species list. The Forest Industry has done a good job of prioritizing the species in forested areas. He said now OSC needs to discuss conservation activities with the grazing community regarding sagebrush lands and habitat.

Chairman Schroeder asked if their budget was adequate to work in a comprehensive and efficient way on the T and E species? Mr. Allen said he believed their budget was adequate regarding manpower.

Mr. Allen talked next about **Sage Grouse**. He said that not a lot happened last year as far as sage grouse were concerned. Western Watershed filed a lawsuit challenging a decision that was made. In January 2005, USFWS determined the provisions and protections of the ESA are not warranted to protect Greater Sage Grouse. In July 2006, Governor Risch signs former Governor Kempthorne's Statewide Sage Grouse Conservation Plan, developed by IDFG, OSC, BLM and many others. Mr. Allen said they intervened in that lawsuit and it is his understanding there will be hearings in July 2007.

Mr. Allen said that wraps up the species that typically generate the most phone calls to their office. As far as the **Snails** on the Snake River, in 2006 USFWS proposed to delist the Idaho Springsnail. That same year, OSC petitioned to delist the Bliss Rapids and Utah valvata snails, as well.

Chairman Schroeder inquired of Mr. Allen that if the change of balance of power in Congress would affect the activities of his department. The reply was that he didn't feel it would, as they deal mostly with the Executive Branch.

Senator Stennett asked Mr. Allen if he would be back to update the committee on the efforts of the Pacific Coast Salmon Recovery Fund. Mr. Allen said he would report back to the committee on that subject.

The **Chairman** said with respect to the potential delisting of wolves, he asked Mr. Allen to think about what the committee might do between now and the time they leave, so that they are not a legislative session behind.

ADJOURN:

Chairman Schroeder thanked Mr. Allen for his presentation, then adjourned the meeting at 2:40 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 15, 2007

TIME: 1:30 p.m.

PLACE: Room 433

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

MEMBERS ABSENT/ EXCUSED: None

RS 16454 **Chairman Schroeder** called the meeting to order at 1:30 p.m. He then asked **Sharon Kiefer, Legislative Liaison, Department of Fish & Game** to explain RS 16454. She said it would amend the description of the Wildlife Management Area (WMA) pheasant permit, to expand that scope to include other stock game birds (primarily chucker) and hunter opportunity. Ms. Kiefer also pointed out there are no additional fees associated with this RS.

RS 16459 **Ms. Kiefer** also presented RS 16459. She explained this legislation would amend the description of disability criteria for a person to acquire a permit to hunt from a motorized vehicle. Physical disability criteria would be consistent with persons acquiring a disabled license to hunt and/or fish, and a permit to hunt from a motorized vehicle.

MOTION: **Senator Little** made a motion to print RS 16454 and RS 16459. **Senator Stennett** seconded the motion. The motion passed by unanimous **voice vote**.

MOTION: **Vice Chairman Pearce** moved to approve Bob Barowsky's Gubernatorial Appointment to the Idaho Fish and Game Commission. **Senator Stennett** seconded the motion. The motion passed by unanimous **voice vote**. **Vice Chariman Pearce** will sponsor this candidate on the Senate Floor.

MOTION: A motion was made by **Senator Cameron** to approve the Gubernatorial appointment of Randy Budge to the Idaho Fish and Game Commission. **Senator Andreason** seconded the motion. The motion passed by unanimous **voice vote**. This candidate will be sponsored on the Senate Floor by **Pro Tem Geddes**.

ANNOUNCEMENT: **Chairman Schroeder** mentioned that as the agency directors are asked to speak at committee meetings, he has asked them to present two specific funding requests and to prioritize them. This information will enable him to address the Joint Finance and Appropriations Committee (JFAC). He then welcomed Mr. Robert Meinen.

UPDATE: **Mr. Robert Meinen, Director of Department of Parks and Recreation,**

briefed the Committee on the Department's activities for the past year. Mr. Meinen was assisted by **Mr. Dean Sangrey, Operations Division Administrator for the Department.**

Mr. Meinen provided several handouts for the committee and referenced his remarks to them, which are inserted here. They include: Background Information of the Thousand Springs area; Completing the Recreational Package; and the Five Units of the Thousand Springs State Park.

BACKGROUND INFORMATION

The Thousand Springs area near Hagerman offers some of the most unique geology in Idaho. The springs that burst out of the canyon walls represent the end of a journey of water that begins in the Craters of the Moon area nearly 100 miles away. Ritter Island is one of the best places to see this unique geology firsthand.

The "lost rivers" of south central Idaho are known for trout fishing and their importance for area farms and ranches. But as these rivers flow over the extensive lava fields of the Craters of the Moon area, the water sinks into the porous lava and disappears underground.

The water flows underground for nearly 200 years, until it flows as waterfalls out of the canyon walls of the Middle Snake River. The water is crystal clear and pure, creating beautiful springs and pools. Due to various water uses, only a fraction of the springs remain; the Minnie Miller Springs across from Ritter Island is one of the largest remaining natural spring complexes in the Thousand Springs area.

These springs have provided the foundation for the Snake River's trout industry, making the area the largest producer of commercial trout in the world. Many tourists and outdoor recreationists travel to enjoy the springs, which offer excellent fishing, birding, waterfowl hunting and other outdoor recreation. Tour boats, canoeists and kayakers enjoy this stretch of river for its scenic beauty and geologic marvels.

Ritter Island is centrally located to enjoy this area. Its special location has long been recognized, giving the island an interesting history as a dairy farm, private retreat, nature preserve and now a state park for future generations to enjoy.

Recorded history of this area began with the arrival of French trappers in the 1800s. Pioneers began traveling the Oregon Trail in the 1840s, and entrepreneurs settled in the area to provide services, including a ferry that crossed the Snake River at the south end of the property.

The property was purchased in 1918 by Minnie Miller, a Salt Lake City

businesswoman who wanted to make the property a demonstration farm. Miller was a big game hunter, traveler and entrepreneur who appreciated the unique setting of the island and its proximity to the springs.

She set up what was then a state-of-the-art dairy with the intent to breed the world's finest herd of Guernsey cattle. The house on Ritter Island—known to this day as the Rock House—was built in 1920, as was the barn. The primary purpose of the farm was to produce the breeding cattle rather than commercial milk production. Farm workers were able to take the cream produced on the farm home with them in the evenings.

Miller welcomed visitors to the island, and many people remember her practicing judging on the Guernseys, coming to her July ice cream socials, and enjoying the beauty of the farm.

The Minnie Miller Farm became known for the finest Guernseys in the world, just as Miller wished. These cattle were featured in agricultural and popular magazines around the country during that time.

The farm featured a milking parlor in the barn, and can still be visited on the island.

In 1954, the farm was sold to Federal Judge Willis W. Ritter, who used the island as a private hunting and fishing retreat. The Ritter family owned the island for 32 years.

In 1986, The Nature Conservancy purchased the property. Ritter did not allow public usage, but many local people thought the future of the property should allow access to the island and canyon.

The Nature Conservancy, a non-profit conservation organization that protects special places around the world for people and nature, recognized the importance of the property for its unique ecology and the importance to the local community. The Conservancy had been working in Idaho since 1976, when it purchased Silver Creek Preserve, which was well known as a world-class fly-fishing destination.

The Conservancy believed that protecting the springs of the area was important for the Middle Snake River's clean water and wildlife habitat. The springs supported a number of invertebrate and fish species, including the Shoshone sculpin, a fish found nowhere else on Earth.

The Conservancy purchased the property, and has owned and managed the property since then. The property was 385 acres, including Ritter Island, two miles of river front, and many springs and spring creeks along the canyon.

The preserve has remained a real haven for wildlife. Waterfowl use the wetland habitat, especially in the spring and fall. Herons nest on the island, and raptors like golden eagles and prairie falcons nest along the canyon walls. During annual Christmas bird counts, Ritter Island often has one of the highest counts of bird species in the state.

The island includes the home and the historic barn, both still in excellent condition. Visitors can tour the dairy facilities installed by Minnie Miller as well as many of the historic farm implements and tools. Walking trails wind through the island, including one that offers an excellent view of Minnie Miller Falls.

Each September, Ritter Island has been the location of the popular Thousand Springs Festival. In its fifteenth year, the festival includes artists from around the region, regional food specialties, music, children's activities, natural history displays and wagon rides.

Originally started as a fundraiser for the Conservancy, for the past four years the festival has benefitted the Southern Idaho Land Trust, a local land conservation organization. The Nature Conservancy has been involved in other ways along the Middle Snake River. In 1999, the State of Idaho had negotiated a purchase of nearby Box Canyon from the Hardy family. The state didn't have the funds to purchase the property, but assigned the contract to the Conservancy. Under state terms, the Conservancy purchased Box Canyon, and simultaneously entered into a purchase and sale agreement with the state. The Conservancy also played a role in the creation of Billingsley Creek State Park.

The Conservancy believes that Idaho Department of Parks and Recreation's vision for the Thousand Springs Complex offers an incredible future for this area. It will preserve wildlife habitat and public access. While there will be a transition in opening Ritter Island, eventually the public will be able to enjoy expanded usage of the island. In the meantime, Nature Conservancy volunteers and a caretaker will continue to work at the preserve and take care of the facilities.

Completing the Recreational Package *Ritter Island & Bonnyview*

The option to procure the Bonnyview property would provide over 70 acres of additional access to the Snake River within what has recently become the Ritter Island unit of Thousand Springs State Park. In addition, the Bonnyview property would compliment the available resources on Ritter Island by providing safe and appropriate recreational opportunities in the area like camping, where currently none exist.

Together, Ritter Island and Bonnyview create a complete recreational package, allowing for the following:

- o **Appropriate Resource Stewardship**
- o **Safe Public Access**
- o **Diversification of Recreational Opportunities In the Area**

Why?

- o The road access from Idaho Power to Ritter Island is steep and narrow, a difficult descent for large recreational vehicles (RV's), which limits camping opportunities. Access with a lesser grade can be established to the Bonnyview property, broadening opportunities for constituents.
 - o Access to Blue Heart Springs and Box Canyon Springs can be established from the Bonnyview Property.
 - o There is limited parking available on Ritter Island. Bonnyview can accommodate vehicles of all sizes.
 - o Additional camping accommodations are needed in the area. Due to its unique temperate climate, this area lends itself to exceptional early spring and late fall camping, attractive to those seeking shoulder-season opportunities.
 - o Conservation easements for habitat exist on Ritter Island that assists in determining suitable uses for the property. Concentrated recreational use, like developed campsites, would be an inappropriate use of the limited, more sensitive natural resources on the island.
 - o Bonnyview has been utilized in agricultural use for decades making it a very appropriate location for recreational developments like a campground, day-use and boat launch.
 - o The best and most appropriate way to utilize Ritter Island is for small events and retreats, enjoying wildlife habitat and the surrounding springs, with little disruption to existing resources. Access with large RV's or concentrated recreational use via overnight camping will not be encouraged at Ritter Island.
- 1) How do these two properties fit into the Master Planning Process for Thousand Springs State Park?
- a. The recently approved Thousand Springs State Park Master Plan can and will be amended to include Ritter

Island as well as Bonnyview. Amendments to State Park Master Plans include an open, public planning process.

- 2) Will IDPR ensure the continuation of the Thousand Springs Art Festival?
 - a. At this time, IDPR is beginning discussions with past art festival organizers and participating organizations. IDPR's goal is to continue to hold the popular event on Ritter Island once annually in cooperation with the Nature Conservancy and the Southern Idaho Land Trust.

- 3) How does IDPR intend to utilize the resources available on Ritter Island?
 - a. It is anticipated that Ritter Island will continue to host the special 'Art Festival' event that it has become famous for, while also offering the public the opportunity to tour the existing historic structures. Nestled alongside the picturesque Snake River, between two magnificent springs, the property provides a sense of serenity and solitude, the perfect venue for small retreats. Homes on site will convert easily into overnight accommodations for families wanting to experience the property's charm.

- 4) Will overnight camping be permitted on Ritter Island?
 - a. No, IDPR does not anticipate providing overnight camping opportunities on Ritter Island itself. The steep access onto the island, sensitive natural resources and limited space are not conducive to camping.

THOUSAND SPRINGS STATE PARK

Thousand Springs State Park and the five beautiful units within are testaments to why the area is called the Magic Valley. Visitors can explore the magnificent Malad Gorge, access the riding arena at Billingsley Creek, view Niagara Springs, and take in the scenery at Earl M. Hardy Box Canyon Springs Nature Preserve. Soon, visitors will be able to tour historic structures and plan overnight stays on Ritter Island. Day-use opportunities abound within the units of Thousand Springs State Park, with limited camping and overnight accommodations.

The Five Units:

Malad Gorge

This 652-acre park is located just off Interstate 84 at the Tuttle exit. People pass the park in an eye blink, never suspecting the spectacular canyon views that await them just a mile off the highway. Malad Gorge is open for hiking, picnicking and day outings.

Billingsley Creek

Billingsley Creek is located in the Hagerman Valley. The lower portion of the site sits along U.S. Highway 30, on the northern edge of the City of Hagerman. The property was purchased for state park use in 2001.

Before it became an Idaho State Park, it was known as the Emerald Valley Ranch, used primarily for agriculture. You can enjoy Billingsley Creek from sunrise to sunset. The park offers spectacular wildlife viewing opportunities, an indoor horse riding arena, excellent fishing and featured events throughout the year. This unit includes access to the Vardis Fischer Fish Hatchery.

Earl M. Hardy Box Canyon Nature Preserve

Box Canyon flows at a rate of 180,000 gallons per minute. The natural area offers views of the springs, a hiking trail and viewing platform that overlooks a 20' waterfall.

Niagara Springs

Tumbling down the canyon side at 250 cubic feet per second, Niagara Springs is a sight you won't soon forget. The churning water is the icy blue of glaciers and the springs are a National Natural Landmark. The park provides your best opportunity to drive into the 350-foot-deep canyon. Once inside the canyon, you'll find year-round fishing in Crystal Springs Lake, including a handicap-accessible site. Wildlife—especially waterfowl—is abundant. The park also features modern restrooms, picnic tables and a group picnic shelter.

Ritter Island

The newest addition to Thousand Springs State Park, it is anticipated that Ritter Island will continue to host the special 'Art Festival' event that it has become famous for, while also offering the public the opportunity to tour the existing historic structures. Nestled alongside the picturesque Snake River, between two magnificent springs, the property provides a sense of serenity and solitude - the perfect venue for small retreats. Homes on site will convert easily into overnight accommodations for families wanting to experience the property's charm.

Following are excerpts from today's discussion:

The name for Ritter Island came from Judge Ritter, who **Chairman Schroeder** pointed out, had a rather colorful career.

There was a short discussion regarding the taxes on the Ritter Island property. **Will Whelan**, Director of Government Relations for The Nature Conservancy of Idaho, stated that the Conservancy pays whatever the going agriculture rate is.

Senator Little asked where the \$1 Million endowment is kept. Mr. Meinen said they have not received the money as yet, but they are trying to find an investment portfolio to get six and one-half percent for when they do receive the money.

Vice Chairman Pearce asked the cost for all the improvements to be made (camp sites, parking, roads, etc.). Mr. Meinen said possibly about \$1.6 million for all amenities.

Chairman Schroeder suggested, because of this area's history, they should preserve the buildings. Mr. Meinen said their goal is to carry on what the Conservancy has done.

Mr. Meinen also mentioned that the Governor had requested money for the purpose of equipment replacement.

Senator Cameron said, his recollection, that two years ago the committee appropriated some money and nothing happened. Last year they took that money, put additional money with it for the procurement of a state park. Senator Cameron asked if Mr. Meinen would have someone on his staff recap briefly what happened, how much money is left, and what the guidance was from the committee. Mr. Meinen said he would.

Chairman Schroeder asked about Heyburn State Park. Mr. Meinen said Heyburn State Park received one of the larger subsets of dollars available. They are moving forward with improvements to water and sewer.

A discussion ensued regarding firearms in state parks. Senator Schroeder would like to know who has authority to write firearm laws for state parks. Mr. Meinen said it is stipulated in the statutes that firearms are prohibited in state parks. Chairman Schroeder invited Mr. Meinen to speak to the Committee regarding this issue at a later date. Mr. Meinen indicated he would.

Chairman Schroeder wanted to know if there was language to prevent the State from selling these state parks. **Senator Stennett** informed him that Will Whelan assured the committee, if the state for some reason walked away from Ritter Island, it would revert back to the Nature Conservancy, and he will check on McCroskey State Park.

Chairman Schroeder thanked Mr. Meinen for the great job he is doing for the state parks, and the cooperation with the ATV trail for central Idaho.

He announced that Wednesday's meeting will be in the JFAC Room. Friday, the committee will tour the UI Water Center and the facilities of the Department of Water Resources.

Chairman Schroeder reminded the committee to get their RS's in to him and Rules Review comments to **Vice Chairman Pearce**.

ADJOURNMENT: There being no further business, **Chairman Schroeder** adjourned the meeting at 2:35 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 17, 2007
- TIME:** 1:30 p.m.
- PLACE:** JFAC Room 328
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Little
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. in the JFAC Room. He explained that this room was chosen today because of the technology available for PowerPoint presentations, compared to the technology in the assigned committee meeting room. Later in the meeting, this technology will be used by the invited speaker.
- RS 16623C1:** The **Chairman** then asked Senator Stennett to explain the purpose of RS 16623C1.
- Senator Stennett** said the purpose of this legislation is to provide that state lands will be open for public access for hunting, fishing, trapping and recreation without charges, except where public safety is a concern. He said that he and Chairman Schroeder had been working on two separate bills and this language is more reflective of what they are trying to accomplish.
- MOTION:** There was some discussion regarding this RS. Following the discussion, **Senator Langhorst** made the motion to print RS 16623C1. **Senator Andreason** seconded the motion. The motion passed by a majority voice vote (7 ayes, 1 nay, 1 absent). Senator Siddoway asked to be recorded as voting nay.
- SPEAKER:** **Chairman Schroeder** said in the past, he has brought in experts on different subjects to brief the committee. Today, he has asked **Dr. Jim Peek, Professor Emeritus, Department of Fish & Wildlife Resources, University of Idaho** to speak. Dr. Peek will present a PowerPoint presentation on "Wolves, Elk, Sheep, Deer and Fire in Central Idaho."
- Dr. Peek** said that before starting his presentation, he wanted to clarify one thing – he is pro-wildlife. He provided the Committee with two handouts - copies of his slide presentation (23 slides) and a book - Shrub-Steepe Vegetation of the East Fork and the Middle Fork of the Salmon River Drainages. (These are on file.)
- The title of Dr. Peek's presentation was "Response of Native Ungulates to Wildfires and Wolves in Central Idaho". He said that wildfire, summer drought, severe winters and predation are the major influences on the

Central Idaho wildlands. The hunting units covered in this report are 20A (Chamberlain Basin), 26 (Big Creek), 27 (Middle Fork) and 28 (Salmon).

Some of the highlights from his presentation are as follows:

Fire Statistics for Central Idaho:

In Unit 20A, the total acreage is 482,993. The number of acres burned since 1982 is 381,918. That is 79.1 percent.

In Unit 26, the total acreage is 379,519. The number of acres burned since 1982 is 237,138. That is 62.5 percent.

In Unit 27, the total acreage is 982,183. The number of acres burned since 1982 is 483,017. That is 49.2 percent.

In Unit 28, the total acreage is 837,386. The number of acres burned since 1982 is 222,194. That is 26.5 percent.

The total acreage is 2,066,888.9. The total number of acres burned since 1982 is 1,185,811.5. That is 57.4 percent.

Number of Documented Wolf Packs in Units 20A, 26, 27, and 28 for 2006

| | | |
|----------|---------|--------------------|
| Unit 20A | 5 packs | 4 also use Unit 26 |
| Unit 26 | 4 packs | All use Unit 20A |
| Unit 27 | 6 packs | 1 uses Unit 26 |
| Unit 28 | 6 packs | 2 use Unit 27 |

Total estimated packs = 15
Estimated total wolves = 105-119

Wolf Predation On Elk

If you are an elk, an 80 percent probability of being killed if you are weak and a 40 percent probability of being killed if you are strong,

Summary of Fire and Predation Effects on Deer and Elk in the Central Idaho Units

Back country units have elk populations that are old and not productive. Major wildfire has not affected elk population trends for three reasons:

1. Elk are not productive enough to respond.
2. Major elk forage is not affected long enough to make much difference.
3. Predation reduces calf survival and tends to suppress population increases.

Wildfire in the more accessible unit may have helped the more productive elk population, but evidence is equivocal.

Mule deer have increased from levels prior to major fires indicating they

increased their productivity, and the additional forage that was created following fire was taken advantage of. Evidence for this is skimpy.

Suppression of predators in back country units probably keeps elk from responding in two ways:

1. The older aged cows remain in the population.
2. Animals in poorer condition are not weeded out. This reduces calf production and survival.

Reductions of predators in the front country may occasionally be warranted, most likely during severe winters when predation is severe enough to reduce calf survival.

There will likely continue to be less elk in the back country than occurred in the early 1990s. This would occur regardless of whether predators were reduced or not.

Big game in all units should be managed to consider the major driving forces of fire, climate, and predation on the system.

Dr. Peek's closing statement was "Let's work towards understanding these big systems rather than just parts of them."

ADJOURN:

Chairman Schroeder thanked Dr. Peek for his presentation. He announced that a new director for the Idaho Department of Fish and Game has been selected and it is Cal Groen. The Chairman then adjourned the meeting at 2:55 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 19, 2007
TIME: 1:30 p.m.
PLACE: Tour of Water Resources Building
MEMBERS PRESENT: Chairman Schroeder, Senators Andreason, Coiner, and Siddoway
MEMBERS ABSENT/ EXCUSED: Vice Chairman Pearce, Senators Cameron, Little, Stennett, and Langhorst
MINUTES: In lieu of a meeting in Room 433, the Committee was transported, courtesy of the Idaho Department of Water Resources, to the facilities of the UI Water Center and IDWR.

Ms. Trudy Anderson, Dean, gave a brief introduction regarding the building, then led the Senators on a tour, accompanied by Dr. John Tracy, Director of IWRRI, Dr. David Tuthill, Acting Director of IDWR, and Mr. Klaus Jorde, Hydraulic Engineer. A highlight of the tour was when Mr. Jorde demonstrated the flume. The building is truly an asset to the State of Idaho.

The Committee returned to the Capitol at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 22, 2007

TIME: 1:30 p.m.

PLACE: Room 433

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

MEMBERS ABSENT/ EXCUSED: None

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

GUBERNATORIAL APPOINTEE: He then welcomed **Mr. Ernest Lombard, the Gubernatorial appointee to the Park and Recreation Board**. He has been reappointed to this Board and his term is from July 1, 2006 to July 1, 2012.

Mr. Lombard is a retired Architect/developer. Since retiring, he and his wife travel extensively. He said they just spent a month in Ethiopia, North Africa. He stated that when one travels around a lot, you gain a great appreciation for America, and especially Idaho.

He reminded the Committee to be thankful of where they live and to endeavor to take care of the land, as do the Board members. He said their vision evolves and changes and they are constantly updating it. Mr. Lombard feels the Park and Recreation agency is very entrepreneurial. One of the things they strive for is to make the facilities good enough for people to be willing to pay to visit them. Attendance is down at National Parks, but Idaho's attendance at our State Parks has remained steady. There are 131 active projects that are underway in "Experience Idaho", a program that was started by Governor Kempthorne to improve Idaho's state parks.

Mr. Lombard represents Region Three on the Board and Eagle Island State Park is within that region. The plan for that park, when completed, is to have a "Natural Education Center." The Meridian School District has agreed to provide staff for the Center when it is completed. The Center will be in conjunction with the Idaho Department of Fish and Game's Research Center.

Part of this park's plan calls for gravel extraction. No gravel has been sold to date, as it is technically mining and complex to do. There is a need for a bridge, at an estimated cost of \$3 million. This bridge will enable the trucks to have a shorter haul in the removal of the gravel, thus helping to keep the cost down. The bridge is also needed so that the trucks would not conflict with visitor travel. Mr. Lombard estimated the

sale of the gravel between \$6 million and \$12 million.

An inquiry was made about the trail system in Idaho. Mr. Lombard suggested that communities develop the trails within their area, which then would connect the state. He said such a system would have definite benefits and an economical impact for the cities.

Chairman Schroeder thanked Mr. Lombard for talking to the Committee and said voting on his appointment would be Wednesday.

RULES REVIEW: **Chairmen Schroeder** then called on **Vice Chairman Pearce**, who is the Rules Chairman, to conduct the Rules Review.

Chairman Pearce said he assigned specific rules to the committee members and called on **Senator Stennett** to report on his findings.

Senator Stennett stated that he had no opposition to: **13-0104-0601 Department of Fish and Game - Rules Governing Licensing.**

Senator Stennett did have questions regarding: **13-0105-0601 Department of Fish and Game - Fishing Contests.**

His question was regarding if the department is interfaced with the Governor's Challenge and why the word "native" was added (page 18). **Mr. Dallas Burkhalter, Deputy Attorney General for Idaho Department Fish & Game** responded. The wording was added at the request of the biologist to further specify areas where fishing contests are allowed, so there would be no harm to native trout species. Mr. Burkhalter said if the committee needed a more specific answer, he would ask a biologist for an explanation. Senator Stennett indicated that he would like for them to come back and talk to the committee, particularly about the event, "The Governor's Challenge".

Senator Cameron had a question regarding **13-0104-0601** to increase the number of tags for outfitters, or out-of-staters, from 3% to 6%. **Vice Chairman Pearce** said he believed that rule was questioned by the House, with an agreement with the Fish and Game to rewrite the rule and bring it back in March. **Mr. Burkhalter** said his understanding was there is another meeting scheduled Thursday with the House Sub-Committee to further discuss this rule. **Senator Cameron** feels this committee should address the issue, but not necessarily today. **Senator Schroeder** said it was his understanding there would be a resolution, from the House, rejecting this rule. A discussion followed regarding "normal" process for House rejection versus Senate rejection. **Senator Cameron** had concerns with the broad latitudes in these rules (page 17 - 002 - Written Interpretations). **Mr. Burkhalter** said that language was suggested by the Office of Administrative Rules. **Senator Cameron** stated that he didn't recall seeing that kind of language in any other rule, from any other agency. It was agreed to hold this rule for the day.

Senator Little said there seems to be a clerical error in **Written Interpretations**. It makes reference to Section 67-5201(19)(b)(vi) when

there is actually no (vi). He said it must be referring to Section 67-5201(19)(b)(iv).

Senator Langhorst was concerned with the wording in the Nonresident Deer and Elk Tag Quotas section. **Mr. Burkhalter** said the numbers are for nonresident tags, but there would still be a nonresident cap. It just needs to be reworded.

Chairman Pearce said this rule would be taken up again at the next meeting. He then called on Senator Siddoway to review his rules.

Senator Siddoway said after reviewing these rules, **13-0108-0601, Rules Governing the Taking of Big Game Animals in the State of Idaho**, the only concern he had was on Hunt Area 10AX. He thought the physical description was unclear and poorly written (page 31, "within one mile of private land") and that it could lead to enforcement problems. **Mr. Burkhalter** said that after talking with the Biologist, his understanding was the purpose of that description is to control deer depredation problems and they are called "green field hunts". They don't want deer further than a mile away killed, only the ones closer to private property and doing damage.

Senator Langhorst wanted to know what effect the changing of language (page 30) **600 Game Management Unit Boundary Descriptions 02** regarding Farragut State Park would have on the hunters. **Mr. Burkhalter** said his understanding was the hunter opportunity remains the same, but allows for more flexibility.

A discussion followed regarding land owner tags and hunt areas that describe private land only. **Senator Langhorst** requested more information from **Mr. Burkhalter**.

Chairman Pearce noted the time restraints and opted to schedule a time later to finish these rules. **Chairman Schroeder** suggested the Senators contact **Chairman Pearce** regarding the rules they might have questions or concerns with.

Chairman Schroeder then welcomed **Mr. John Lawson, Reclamation Scientist, with the Department of Environmental Quality**, who will present a talk, "The Use of Cyanide in Mining".

SPEAKER:

Mr. Lawson said the topic of Cyanide brings a lot of interest and his purpose here is to level the playing field with facts. His PowerPoint presentation included 24 slides which are as follows:

- **What is Cyanide?** It is a compound of two elements - carbon and nitrogen (CN). It is produced naturally by bacteria, algae, fungi and >1000 types of plants (cassava, peaches, almonds, sorghum). It is a naturally occurring compound that readily breaks down under most environmental conditions - it's biodegradable.
- **Industrial Uses of Cyanide** It was first synthesized in 1782.

There are world-wide industrial uses of cyanide. Eighty seven percent is used in industries other than mining, such as synthesis of nylon, metal plating, case hardening of steel, production of plastics, fertilizers, dyes, printing and ink, cosmetics, food processing and medicines. Prussian Blue is used to set the dye in Levis - a common and stable compound.

- **Why is Cyanide Used in Mining?** It is used as a leaching agent to remove precious metals from mined ore. Once the cyanide in solution picks up the gold or silver, it can be recovered and reused. Gold and silver can be stripped from the leaching solution using a carbon filter and some additional rinsing agents. The process can be conducted in vats or on heap leach pads. The process can yield gold or silver product on-site without the need of a sophisticated refinery. 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). Cyanide in solution is neutralized by hydrogen peroxide, or various chlorine based chemicals. Ores that are leached must be fine grained so that the leaching solution can contact the microscopic particles of the target metal(s). Ores must also be oxidized (not a sulfide ore) so that the solution can react with target metal under basic (high pH) conditions. If the pH of the leaching solution is acidic the cyanide becomes a gas and is not available to leach.
- Slide of a **Heap Leach Pad Cross Section**
- Slide of **Ore Placement on a Leach Pad**
- Slide of **Operating Heap Leach Pad**
- **Why is Cyanide Dangerous?** It inhibits the ability of organisms that respire to utilize oxygen - in extreme cases causing respiratory arrest. Free or unbound CN is the most lethal. The mean lethal dose for humans is 50-200mg = death within 60 minutes. HCN at 2000 ppm or 0.2% in air = death in one minute. Ingestion of <10mg/day is non toxic and long term ingestion of 5mg/day has not shown effects. Cyanide can enter the body by: inhalation of gas (HCN); skin absorption - direct contact with solids; and ingestion - eating or drinking. The effects of cyanide poisoning: acute poisoning = rapid rxn's; is non-cumulative - breaks down with metabolism; is reversible - antidotes = amyl nitrate.
- **How does Cyanide React in the Environment?** In solution and at high concentrations CN can be dangerous; CN impacts are acute - it has immediate effects on living organisms. Cyanide at a pH of <10 can form HCN gas which is the lethal form of CN - it is however unstable and breaks down readily. Cyanide spills are chemically treatable. Cyanide in water is rapidly broken down and diluted. In most cases, CN based leach solutions are initially not

strong enough to harm humans if further diluted by storm water or surface water. Cyanide spills in soils are quickly bound up in the soil matrix - CN was once used as a fertilizer for the Nitrogen component.

- **How is Cyanide Dangerous in the Environment?** It is more toxic to animals that respire to gain oxygen and the smaller the animal the more rapid the respiration rate = less tolerant to CN. Small mammals 6-10ppm; large mammals 50-100ppm; algae and macrophytes tolerate higher concentrations than fish.
- **Environmental Concerns for Cyanide in Ore Processes** The acute impacts from a spill or leak; the leaching process is a consolidation process = build up of all chemicals; CN in leach solutions does not recognize Au or Ag from Cd, Hg or Pb in ores. The transportation of CN to the mining facility creates a potential for a spill. Dry CN salts react quickly in water forming HCN gas and CN solutions. Transportation of CN products rarely result in spills. Due to the consequences, containers are built to handle large impacts.
- **2006 Changes in Cyanidation Rules** Following the 2006 Legislative Session, the rules for Ore Processing by Cyanidation were substantially improved. In 2005, the Idaho rules were modified through collaborative efforts from IMA, the Idaho mining industry, ICL, IAC, City of Boise, United Water, EPA, IDL and numerous concerned citizens. Incorporated rules and input from other states, including international experience, and most importantly, lessons learned in Idaho. The proposed metal recovery process is permitted for closure - with these rules, planning for closure of CN processing facilities is part of permitting, before the mine ever gets approved. The DEQ has improved environmental protection in the permitting process by including: closure requirements; updated engineering requirement for water protection; and new monitoring standards and reporting requirements. Bonding has increased from a cap of \$100,000 to essentially total cost bonding. Bonds will be reviewed on a regular basis to ensure that sufficient bonds are in place to reclaim the CN Facilities. Bonding is set with a full closure plan that is reviewed by the agencies and confirmed by an independent third party. Permitting is more thorough but can be expedited with the cooperation of the permittee. All permits are coordinated through the Idaho "Joint Review Process". There are now realistic fees associated with permitting - \$5K, \$10K and \$20K. There are new limited and specific timelines to permit an operation-max time = 180 days.

That concluded the presentation.

Chairman Schroeder asked Mr. Lawson to comment on the level of concern for people who live down here in the valley with a cyanide mine up on the hill. Mr. Lawson explained they should always have concern;

however, he believes anything that goes on at that mine won't have an effect on the drinking water supply of this valley, and will be heavily scrutinized and agencies will be reviewing permits and requirements to make sure the mine is a sound facility.

The **Chairman** thanked Mr. Lawson for his presentation.

INTRODUCTION: **Chairman Schroeder** welcomed and introduced the **Director of Idaho Department of Environmental Quality, Toni Hardesty.**

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 24, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- MOTION:** He said the first order of business would be to vote on the Gubernatorial appointment of Ernest Lombard to the Park and Recreation Board.
- Senator Little** made a motion that the Resources Committee recommend the confirmation of Mr. Lombard. **Senator Siddoway** seconded the motion. The motion passed by unanimous voice vote. **Senator Little** will be the Floor sponsor.
- ANNOUNCEMENTS:** The **Chairman** announced there were several items of interest in the Committee's blue folder. They are: The Idaho Forest Products Commission's Legislative Budget Report; Revenue Loss Information Without Craig-Wyden; a letter from the Idaho Department of Fish and Game to the Co-Chairs of the Joint Finance and Appropriations Committee regarding easements and land acquisitions.
- RULES REVIEW:** **Chairman Schroeder** said the rest of the meeting will be devoted to reviewing the Rules. He then gave the gavel to **Vice Chairman Pearce, who is the Rules Chairman.**
- MOTION:** **Chairman Pearce** called on **Senator Siddoway** who reviewed these rules, Rules of the Outfitters and Guides Licensing Board. **Senator Siddoway** did not oppose these rules and made a motion to **accept** rules 25-0101-0601 & 25-0101-0602. **Senator Coiner** seconded the motion. **The motion passed by unanimous voice vote.**
- Chairman Pearce** said next would be the rules for **The Department of Fish and Game.**
- MOTION:** **Senator Siddoway** said with regards to Rules Governing Licensing, he is opposed to the increase in the percentage of the tags. The perception is the out-of-state hunters and the guides are getting more opportunities. After much discussion, **Senator Cameron** made a motion to **reject** rule 13-0104-0601. **Senator Siddoway** seconded the motion. **The motion passed by unanimous voice vote.**

TABLED: **Senator Stennett** reviewed this rule, Fishing Contests. This rule would allow additional fishing contests on planted trout. He had previously inquired about the Governor's Challenge, but has had no feedback. After some discussion, rule 13-0105-0601 was **tabled temporarily** until Mr. Stevenson, from the Office of the Administrative Rules Coordinator, arrives to answer some questions.

MOTION: **Senator Siddoway** said that he didn't have any problems with Rules Governing the Taking of Big Game other than defining a boundary in Unit 10A, as previously discussed. Mr. Terry Mansfield, Deputy Director for the Idaho Fish and Game provided information regarding this issue. After some discussion, **Senator Langhorst** made the motion and **Senator Coiner** seconded the motion to **accept** rule 13-0108-0601. **The motion passed by unanimous voice vote.**

MOTION: Fishing Contests. **Senator Cameron** stated that he visited with Mr. Stevenson the past few minutes in the hallway and his explanation was that the written interpretations aren't normally part of the rule - only if an agency has some additional information that they feel like the public should be aware of that could influence their participation. In that case, they request that it be placed in the rule, with an address, so that individuals participating (in fishing contests) would know, besides the rules here, there may be other interpretations. The code site is in error and that could be changed by posting and re-referencing the correct code site. **Senator Cameron** made the motion to **accept** rule 13-0105-0601, **pending** the notice of change, referencing Section 67-5201(19)(b)(iv) instead of (vi). **Senator Stennett** seconded the motion. **The motion passed by unanimous voice vote.**

MOTION: **Senator Siddoway** reviewed this rule - Rules Governing the Taking of Game Birds. This rule would require hunters to wear hunter orange when hunting on Wildlife Management Areas (WMA) where pheasants are stocked. **Senator Little** stated that in his district there is an area that has a high concentration of hunters, due to the amount of wildlife and the growth of habitat. **Senator Langhorst** said that sometimes there are both bird hunters and game hunters in the same area which makes for a high concentration of hunters also. **Senator Schroeder** said that some people assume because hunters wear hunter orange they won't get shot. He said that is not necessarily true. **Senator Langhorst** said that hunter safety instructors feel that accidents would be less frequent if hunters were required to wear hunter orange. **Senator Siddoway** made the motion to **accept** rule 13-0109-0601. **Senator Langhorst** seconded the motion. A roll call vote was requested. Voting aye were Senators Langhorst, Siddoway, Coiner, Little, Andreason, and Pearce. Voting nay were Senators Stennett, Cameron, and Schroeder. **The motion carried by a majority vote (6-3).**

Senator Cameron suggested that in the future, legislation should be brought forward regarding certain issues, rather than instituting law through rules. **Senator Schroeder** said that on some of the pheasant WMA's, it should be run like the federal government does on some of the goose and duck hunts - only allowing a certain number of people to hunt

per day in those areas.

MOTION: **Senator Siddoway** reviewed this rule - Rules Governing Fish. He did not see any problems with this rule and there was no discussion from the committee regarding it. **Senator Coiner** made the motion to **accept** rule 13-0111-0601. **Senator Langhorst** seconded the motion. **The motion passed by unanimous voice vote.**

Chairman Pearce stated that the **Department of Environmental Quality (DEQ)** rules would be reviewed next.

MOTION: **Senator Little** said that he reviewed this rule - Water Quality Standards and Wastewater Treatment Requirements - with the Director. He stated that most of the definitions were significant clarifications and recommended that they be accepted. There was some discussion and Senator Little pointed out that this rule will bring more consistency and clarity to the regulatory field. **Senator Little** made the motion to **accept** rule 58-0102-0505 and **Senator Andreason** seconded the motion. **The motion passed by a majority voice vote (8-1)**. Senator Stennett voted nay and asked to be recorded as such.

MOTION: **Senator Andreason** was assigned the Ground Water Quality Rule. He read the first paragraph of the descriptive summary on page 98. It allows DEQ to use improvements in analytical technology implemented since the Ground Water Quality Rule was promulgated in 1997. There was no discussion regarding this rule. **Senator Andreason** made the motion to **accept** rule 58-0111-0601. **Senator Coiner** seconded the motion. **The motion passed by unanimous voice vote.**

MOTION: **Senator Langhorst** reviewed this rule - Wastewater Rules. He said it deals with facility and design standards for wastewater systems. Senator Langhorst asked **Mr. Barry Burnell, Water Quality Administrator for DEQ**, if he would tell the committee who was involved in the rulemaking. Mr. Burnell said the Association of Idaho Cities, Idaho Association of Commerce & Industry (IACI), the Idaho Mining Association, Idaho National Laboratory (INL), Idaho Rural Water, and DEQ engineers. He also said that a panel of experts convened before the negotiated rulemaking to develop a strawman rule and they assisted one of DEQ's licensed engineers. This rule applies to three or more homes and sets minimum pipe size and minimum slopes. **Senator Langhorst** made a motion to **hold** rule 58-0116-0502 until Friday, as he feels he needs more information. It was seconded by **Senator Stennett**. **The motion passed by unanimous voice vote.**

Chairman Pearce announced that the remaining rules would be heard on Friday, January 26, and returned the gavel to Chairman Schroeder.

REQUEST: **Chairman Schroeder** stated that he wanted to ask for the Committee's permission to have a conference call with Gubernatorial appointee Linda Mitchell. She has been reappointed to the Lake Pend Oreille Basin Commission, is currently out of the country for three months, and it is impossible for her to personally appear before the committee. The Chairman said that he has a letter from Jeff Youtz, Director, Legislative

Services Office, stating that it would be permissible to do this. There was no opposition from any committee member.

ADJOURN: **Chairman Schroeder** adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 26, 2007

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Siddoway, and Stennett

MEMBERS ABSENT/ EXCUSED: Senators Andreason, Coiner, and Langhorst

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

MOTION: **Vice Chairman Pearce** said he has read the minutes for January 10, 11, and 12 (a.m. meeting) and made a motion for their approval, as written. **Senator Little** seconded the motion. **The motion passed by unanimous voice vote.**

RS 16756C1 **Chairman Schroeder** passed the gavel to **Vice Chairman Pearce**, so that he could present RS 16756C1.

Senator Schroeder said the purpose of this RS is to require that any person who pleads guilty to, convicted of, or found guilty for attempting to take simulated wildlife in an unlawful manner shall pay restitution of \$50 or more for the repair or replacement of simulated wildlife. He said his philosophy is that poachers should pay for replacing them.

MOTION: **Senator Little** made the motion to print RS 16756C1. The motion was seconded by **Senator Stennett**. **The motion passed by unanimous voice vote.**

Chairman Pearce turned the gavel back to Chairman Schroeder.

SPEAKER: **Chairman Schroeder** then welcomed **John Williams, Idaho Constituent Account Executive, Bonneville Power Administration (BPA)**. He has been with BPA over 20 years and has been in his current position for 12 of those years.

Mr. Williams' talk covered four areas. They were:

- Recap of BPA
- Transmission
- Power Marketing
- Fish and Wildlife

Following are some facts about BPA which were taken from their publication titled A Better Environment, A Better Future, provided by Mr. Williams.

The Bonneville Power Administration is a federal agency under the U.S. Department of Energy. BPA markets wholesale electrical power and operates three-fourths of the high-voltage transmission grid in the Pacific Northwest.

The power comes from the Federal Columbia River Power System - 31 federal hydro projects owned by the U.S. Army Corps of Engineers and the Bureau of Reclamation - plus one nonfederal nuclear plant owned by Energy Northwest and several other small nonfederal power plants. About 35 percent of the electric power used in the Northwest comes from BPA.

BPA is a self-financed public agency. It pays its way through power and transmission sales, primarily to Northwest utilities. Both power and transmission are sold at cost, and BPA repays any borrowing from the U.S. Treasury with interest. BPA also sells or exchanges power with utilities in Canada and the Western United States.

BPA is committed to our responsibilities to protect, mitigate and enhance fish and wildlife affected by the Federal Columbia River Power System (FCRS), and to provide the citizens of the Northwest with an economical and reliable power supply. This includes a commitment to conservation of salmon, steelhead, and other listed fish under the ESA. We believe the citizens of this region want to protect and recover these fish, and we share that goal. We also believe that Northwest citizens understand the tremendous value of the lower-cost, clean hydropower that the Federal dams on the Columbia River and its tributaries provide to us. We continue to seek to achieve our twin goals of supporting a healthy Northwest economy and environment.

Time was allowed for questions from the committee at the conclusion of Mr. Williams' presentation.

Chairman Schroeder thanked Mr. Williams for talking to the committee, then turned the gavel to **Vice Chairman Pearce** to chair the Rules Review.

- MOTION:** **Chairman Pearce** was informed that the questions that were asked on Wednesday regarding rule 58-0116-0502, Wastewater Rules, have been answered. **Senator Siddoway** made the motion to **accept** rule 58-0116-0502. **Senator Little** seconded the motion. **The motion passed by a majority voice vote.** Senator Stennett voted nay and asked to be recorded as such.
- MOTION:** **Senator Cameron** made a motion to **accept** rule 58-0117-0601, Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater. **Senator Siddoway** seconded the motion. **The motion passed by a majority voice vote.** Senator Stennett voted nay and asked to be recorded as such.
- MOTION:** **Senator Cameron** reviewed pending fee rule 20-0314-0601, Rules Governing Grazing Leases and Cropland Leases. His concern was that it requires \$2,500 or ten percent (10%) of the total value, whichever is greater, for someone to post a fee in order to object to a lease. **George**

Bacon, Acting Director for the Department of Lands, responded to Senator Cameron's inquiry. Mr. Bacon said that grazing leases are for a period of ten years. In some cases, the lessee has made improvements to the land, such as fences, watering sites, corrals, etc. A conflictor, if he wins at the lease auction, has to pay the former lessee for the value of those improvements. Therein lies the reason for this rule - the value of improvements. This has caused frivolous cases. The Department did not have a process to follow, resulting in time and resources expended, and it is the Department's desire to establish a process. This fee is used to hire an appraiser to determine which valuation is more accurate and fair. This fee is non-refundable and is designed to discourage frivolous objections.

After much discussion, **Senator Siddoway** made the motion to **accept** rule 20-0314-0601. **Senator Little** seconded the motion. **The motion passed by unanimous voice vote.**

MOTION: **Senator Cameron** explained pending fee rule 58-0112-0501, Rules for Administration of Water Pollution Control Loans. He said it allows the Department to impose a fee on loans, not to exceed one percent (1%), rather than the fee being built into the interest rate. It is a truth in disclosure type of approach. **Senator Cameron** made the motion to **accept** rule 58-0112-0501. **Senator Stennett** seconded the motion. **The motion passed by unanimous voice vote.**

MOTION: **Chairman Pearce** inquired of **Mr. Dennis Stevenson, Rules Coordinator**, of the correct procedure the Committee should follow regarding the rule that was rejected, 13-0104-0601. **Mr. Stevenson** said the House Resources and Conservation Committee rejected part of the same rule. He suggested this committee allow the House to request a concurrent resolution and then sign it without taking any other action. **Senator Cameron** said that he made the motion to reject rule 13-0104-0601. He said, with the Chairman's permission, he wished to modify his motion. Senator Cameron then asked for unanimous consent that they reconsider the previous motion on Docket number 13-0104-0601. There was no objection. Senator Cameron then made a motion that the Committee reject, in Docket 13-0104-0601, Section 505 02 e I. **Senator Schroeder** seconded the motion. **The motion passed by unanimous voice vote.**

RULES REVIEW COMPLETED: **Chairman Pearce** said that completed the Rules Review, then passed the gavel to Chairman Schroeder. Chairman Schroeder stated that a letter would be written to the Pro Tem to advise him of the Committee's action.

SPEAKER: **Chairman Schroeder** welcomed **Mr. Cal Groen, Director, Idaho Department of Fish and Game**, who will speak to the committee.

Mr. Groen said he has been in his new job just over a week and is trying to catch up on the issues. He is working to establish a balanced budget and stated that IDFG is a user fee agency. He then reviewed some fiscal facts.

Chairman Schroeder asked Mr. Groen to identify two areas of concern in which this Committee might be advocates of when they go before JFAC. He also inquired as to the agency's free fund balance.

Vice Chairman Pearce said that in the past they have given the agency more spending authority than they have had funds for. He inquired as to how wide that gap would be this year. Mr. Groen replied that he is going through the dedicated funds with the Commission. In 2006, he said it was an eight percent (8%) gap. **Ms. Sharon Kiefer, Legislative Liaison for IDFG**, said that they are progressing in reducing their appropriations in some areas which should help to close the gap.

Chairman Schroeder thanked Mr. Groen for speaking to the Committee and he congratulated him on becoming the new director for IDFG.

S 1010

The **Chairman** then asked **Ms. Kiefer** to present S 1010.

Ms. Kiefer said that currently, a Wildlife Management Area (WMA) pheasant permit is required to hunt pheasants on certain WMAs where pheasants are stocked to expand hunter opportunity on these high use areas. The permit allows hunters to contribute to the cost of stocking pheasants and it allows harvest monitoring because each harvested bird must be recorded on the permit.

This legislation would expand the scope of the WMA pheasant permit to include other stocked game bird species, primarily chukar. Expanding the scope of the permit would enhance hunter opportunity by adding additional species and it could increase the time period for pursuing stocked birds on WMAs, because chukar season lasts longer than pheasant season.

Senator Stennett inquired of Ms. Kiefer as to why "hunter orange" was not included in this bill. Ms. Kiefer replied that the Commission has not directed the staff to implement that. She also stated that submitted bills have to be in by August and the "hunter orange" rule was proposed at a later date. **Senator Stennett** said that he will vote for this bill, but he would like to know how this all came together - a timeline.

MOTION:

Senator Cameron made the motion to send S 1010 to the Floor with a do pass recommendation. **Senator Siddoway** seconded the motion. **The motion passed by unanimous voice vote.** **Senator Siddoway** will **sponsor** this bill on the Senate Floor.

ADJOURN:

The **Chairman** adjourned the meeting at 3:05 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 29, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Little
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- The Chairman said what the resource industry is about is creating wealth. There is an interesting complex between resources and energy in creation of wealth to provide jobs for people. The presentation that will be given by Dr. Elger looks at things a little different, but should be interesting. He then welcomed **Dr. Donald Elger, University of Idaho**.
- SPEAKER:** **Dr. Elger** said his presentation is "Producing More Wealth in Idaho Through Technology and Science Innovation." Also attending the committee meeting were three of his students whom he introduced. They were Colby Austin from Twin Falls, Jeff Otto from Kuna, and Chris Curtis from Pocatello.
- Dr. Elger is a professor at UI, teaching mechanical engineering and has lived in Moscow for 20 years. Prior to that, he worked for the Idaho National Laboratory (INL) at Idaho Falls.
- He stated that about five years ago, he asked the question - "What is it that we know how to do as engineers?" The answer was that they could innovate, draw up new technology and develop new businesses. He then started introducing entrepreneurship to the engineering students.
- The three students with him today have developed a device that alerts parents if there is a disruption in the breathing pattern of their baby as it sleeps. It will be on display in the Rotunda tomorrow. Dr. Elger said they have filed for intellectual property protection and he feels it is a marketable product and business.
- Dr. Elger said the purpose of his talk is to show a vision. Through communication, he wants to understand what the Legislature wants and needs and also how to serve the needs of the constituents. The reason for his talk is because of common interests in producing more resources - not how to divide it up, but how to make it bigger. He said there is also a shared interest in developing young people.

Dr. Elger gave a slide presentation in three parts.

- The Present State: What We Are Already Doing
- Vision Of The Future
- Next Steps

Following the presentation, time was allowed for discussion. **Chairman Schroeder** asked Dr. Elger to provide a list of the ongoing research projects at UI. The Chairman said he would also contact Mr. Marty Peterson, UI representative, to provide research information.

Dr. Elger provided the committee members with a data sheet to fill out and submit to him. He would like to know what they might envision for the next five years, a “needs” analysis, and what the next steps should be.

Chairman Schroeder thanked Dr. Elger for his presentation and said there would be a five minute break before the next presentation.

SPEAKER:

The **Chairman** welcomed **Ms. Amy Lientz, Vice President, Communications and Government Affairs for the Idaho Cleanup Project (ICP).**

Ms. Lientz introduced **Mr. Blake Hall**, also with Governmental Affairs, ICP, and **Ms. Kliss McNeel**, Regulatory Affairs (ICP).

Ms. Lientz said there are three main contractors at the Idaho National Laboratory (INL). They are INL, ICP (made up of CH2M Hill, Washington Group International, and Premier Technology), and the Advanced Mixed Waste Treatment Project (AMWTP). She said her talk would focus on the role ICP has at the site which is risk reduction, environmental restoration, and general protection of the aquifer.

The cleanup is centered around the five facilities which are in an 890 square mile area. They are:

- Idaho Nuclear Technology and Engineering Center
- Radioactive Waste Management Complex
- Test Area North
- Reactor Technology Complex
- Power Burst Facility

Accomplishments at the Idaho Nuclear Technology and Engineering Center: they dispositioned 240 nuclear material items; transferred 1,200 spent nuclear fuel units from wet storage in basins to safe, dry storage in casks; developed alternatives for disposal of calcine; obtained approval for second phase of steam reformer design; and grouting (completed first three of 15 high-level waste tanks at the INL Site and completed grouting of 603 basin - a former spent fuel storage basin).

The Radioactive Waste Management Complex accomplishments are as follows: (1) Preparing remote-handled transuranic shipment to the Waste Isolation Pilot Project (WIPP) - first in Complex. A total of 225 shipments out of the state is anticipated during the next few years to meet 2012 cleanup commitments ahead of schedule. (2) Low-level and mixed low-

level waste. Disposed of more than 11,500 cubic meters of low-level and mixed low-level waste (MLLW); all currently stored MLLW has disposition path forward either on or off-site. (3) Idaho CERCLA Disposal Facility. Completed construction and began receipt of waste in Cell 2. Disposed of 70,000 cubic meters (38 percent capacity).

Waste Area Group 7 (Buried Waste at Subsurface Disposal Area). Continued exhumation of targeted waste at the Accelerated Retrieval Project I facility. Excavated 3,555 cubic yards of material from the Subsurface Disposal Area and continuing environmental investigating of buried waste as required by the Federal Facility Agreement and Consent Order. They are finalizing the Feasibility Study with DOE, Environmental Protection Agency, and the Idaho Department of Environmental Quality. They are also anticipating a proposed plan/public outreach by the end of 2007.

They have completed decontamination, decommissioning and demolition of four industrial buildings, 10 radiological buildings, two nuclear facilities including the Loss-of-Fluid Test (LOFT) reactor facility, and 40 other structures. They have also completed major dismantlement on the interior of the Engineering Test Reactor.

Ms. Lientz said that in looking ahead, they will: finalize plans for shipment of unirradiated Light Water Breeder Reactor fuel to Nevada Test Site; continue transferring spent fuel; continue high-level waste tank grouting; receive final permit to construct from DEQ allowing on-site construction of steam reformer unit; continue exhumation of targeted buried waste; continue environmental investigation under the FFA/CO; continue shipments off-site to WIPP; complete internal dismantlement and initiate demolition of first reactor vessel and associated building; complete demolition of an additional 18 facilities and reactor buildings and vessels; and begin demolition of TAN Hot Shop facility.

That concluded Ms. Lientz's presentation.

A question was asked of her as to how much money has been spent on clean up in the past and how much will be spent in the future. Ms. Lientz replied that she didn't know how much has been spent in the past, but their contract started in May, 2005 and runs until 2012 and is a \$3 Billion project. She said safety is a prime concern at the site.

Another question was how many people have had their health adversely affected at the INL sites. Ms. Lientz said she did not know, but would get that information.

ADJOURN:

Chairman Schroeder thanked Ms. Lientz for her presentation, then adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 31, 2007

TIME: 1:30 p.m.

PLACE: Room 433

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

MEMBERS ABSENT/ EXCUSED: None

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

He announced that all committee members have been given a copy of the Water Resource Funding Program Annual Report by the Idaho Water Resource Board and encouraged the members to read it.

S 1011 The **Chairman** then welcomed **Ms. Sharon Kiefer, Legislative Liaison for the Idaho Department of Fish and Game**, who will present S 1011.

Ms. Kiefer said S 1011 essentially will harmonize the physical disability requirements to obtain a hunt from motor vehicle permit. It will harmonize those disability descriptions with the same criteria that are used to acquire a disability hunting, fishing, or combination license. This would amend Section 36-1101 to make that physical disability criteria similar to the licensing criteria for a disability license. The Commission has promulgated rules to define that criteria which were in the rule docket that was recently approved by this committee. The purpose of this bill is to be consistent between a disability license and a hunt from a motor vehicle permit.

MOTION: After some discussion, **Senator Little** made the motion to send S 1011 to the Floor with a do pass recommendation. **Senator Pearce** seconded the motion. **Senator Cameron** inquired about arthritic conditions and asked if people have to have been qualified as being disabled prior to applying for the permit. **Ms. Kiefer** said she would research that question and get back to Senator Cameron with the information. **The motion passed by unanimous voice vote. Senator Little** will be the **sponsor** of this bill.

SPEAKER: **Chairman Schroeder** welcomed **Mark Drew, DVM, Wildlife Veterinarian**, who will present a program on "Wildlife and Domestic Diseases." Dr. Drew is with the Idaho Department of Fish and Game and the Idaho State Department of Agriculture. This program is for information only and no public testimony will be taken.

Inserted into the minutes is information provided to the committee by Dr. Drew and which he referenced in his talk. He also gave a PowerPoint

presentation consisting of 31 slides.

DISEASES OF CONCERN IN CERVIDS IN IDAHO

Background

In Idaho, as well as many other states, we are blessed with an abundance of wildlife. Cervids or members of the deer family include mule deer, white-tailed deer, elk, moose, and woodland caribou. With the exception of woodland caribou, hunting of all cervid species is possible. Many residents of this state understand the importance of free-ranging deer and elk to the economy of the state both in terms of hunting and tourism.

The Idaho Department of Fish and Game has jurisdiction over the management of free-ranging wildlife. The IDFG's mission is to protect, preserve and perpetuate the wildlife and fisheries resources in the state and to provide continued supplies of wildlife and fish for hunting, fishing and trapping. IDFG also has jurisdiction over captive cervids, both native and non-native with the exception of domestic elk, fallow deer and reindeer.

IDFG is concerned about the establishment of new or undesirable pathogens in free-ranging wildlife, including cervids. It is impossible to predict the immediate effect of new pathogens on animals or the long term consequences of disease on populations. However, once a disease becomes established, it becomes very difficult, if not impossible, for management actions to modify the effects of disease or to control disease in wildlife. Access to wild animals is difficult and limited, treatment options are limited to non-existent and the application of management actions to control disease is very expensive and controversial.

General Information about Disease of Concern in Cervids

Wildlife are not sterile animals in a pristine environment. Over time, hundreds of pathogens including viruses, bacteria, parasites, toxins, fungi, and other conditions have been described in wildlife, including cervids. Wildlife in Idaho also have pathogens; however, most pathogens do not cause significant morbidity or mortality.

There are a number of disease agents that do pose significant risk for wildlife populations in Idaho. These include but are not limited to the following:

Epizootic Hemorrhagic Disease (EHD) - a viral disease of white-tailed deer that is transmitted by gnats. It is present in Idaho and has caused significant mortality of deer.

Chronic Wasting Disease - a prion disease of wild and captive cervids in North America. It is not present in Idaho, but vigilance is needed to ensure that the disease is not introduced into the state as management would be very difficult.

Brucellosis — a bacterial disease of ruminants caused by *Brucella abortus*. Brucellosis is present in elk in eastern Idaho and elk-cattle interactions resulted in the loss of Idaho's Brucellosis Free Status for cattle in 2005. Management of the disease is on-going but difficult and expensive.

Bovine Tuberculosis — a bacterial disease caused by *Mycobacterium bovis* that is a problem worldwide. The disease is transmitted by aerosolization, direct and indirect contact. In North America, the disease was introduced to wild deer and elk from infected cattle. It was recently discovered in white-tailed deer in Michigan and elk in Manitoba. The introduction of bovine TB into Idaho would have severe consequences for wildlife as well as livestock.

Meningial worm — a nematode parasite, *Parelaostrongylus tenuis*, of white-tailed deer in eastern North America. Generally the presence of this parasite in other ruminants is fatal. It is not present in Idaho; however, both suitable intermediate and definitive hosts are present in the state. Prevention of this parasite is the primary reason for the ban on importation of domestic or captive cervids from east of the 100th meridian. If the parasite were introduced, it could have very severe consequences for wild cervids. In addition, control of the parasite would be very difficult as the intermediate hosts are difficult to control in the environment, there is no good treatment.

Giant Liver Fluke — a trematode parasite (*Fascioloides magna*) of white-tailed deer and elk. It is not found in Idaho in wild cervids, but is present in several domestic elk facilities. The introduction of this parasite into wild deer or elk could have severe consequences and management would be very difficult without severe damage to aquatic ecosystems.

Conclusion

Disease in wildlife is difficult to manage for reasons already mentioned - limited access to animals, limited treatment options for wildlife, and the need for population management. All of these approaches require large expenditures of time, resources and money.

The bottom line is that for disease in wildlife, prevention is the best management option. Surveillance and continued risk assessment for diseases already present and those that could be brought to Idaho is important for the health of wild cervids in Idaho.

Statistics from slide presentation:

Idaho Wild Cervids

- 125,000 Elk
- 300,000 Mule deer
- 200,000 White-tailed deer

- 15,000 Moose
- <50 Woodland Caribou

Disease agents found in elk and deer

- Viruses - 10-12 known
- Bacteria - 15-20 known
- Fungi - 2 known
- Parasites - 100's known
- Toxins
- Others - CWD, mineral deficiencies

IDFG CWD Surveillance

- Surveillance program since 1997
- Combination of targeted and general surveillance
- 3,180 samples (1998-2005) - mule deer, elk, white-tailed deer, moose, caribou, sika deer
- 1,122 samples to date (2006)
- NONE positive for CWD

CWD Management IDFG CWD Response Plan (2002)

- 5 mile zone for further testing
 - If CWD found, kill/reduce wild cervids in area by 50% within one mile of positive site, total population reduction if needed
 - Expand to five miles from positive site if needed
- ISDA CWD Response
- Quarantine and slaughter all clinical and exposed animals

Questions were asked of Dr. Drew during his presentation.

ADJOURN:

Chairman Schroeder thanked **Dr. Drew** for briefing the committee on the diseases and also thanked **Jim Unsworth, Bureau Chief of Wildlife**, for coordinating the meeting.

The meeting was adjourned at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 2, 2007

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Siddoway, Stennett, and Langhorst

MEMBERS ABSENT/ EXCUSED: Senator Coiner

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m. He announced that the committee has been provided information regarding research at the University of Idaho by Mr. Marty Peterson, as requested during the meeting of January 29.

ANNOUNCEMENT:

MOTION: **Vice Chairman Pearce** said he had reviewed the minutes of January 12, 15, 17, 19, and 22. He made a motion to accept the minutes as written. **Senator Andreason** seconded the motion. **The motion passed by unanimous voice vote.**

S 1027 **Chairman Schroeder** passed the gavel to **Vice Chairman Pearce** so that he could present his bill, S 1027.

Senator Schroeder said the purpose of S 1027 is to remove term limits from the Fish and Game Commission. Senator Schroeder said what this bill does basically, by removing the term limits, would give the chief executive the ability to appoint or reappoint someone, if he so chooses.

TESTIMONY: Inserted into the minutes is the testimony of **Ms. Sharon Kiefer**, Legislative Liaison, Idaho Department of Fish and Game.

Chairman Schroeder and Committee:

The Idaho Department of Fish and Game Commission adopted a motion during their legislative conference call on January 31 to take no position on Senate Bill 1027.

However, the Commission did give staff guidance to provide this Committee with the analysis of potential outcomes of the bill, as discussed by the Commission during their publicly noticed conference call.

The Commission reviewed the following issues:

.If more frequent turnover of Commissioners and turnover of a larger

proportion of Commissioners each time were outcomes of this bill, there could be negative effect to development/implementation of consistent policy for the Department due to loss of Commission experience.

.Infusion of new/different perspectives may occur more frequently if higher turnover is an outcome, whereas the opposite may occur if no turnover at all is an outcome.

.The current term framework ensures that there is not 100% turnover at any time so that institutional knowledge is retained to assist new Commissioners. Staggered terms provide institutional structure to balance retention of knowledge and experience with new perspectives.

.Currently, terms provide institutional structure that dampens political intimidation.

The Department has heard reference to this bill as deleting term "limits". It should be clear that this bill does not delete term limits, it deletes terms.

- TESTIMONY:** **Mr. Fred Christiansen** testified that two terms are all that should be allowed. He feels that term limits are needed because with new people, they bring fresh ideas.
- DISCUSSION:** During the committee's discussion, it was brought to the attention of Senator Schroeder that the bill did not contain the language as he intended. Senator Schroeder said that he would bring a new RS back to the committee at a later date.
- MOTION:** **Senator Little** made a motion to hold S 1027. **Senator Stennett** seconded the motion. **The motion passed by unanimous voice vote.**
- SPEAKER:** **Chairman Pearce** welcomed **Mr. Jake Howard, Director, Idaho Outfitters & Guides Licensing Board**, who will present the Board's annual report.

Mr. Howard provided the committee with a handout that contains facts and information regarding the Outfitters & Guides Licensing Board.

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

In the organization, they have six full-time staff; 1 part-time/temporary staff during the license renewal period; 10 part-time (on call) enforcement agents; three "Outfitter" Board members are nominated by IOGA and appointed by the Governor and are confirmed by the Senate; one Board member is appointed as a member-at-large by the Governor and is

confirmed by the Senate; one Board member is appointed by the Idaho Fish and Game Commission and is confirmed by the Senate (Mr. Howard introduced Mr. Marcus Gibbs, who is that member); the Executive Director and Enforcement Chief are appointed by the Board.

Mr. Howard's report on annual activity is as follows:

- 423 outfitters licensed in 2006 - up from 406 in 1999
- 336 designated agents licensed in 2006 - up from 277 in 1999
- 2,188 guides licensed in 2006 - average 2,097 for the five previous years
- Processed 2,100 special requests - up 30% since 1999
- Processing 1,535 Outfitter allocated big game tags - increasing next year
- Managing nearly 2,000 individual outfitter operating areas - increasing due to business sales, diversification and outfitting on private lands

A question was asked as to the break-down of the outfitter licenses. Mr. Howard replied that approximately 60 percent of the licenses are for boating and the remaining are for hunting and recreation. The license year ends March 31 and they are in transition for the 2007 licensing year.

In the Enforcement Department, the Chief is now Bob Lund, a former state police officer who worked with the Fish and Wildlife Division in the state of Oregon. Statistics from this department are as follows:

- 267 **formal complaints** in 2005 - up 27% from 2003
- 76 unlicensed activity; 77 licensing; 38 conduct; 34 non-compliance; 8 out-of-area; 17 illegal activity; 8 IDFG violation
- 223 **actions taken** in 2005
- 77 unfounded; 50 probationary license; 23 letter of instruction; 25 citation; 12 no action; 9 complaint/hearing; 3 verbal caution; 3 referred
- Targeting known problem areas
- Expanding interagency cooperation (IDFG, USFS & BLM)
- Need regional coordination

An inquiry was made as to where the problem areas are located. Mr. Howard replied that as an example, in central Idaho, it has been targeted to address illegal hunting activities and the IOGLB Enforcement staff has been working with the Forest Service and the Fish and Game for the past two years on this. He said that there have been concerns regarding the several rivers statewide.

Chairman Pearce inquired if there are many complaints from out-of-state clientele. Mr. Howard said that often times complaints are cases of misunderstanding and IOGLB's first approach is to clearly understand that there was some inappropriate contact on part of the licensed industry representative before taking disciplinary action.

Senator Stennett said he has received calls about outfitters/guides being unethical and inquired if there is a code of conduct. If not, should there

be? **Mr. Howard** replied that there is a code of conduct that has been facilitated by the Outfitters and Guides Association. A lot of the issues that his office has with guides as being perceived as inappropriate are typically people that are not licensed. Senator Stennett said perhaps there should be some kind of outward, visible identification for guides and outfitters. Mr. Howard said he would pass that information along to the Board members. Senator Stennett asked for a copy of the code of conduct and Mr. Howard said he would provide it.

Senator Langhorst inquired if guided turkey hunts are permitted or will be considered to be permitted on public land. **Mr. Howard** said that there was not any movement in this direction by the Board.

Senator Langhorst said he understood turkey permitting started in 2003 and that it was limited to land that the outfitter owns. Director Howard indicated that this was correct.

Senator Langhorst asked, "If outfitters engage with the Forest Service, what would the Board have to do to enable that?" Mr. Howard said that a Memorandum of Understanding (MOU) exists between the Board and the federal land management agencies that requires the federal agencies to conduct a "scoping" to determine whether a new activity would be in the best interest of the public. When scoping something like guided turkey hunts, the MOU calls for a cooperative effort with the Board that would involve input from the IOFG. Once the federal agency scoping is complete, the agency would make a determination if they would permit the activity. They would then advise the Board, then the Board would consider their recommendation and make a determination if they would issue a license. There is also a similar process in place if the Board thinks that activity should occur. There is a hand book that provides information on IOGLB's website as to the process.

Senator Schroeder asked Mr. Howard if they provide training for members with respect to their taxable income. He said this question is a result of inquiries from his constituents regarding out-of-state outfitters collecting money for Idaho hunts in the state in which they reside. Mr. Howard said they do require that guides be employees of outfitters and that the outfitters follow the state labor laws, which include reporting taxable income. They work with the Department of Labor and the State Tax Commission on that issue and have reviewed that matter with them in the past. Senator Schroeder asked Mr. Howard if he would pass this information along in their newsletter or publications, then send him a copy. Mr. Howard said he would do that.

Senator Little inquired about the back-log of licenses. Mr. Howard replied that when he started as Director five years ago, they were back-logged as much as 60 days on some licenses. They have implemented a number of changes that have significantly improved the process and eliminated the back-log problem. They have moved the process from 60 days to two days for guides, where the greatest problem occurred.

Mr. Howard continued with his presentation and talked about the trends of his industry. He said it is becoming increasingly more diverse. Non-traditional activities are on the increase, such as skiing, hiking, mountain biking, walk and wade fishing. The non-licensed activity is a huge concern for them, as well as non-licensed individuals. The non-licensed individuals tend to be involved in other criminal activities and cited several examples.

Senator Schroeder inquired if there should be a hunting season on wolves and it goes into effect next fall, is it authorized or does it need to be authorized. Mr. Howard said he doesn't think there needs to be special legislation. It is a matter for the Board to make wolf hunting an activity. Senator Schroeder asked Mr. Howard to look into the matter and report back to him on his findings.

Mr. Howard concluded his report with information on funding. He said the 2006 appropriation was \$507,300 and they will generate approximately \$460,100. The 2006 expenditures were \$441,700 and they are operating well within their revenues and appropriation. Their free fund balance \$223,100. He said that they anticipate the possibility of a fee increase in two to three years, but financially, right now, the department is doing okay.

Chairman Pearce thanked Mr. Howard for his report, then passed the gavel back to **Senator Schroeder**.

**ANNOUNCE-
MENTS:**

Chairman Schroeder said that next Monday, Chairman Stevenson and Representative Wood would be introducing a RS relating to wolves.

He has also received a few bills from the House.

The Chairman stated that the committee has a host of people to confirm, so confirmation hearings will be held when it is convenient for the people to come and speak to the committee.

The Chairman said he has asked the agency directors/administrators to submit to him their two top priorities, then he will bring them to the committee for discussion, prior to going before JFAC with recommendations.

The Supreme Court has the water case, so our lives here could get busy with water-related hearings - so be prepared for that.

Also, if you have made a request for information to an agency and haven't received a reply, let Juanita know and she will follow up on it for you.

ADJOURN:

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 5, 2007

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Stennett, and Langhorst

MEMBERS ABSENT/ EXCUSED: Senator Siddoway

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

ANNOUNCEMENTS: The Chairman said the committee has been provided information from Ms. Sharon Kiefer, Legislative Liaison for the Department of Fish and Game, regarding the background on IDFG Commission "Hunter Orange" rule. That information is inserted into the minutes and is as follows:

FROM: Sharon W. Kiefer, IDFG Legislative Liaison

SUBJECT: Background on IDFG Commission "Hunter Orange" rule

DOCKET NO. 13-0109-0601 In the course of conducting rule review of Fish and Game Docket No. 13-0109-0601 (Rules governing the taking of game birds) and discussing aspects of Senate Bill 1010, which expands the scope of the WMA pheasant permit, the Committee had questions about the Commission hunter orange rule timeline compared to the executive agency timeline for submitting legislative ideas for the 2007 session.

The hunter orange rule for taking of upland birds on Wildlife Management Areas (WMAs) where pheasants are stocked was considered and adopted at the May, 2006 Commission meeting. As background to this issue, I have enclosed the rule proposal from the IDFG Commission book. I have also enclosed survey results from WMA permit hunters that asked about wearing hunter orange. Survey results were presented to the Commission as part of the rule briefing in May. In addition, I have enclosed the minutes from the Commission meeting dealing with this rule.

The Department and the Commission communicated about legislative idea proposals from May until August, 2006. Legislative idea forms were due to DFM on August 4. After the Governor's office and DFM review, any approved proposed legislation with statement of purpose and fiscal note was due to DFM on September 22.

The Commission did not direct the department to submit a legislative idea to statutorily codify the hunter orange rule for upland bird hunters on

WMAs where pheasants are stocked. Had the Department received such guidance, the statute for amendment would likely have not been the same as the statute being amended for Senate Bill 1010, which is 36-409. This is a permit statute and none of the permits and tags in 36-409 includes aspects of "take" other than the requirement to have the proper permit. The Commission rule was not tied to the WMA pheasant permit; it was tied to methods of take of upland birds. Thus, one could be hunting Hungarian partridge on a WMA where pheasants are stocked and meet the requirement for wearing hunter orange, but not meet the requirement of possessing a WMA pheasant permit.

The hunter orange rule can be found in Section 300 [Upland Game Bird Methods of Take] of IDAPA 13.01.09. The statutory connection for methods of take is 36-104(b)(2) -- Commission's powers and duties "then it shall make a rule or proclamation embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of the state may be taken. Had the Department proposed statutory language for the hunter orange rule, the most likely statute amendment would have been adding a new section in the Public Safety Chapter, (36-1501-1511).

(NOTE: The attachments Ms. Kiefer referred to in paragraph two are on file.)

RS 16865C1

Chairman Schroeder welcomed **House Resources Chairman Stevenson and Representative Fred Wood**. Chairman Stevenson and Representative Wood will present RS 16865C1 regarding wolf legislation.

Chairman Stevenson said that when word was received that wolves might be delisted, they realized there had to be some changes made to the statute to allow to hunt them. The wolf plan indicates they will be treated the same as other predator animals. Page 2, lines 42-52 and page 3, line 34, refers to the wolf tag. Early on, it was indicated these tag prices would be considerably higher than other big game carnivores. However, in the wolf plan, it stated they would be treated the same, so it was determined that for this season, the wolf tag would be the same as bears and cougars - \$9.75.

The State plan that was adopted in 2003 gave the State the authority to manage wolves when delisted. The concern is that if delisting comes before the next legislative session, the Fish and Game would not have the opportunity to manage them and that is the reason for the tags. The current wolf management program costs approximately \$720,000 and is federally funded. This money may not be available after delisting is completed, so wolf tags will contribute to revenue to support the State's management.

Chairman Schroeder pointed out that on page 3, line 26, the word wolf has been added.

Senator Langhorst asked Chairman Stevenson for more detail regarding the price differences of the wolf tag. Chairman Stevenson said that in an earlier draft of the legislation, the Commission had wanted to increase the

price of bear and mountain lion to \$26.50, the same as suggested for wolves. They were advised to leave those tags the same and reduce the wolf tag to make them all equal. By having the wolf tag at a higher price, it could be misconstrued that wolves would be treated differently. That was one reason for the change.

Representative Fred Wood agreed with Chairman Stevenson's remarks and said an increase might come in subsequent years.

Chairman Schroeder said there had been an issue regarding the need to change the Code if the consumption of the meat was not required. He called on **Ms. Kiefer, Legislative Liaison for Fish and Game**, to explain the statute. Ms. Kiefer said 3612-02, wasteful destruction of wildlife, essentially says that it is illegal to capture or kill any game animal except for carnivores and black bear. Because wolves are in the carnivore category, it is not considered wasteful.

MOTION: **Vice Chairman Pearce** made the motion to print RS 16865C1. **Senator Langhorst** seconded the motion. **The motion passed by unanimous voice vote.**

Vice Chairman Pearce made a request of Fish and Game to provide the committee with information as to how the \$720,000 is spent on wolf management. Ms. Kiefer said she would provide the requested information.

Chairman Schroeder said that a hearing on this legislation will be held Wednesday, the 14th, in the Gold Room.

Senator Langhorst inquired if this will be included in the Sportsmen's packet and if so, how will that effect the revenue. **Ms. Kiefer** replied that if you look at the statute amendments, it will not be included in the Sport packet at this time, just this particular piece of legislation.

RS 16905 **Chairman Schroeder** said RS 16905 is a re-write of an RS heard last Friday. This has the language that was omitted and is to remove term limits from the Idaho Fish and Game Commission.

MOTION: **Vice Chairman Pearce** made the motion to send RS 16905 to print. **Senator Andreason** seconded the motion. **The motion passed by unanimous voice vote.**

H 31 The **Chairman** said that the Department of Environmental Quality (DEQ) has two bills before the committee and called on **Mr. Rob Hanson, Mine Waste Project Manager for DEQ**, to present the first one, H 31.

Mr. Hanson said the purpose is to modify the nature of the removal and remediation contracts at the Bunker Hill Superfund Site and to designate DEQ as the authority for letting and overseeing these contracts. They have learned that DEQ has the capacity to handle these contracts. This bill would give DEQ the authority and clarify that this is a superfund contract. **Senator Pearce** inquired if additional staff would be required and Mr. Hanson responded no, they would not.

Senator Stennett asked what effect it will have by taking work away from Public Works. Mr. Hanson said it is the distribution of work and the current process. **Senator Stennett** inquired about the new code that says contractors may be bonded, but not necessarily required. Mr. Hanson said there are different types of contracts and DEQ would like the authority to require bonding on construction-type contracts. **Senator Pearce** inquired if there would be additional implications with DEQ and EPA. Mr. Hanson replied no. **Senator Little** asked if they were just removing the middle man and Mr. Hill said yes.

Senator Langhorst inquired about additional costs to DEQ to handle the contracts. Mr. Hanson said it would free up the two people from the Division of Public Works who work on the contracts with them (DEQ) and would not require more man hours on DEQ's part.

Senator Cameron said a role that Purchasing and Public Works plays is both legal and one that protects an open bidding process. He asked how the department would maintain that open bidding process. Mr. Hanson said they would continue the practice. **Senator Little** asked if Mr. Hanson had a side-by-side example that would show criteria of the differences between DEQ and Public Works of how the bidding process works. Mr. Hanson said he didn't know those types of details. Senator Little then asked what part of the adopted purchasing process in Idaho are we not picking up by excluding Public Works in this particular process. Mr. Hanson replied that they are required to follow the federal guidelines in their contracts. He added that the contracts don't easily fit within the Public Works for additional service-type contracts. That is why they thought they should write it as a bill, as work is done on both private and public property.

Senator Cameron asked for an explanation regarding Title 54, Chapter 19 which is a Public Works contractor provision. Mr. Hanson said the challenge has been the construction work that is mostly on private property, cleaning up yards, then right-of-ways, which is public property. It just doesn't fit in for the Public Works category. Senator Cameron then inquired about the bonding requirements. Mr. Hanson said they have been using a services contract and taken portions of the Public Works contract that fit and have been requiring the bonding insurance.

Senator Andreason said that if each department negotiates for each service, how can we cope with the increase in prices. Mr. Hanson said this legislation is just geared towards the superfund contracts at the Bunker Hill Superfund Site and is very narrowly focused.

Senator Little inquired if DEQ would be administering the rules, rather than the Department of Administration. Mr. Hanson said that was a correct assumption.

Chairman Schroeder called on **Ms. Toni Hardesty, Director of DEQ**, to speak on this issue. Ms. Hardesty said they have two reasons for changing the contracts. First of all, there is duplication. The first reason is to take out the middle man and second, the contracts did not fit well with the Public Works definition. She stated it just takes out a layer of

bureaucracy. **Mark Little, Purchasing Manager** for the **Division of Purchasing**, said they advocated that DEQ do this. DEQ fits in the realm of Public Works, but Public Works deals with public property. Since this issue is on private property, it falls under the realm of the Division of Purchasing. Mr. Little stated that they are not into rock samples and specs on gravel, etc., and DEQ knows the requirements as well as Public Works knows. They thought it would be a good fit for DEQ to go ahead and do it themselves as it is unique to them.

Discussion then centered around prevention of using unlicensed contractors, and the possibility of "opening doors" down the road.

Chairman Schroeder said if this legislation does not pass, what will happen next year that is not efficient or cost effective. Mr. Little said if it doesn't pass, they would continue status quo with DEQ.

Senator Stennett said he was uncomfortable with the wording of the bill. **Chairman Schroeder** said the bill could go to the amending order if the committee should so choose.

MOTION:

Senator Little made a motion to hold H 31 as long as the Chairman deems necessary. The motion was seconded by **Senator Langhorst**. **The motion passed by unanimous voice vote.**

H 33

Chairman Schroeder welcomed **Mr. Joe Nagel** from DEQ who will present this bill.

Inserted into the minutes is Mr. Nagel's testimony.

My name is Joe Nagel. I work for the Department of Environmental Quality. My responsibilities include working with the underground storage tank program, the solid waste program, the Brownfield program, and the voluntary clean-up program.

By way of background on the legislation before you, in August 2005, President Bush and the United States Congress amended the federal law governing the installation and operation of underground storage tanks.

In a nutshell, the new federal law seeks to prevent leaks from underground tanks as opposed to cleaning up leaks after the fact. To accomplish that, the new law requires:

- training for owners and operator of underground tanks and their employees;
- regular inspections of tanks;
- secondary containment for tanks that are installed near drinking water wells - or insurance for people who manufacture and install new tanks.

It also required federal agencies to comply with the new law. It prohibits fuel delivery to tanks that do not meet federal requirements, except in emergencies.

And finally, the law allows states to take the lead in implementing the new law rather than the federal EPA.

Last summer, the department held nine meetings throughout the state - in Sandpoint, Coeur d'Alene, Lewiston, Boise, Twin Falls, Pocatello, Idaho Falls, and Challis - to explain the new law to everyone who is impacted by it. About 300 people attended the meetings. (There are about 1,300 regulated tank sites in Idaho, owned by about 900 people.) Most of the people who attended the meetings preferred the state implement the new law rather than EPA. Following those meetings, we conferred with the Idaho Petroleum Marketers & Convenience Store Operators (ably represented by Ms. Suzanne Budge Shafer), and the Idaho Petroleum Storage Tank Fund staff and board (represented by Mr. Hugh O'Riordan) in preparing the legislation before you.

This legislation, if approved, would direct the Department of Environmental Quality to establish an underground storage tank program to implement the new federal law. It directs the department to develop regulations - through negotiated rule making and subject to legislative review - to implement the new program. It requires the Petroleum Storage Tank Fund Board to participate in the rulemaking. It prohibits fuel delivery to underground storage tanks after August of this year if the tanks are ineligible to receive fuel. Finally, it requires secondary containment for tanks installed within 1,000 feet of a drinking water well after this law goes into effect. It contains an emergency clause because the federal law requires tanks installed after February, 8, 2007, to have secondary containment or insurance for tank installers and manufacturers.

Mr. Chairman and members of the committee, thank you for the opportunity to explain this proposed legislation. I would be happy to answer any questions you may have.

Senator Stennett inquired if there was a statewide permitting process for secondary containment of tanks. Mr. Nagle replied no, there is not. Senator Stennett then asked if Idaho was unique in that regard by not requiring some kind of statewide or local citing authority. Mr. Nagle said that 49 of the states have laws or requirements of some kind regarding underground storage tanks. Idaho is the only one that does not. Idaho Falls, Pocatello and Boise have fire marshal requirements.

Senator Cameron asked about the fiscal impact regarding additional FTE's and the 25 percent match. Mr. Nagle replied that at the time this legislation was prepared, then-Governor Risch had approved the \$200,000 from the federal government and two additional FTE's. Governor Otter asked the department to reconsider that. He approved receiving and spending the \$200,000 and asked if the work could be accomplished without the additional FTE's. Mr. Nagle said they have done that. He added that Idaho has one of the best records in the United States regarding clean-up. As to the dollar amount of the 25 percent match, Mr. Nagle will research that request.

There was some discussion regarding the number of public community water systems (2,200) and private wells (94,000) registered with Water Resources. Mr. Nagle said he would confirm these numbers with the Department of Water Resources.

Chairman Schroeder said that there was an underground storage act in

2005 and then asked if this legislation, H 33, is not passed, will Idaho lose \$750,000. Mr. Nagle said yes, that is a requirement from Congress. The federal money comes from a trust fund that amounts to \$2.4 Billion. It can now be spent for prevention, but a prevention code has to be in place, otherwise the state will not receive the money for clean up. There is a February 8th deadline (law) that says any tank that is installed must have secondary containment.

MOTION: **Senator Little** made the motion to hold H 33 in committee, subject to the call of the Chair. The motion was seconded by **Senator Cameron**.

TESTIMONY: **Ms. Suzanne Schaefer, representing Idaho Petroleum Marketers & C-Stores Association**, testified that they have been working on this issue for several years with DEQ. She provided the committee with an eight page handout that provided facts regarding underground storage tanks (UST). There are 4,078 insured tanks; 1,430 sites; and 891 policies. Eighty nine percent of the UST's are insured through the Petroleum Storage Tank Fund (PSTF). The remaining 11 percent are self-insured, have other insurance or no insurance. The average clean up cost has been \$146,230. There are about 40 open sites. The number one way of finding leaking tanks is by seeing and smelling. Because Idaho is known as a state without a program, the clean up statistics are positive compared to the rest of the region. Ms. Schaefer said their interest in the industry is to have a program that works, is efficient and positive, as well as practical in implementation. She stated that there are some things in this legislation that the industry doesn't like, but they are in support of H 33.

Senator Pearce inquired as to how many old tanks need to be cleaned up and what the policy is. Mr. Nagle said there are about 150 tank sites and they are working with the owners now.

Mr. Erik Sirs, EPA representative, said there is a three year inspection cycle that will be in effect commencing August 8th.

Senator Langhorst inquired about above ground storage tanks. Mr. Nagle said that above ground storage tanks are not regulated in Idaho. Ms. Schaefer said they are federally regulated.

Ms. Schaefer was asked what her concerns would be if this bill is not passed (speaking for the industry). She replied that they have a good working relationship with DEQ and would like to see the various elements of this federal bill put into place in a way that they can do the rule making with them. She said that from her standpoint, it just makes sense.

Senator Schroeder said this matter would be taken up at the Wednesday meeting and a motion is still before the committee. **Senator Cameron** said he would like for Mr. Nagle to revise the fiscal impact and to provide additional information.

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 7, 2007
- TIME:** 1:30 p.m.
- PLACE:** Gold Room
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He informed the committee about the handouts they were given. One is an article about wolves, submitted by Senator Little; the other is in conjunction with today's presentation on Administrative Rules, Policy and Stringency.
- He then called on Senator Andreason to present his RS's.
- RS 16899**
RS 16952 **Senator Andreason** said that the reason for two RS's is to give people a choice. RS 16899 is to prohibit the construction and operation of facilities that require water treatment in perpetuity. RS16952 is to require financial assurance on the operation of facilities that will require water treatment in perpetuity. He explained that one RS would not allow mining that would require water treatment in perpetuity and the other would require bonding that would cover the cost of the treatment in perpetuity. The Senator said it is far better to design facilities in such a way that they do not cause the requirement for a long term solution and do not require water treatment in perpetuity.
- MOTION:** **Senator Little** made a motion to send RS 16899 and RS 16952 to print. **Senator Stennett** seconded the motion. The motion passed by **unanimous voice vote**.
- H 33** **Mr. Orville Green, DEQ Administrator for Waste Management**, addressed two main questions that were asked at the last presentation, which was Monday, the 5th. The first question regarded definitions and the use of "guidance". He pointed out the only definition in this proposed bill is the one taken directly from the federal statute describing what an underground storage tank system is. Other language was added to put constraints on the implementation of the Idaho Law. There is also a stringency requirement in this bill and some provisions to provide flexibility over what the federal law mandates. **Mr. Green** explained no new state monies will be requested. The second question was, what will happen if the State does not adopt an underground state storage tank program.
- Mr. Green** said if it is not passed, the federal government will implement

the law. The state will not be eligible for federal funds which could cause the loss of approximately \$750,000 annually. It may also affect some existing petroleum product clean-up grants.

Senator Stennett asked if there was a definition from the Idaho Code for the word “guidance” from Line 39, page 2. **Mr. Green** said he didn’t know if “guidance” was defined in code, but believes it is in the Administrative Procedures Act. They have an internal policy regarding any “guidance” that the Director has set up. It involves interpretations of rules or laws outside of internal policy, and the procedures they have for “guidance” are very similar to what they have for rulemaking. “Guidance”, first of all, would have to be approved by the director. Secondly, it would have to go out for public comment and response. **Senator Stennett** asked if there was a chance that “guidance” could be in conflict with the Public Administrative Rules. **Mr. Green** said he was unaware of that happening and that would not be their intent. **Mr. Green** said their role of “guidance” would be to better understand how the rule does meet the code for rulemaking.

Chairman Schroeder said there was a motion made Monday by **Senator Little** to hold H 33, subject to the call of the Chair.

Senator Little asked to withdraw his motion, subject to the consent of Senator Cameron, who seconded the motion. **Senator Cameron** gave his consent. **Senator Little** explained that he talked to the department and he believes they are trying to make the rulemaking livable. It does involve a federal mandate.

MOTION:

Senator Little made a motion to send H 33 to the floor with a do pass recommendation. **Senator Cameron** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Little** will **sponsor** this bill on the Senate Floor.

Norm Semanko, Executive Director, Idaho Water Users Association, explained that this association is a member of **Idaho Council on Industry and Environment (ICIE)**. They have been around since 1989, and born to promote the involvement in discussion of facts and science in decision making. **Mr. Semanko** wanted to acknowledge **John McCreedy**, with Amalgamated Sugar, as the Chairman for ICIE and is unable to attend this meeting; **Pat Barclay**, Executive Director for ICIE; **Scott Nichols**, from Caldwell, to help with regulatory matters; **John Barclay**, who helps with administrative matters, including putting together the PowerPoint presentation. He said that **Roy Eiguren**, Lawyer and Lobbyist, was to be a presenter, but couldn’t attend today’s meeting. **Jack Lyman, Executive Director, Idaho Mining Association**, will talk about stringency issues.

Dr. Joan Cloonan, retired from Simplot, former law partner of Roy Eiguren, and IDEQ Board Chair, presented a summary of the rule making process. The PowerPoint presentation consisted of 13 slides from which Dr. Cloonan either read or directed her remarks from them. She then explained the Idaho Administrative Procedures Act (APA).

The Act does the following:

- Authorizes the state agencies to develop (promulgate) rules that have the force and effect of law.
- Rules are recommended by agency directors to agency boards.
- Directors or agency heads promulgate rules where there is no board.
- APA allows persons to petition boards or agency heads to promulgate rules.
- Many rules are the result of negotiated rulemaking.
- The process provides for substantial public input through written comments, meetings and hearings.

Dr. Cloonan read the definition of a rule. She said that a rule means the whole or part of an agency statement of general applicability that has been promulgated in compliance with the provisions of the APA and that implement, interprets or prescribes: law or policy; or the procedure or practice requirements of any agency. Dr. Cloonan said the Idaho Supreme Court in Asarco v. Idaho DEQ provided additional definitions of a "Rule". They have wide coverage; are applied generally and uniformly; operate only in future cases; prescribe legal standards or directives not otherwise provided by the enabling statutes; express agency policy not previously expressed; and are interpretations of law or general policy. She also explained what a rule is not. The APA provides the Legislature with the authority to amend, modify or reject rules. Idaho is the only state in the nation that has such authority. The Idaho Supreme Court in Mead v. Arnell declared that the Legislature's authority to reject rules does not violate the Constitutional doctrine of Separation of Powers, provided that Legislative rejections of rules are based upon a rule being "Contrary to Legislative Intent." She stated that summarizes what Roy Eiguren was going to present.

Dr. Cloonan explained guidance and rulemaking at IDEQ. The Board promulgates rules. Rules originate from: statutory requirement; adoption of EPA rules where state has primacy; revisions of antiquated or inadequate rules; requests by regulated community or DEQ to update; formal petitions for rulemaking; and Board requests. A legislatively approved rule or temporary rule has force and effect of law. She said guidance is written documentation of how an agency interprets rules. It has checklists and provides technical background information.

DEQ's guidance policy is as follows:

- Guidance is guidance, not law
- Consult with AG's office on whether guidance or rule
- Obtain Director's approval for guidance document
- Seek public input on guidance
- Publish draft guidance
- Publish final guidance
- Avoid mandatory language

Dr. Cloonan's closing remark was that guidance, from a users perspective, has its place. It needs to be used appropriately and properly.

Mr. Jack Lyman said he was asked to make a brief presentation on the concept of stringency as contained in Idaho Code. He said stringent means imposing rigorous standards of performance; severe. Stringency was first introduced into the Idaho Code in 1983 with passage of the Idaho Hazardous Waste Management Act. Ultimately, the task of developing Idaho Rules became too daunting and they adopted Federal Rules, by reference. Since then, similar provisions have been included in five other statutory enactments and has been addressed in other legislative enactments. They are all different to some extent.

1983 - Idaho Hazardous Waste Management Act (HB 144)

1987 - Toxic Substance Control Act (SB 1172)

1992 - The Idaho Solid Waste Facilities Act (HB 778)

1993 - The Idaho Clean Air Act (SB 1236)

1995 - The Idaho Clean Water Act (SB 1284)

1996 - The Idaho Land Remediation Act (SB 1516)

2002 - Stringency amendments to the EPHA (HB 658)

Mr. Lyman said the basic premise of a stringency provision is the sense that the federal government is generally in a better position to determine the level and intensity of a regulation that is needed in a particular aspect of an environmental regulation. The state does not have the personnel, the expertise, or the resources to do anything in addition to that. Stringency provisions assure that Idaho will always be in compliance with federal law and that Idaho will not exceed federal regulation unless that is done under a specific legislative authorization. Primarily, if you go back to 1983, we had a Democratic administration and a Republican legislature. There was a concern that the executive might over-regulate and that the legislature would have no ability to counter that. This was before there was an active review of the rules. Every Governor (Andrus, Evans, Batt, Kempthorne) have signed one of these stringency provisions in one of these Acts. It's also important to realize that there is nothing in the current stringency provisions in any of these Acts that prohibits the legislature, at its discretion, from imposing standards or requirements that are more stringent than the federal government.

A short discussion followed where guidance would be for land application rules. Dr. Cloonan said it can be found on the web site on the Internet which deals with water, ground water, and land application. One needs to "drill down" in the menu to find it.

Senator Little asked if old rules were archived. Dr. Cloonan said the law library would have them.

Senator Stennett said he didn't understand what the word amend means. "If you can take the heart out of a rule by rejecting a particular portion of it, you've amended the intent of the rule and amended the rule. If you don't reject the entire thing, send it back to the agency, just pick and choose what you want to reject, how is that not amending?" **Mr. Lyman** said he has been told by attorneys that you can reject rules in a section, sub section, and it has the practical effect of amending that. So, you either have to take it as it is or delete what you want and take what is left. As he understands it, what you can't do is add to or take any part of

the words and change them around.

Vice Chairman Pearce asked why both the House and Senate have to do a rejection for it to be effective? **Mr. Lyman** said if it is a non-fee rule, both sides have to reject the rule or it is approved. If it is a fee rule, one side can object and the fee rule goes away.

Dr. Cloonan said she worked with the Department of Justice for six years as a trial attorney defending federal rules and the federal rulemaking process is ugly.

Senator Stennett said if the Committee has the ability to reject rules, how would they get a guidance? **Mr. Lyman** said if he were the Lobbyist, he would draft a concurrent resolution and direct it at the offending board, and indicate the displeasure you have with that particular guidance. You would find that they are very responsive. Within the statute and APA, you have no role on guidance.

Mr. Lyman explained, as he understands guidance, it is to help those in the regulated community comply with the rule. Guidance is meant to be advisory, and to be helpful to those who have to meet the rule. No one can cite you for a violation of a guidance document.

Chairman Schroeder asked for an example of guidance. **Dr. Cloonan** said her easiest example would be the guidance for waste water land application. The Board occasionally sees a guidance document, they do not review guidance documents, they are there developed by the agency. DEQ has a process that requires public input into the guidance. The guidance now on land application check lists, dissertations, information on treatment alternatives. It is quite detailed.

Senator Little described a previous experience he and **Vice Chairman Pearce** had with waste water rules for municipalities. Some of the problems were with guidance, such as what time of the day to take water temperatures and the location to take it.

Dr. Cloonan said rules are written like guidance, they are offerings. There is a lot of site specific and a lot of reasons you may want to be different from one place to another. It makes a very long complex rule that would probably need a lot of attention to changing as technology changes. It does put the guidance right there in the rule. You want uniform availability of guidance and implementation of guidance in a way that recognizes that it is, in fact, guidance.

Mr. Lyman added that as guidance has proliferated, and the regulated community has become more sensitized to it, Director Hardisty has done a wonderful job of making sure there is full public disclosure of this in advance.

There were no more questions from the committee.

Mr. Semanko stated that he hoped this presentation was helpful. It is the

fourth and final committee that has environmental jurisdiction that they have come before. He invited the committee members to any of ICIE environmental committee meetings. The next meeting is February 12th.

Chairman Schroeder thanked everyone for their participation in this meeting.

ADJOURN:

There being no further business, **Chairman Schroeder** adjourned the meeting at 2:38 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 9, 2007

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Siddoway, Stennett and Langhorst

MEMBERS ABSENT/ EXCUSED: Senator Coiner

CONVENED: **Chairman Schroeder** called the meeting to order at 1:30 p.m. He then called the committee's attention to the handouts that have been provided. They are the following: Information on Mr. Booth; a chart of simulated wildlife by region and species; and a response from Sharon Kiefer, Legislative Liaison for the Department of Fish and Game, regarding federal funding for wolf management. That response is inserted into the minutes, as it was requested at the February 5th meeting and is pertinent information.

Response from Ms. Kiefer:

At the print hearing for Senate Bill 1086 on February 5, the Committee requested information about how federal funding for wolf management has been utilized. As noted in the Statement of Purpose for the bill, the State received \$720,000 federal funds from earmarked congressional appropriations for FY05 and FY06. The Nez Perce Tribe received an additional \$380,000 in federal funds for a total of \$1.2 million annually for wolf management in FY05 and FY06 (rounded numbers). The FY07 federal budget has not yet been finalized.

A brief summary of how the State funds were utilized for these two fiscal years by Office of Species Conservation (OSC) and IDFG follows:

\$100,000 utilized by OSC for depredation activities, which includes compensation for unconfirmed losses.

\$620,000 utilized by IDFG for wolf management in these approximate amounts .

\$200,000 used to survey elk and deer in areas with wolf impacts and also to support big game research to evaluate the effects of wolf predation on elk and mule deer,

\$45,000 utilized by Wildlife Services for control measures, \$375,000 used for wolf monitoring, management, enforcement, outreach, and information/education. This expenditure includes work conducted by two limited-service Department biologists to trap, radio collar, and monitor wolf populations.

The **Chairman** then welcomed Bill Booth to the committee for his confirmation hearing.

APPOINTMENT: **William B. Booth** of Hayden, Idaho was appointed to the Northwest Power & Conservation Council. He will serve from January 15, 2007 to January 15, 2010.

Inserted into the minutes is a copy of Mr. Booth's talk.

Mr. Chairman; Members of the Committee; Thank you for inviting me here today. I'd like to make some brief comments and then will be happy to stand for questions regarding my appointment to the Northwest Power and Conservation Council.

As I look at the list of prior and current Council members, I'm honored to have been nominated by Governor Otter, and I will do my best to continue the distinguished tradition of service they have given to Idaho.

The Council was formed in 1980 when an interstate compact authorized by Congress created a partnership between Idaho, Montana, Washington and Oregon intended to give the four states more say over power planning, river usage and wildlife restoration projects associated with the major interstate river systems we have in the Pacific Northwest. Of course the hydroelectric system of dams was deemed of prime importance. Along with power, mitigation for fish & wildlife impacts from hydroelectric generation, specifically salmon, was another prime driver behind the perceived need in Congress to provide more regional planning for both power and fish and wildlife. The council gives Idaho an equal voice with our partner states on these issues of immense importance here.

The Northwest Power and Conservation Council were given three overriding duties:

1. Develop a regional plan to "assure the Northwest an adequate, efficient, economical and reliable power supply", including analyzing the adequacy and reliability of the power supply.
2. Develop a program, as part of the power plan, "to protect, mitigate and enhance fish and wildlife affected by hydroelectric dams in the Columbia River Basin", and make annual project funding recommendations to the BPA.

3. Provide for broad public participation in developing the power plan and fish and wildlife program, and inform the public about regional energy issues.

The Council is made up of eight members, two from each State, all appointed by their Governors and confirmed by their State legislative bodies. The Council's Central Office is in Portland, Oregon. Each state has its own offices and a small staff in Idaho, the Headquarters office is in Boise where we have two council members and three staff. All funding is provided by the Bonneville Power Administration through a rate fee appropriation. The State of Idaho provides no funds for operation of the Idaho office; and likewise is not required to fund the restoration projects in our state. We all know there is no free lunch, however. The ratepayers of the region pay for this program every month when they pay their utility bills. We need to always keep this in mind so that the dollars we receive in Idaho are used prudently.

With that, I believe my background in Environment and Government Affairs provides a good fit for the Council and I look forward to serving our State. I'd be happy to take your questions.

Senator Stennett asked who would be sitting where on the council. **Mr. Booth** said it was decided to be set up as it had been in the past and he will be starting on the fish and wildlife committee. **Senator Stennett** asked how much money will be available and where that will be placed. **Mr. Booth** said there is probably about \$150,000 of wildlife restoration project funding available, per year. That money gets split up between travel use, state and federal agency use. The goal is to put the money to good use, where they have the best chance of affecting success reaching recovery, based on science. **Senator Stennett** then asked what percentage of the \$150,000 has come to Idaho and is it administered through the Office of Species Conservation (OSC). **Mr. Booth** said he wasn't quite the expert on the numbers, yet. He's been told that the states of Oregon and Washington get the larger share, Idaho gets a somewhat smaller share, and the state of Montana gets the smallest share. He said it is his understanding that not much money goes to OSC. The Council solicits input on projects from all persons in the four states, it's put into a prioritization, the Council looks at it, and it is reviewed by science panels. Ultimately, a program is recommended to the Council, which consists of funding projects throughout the four states.

Senator Langhorst said about 10 years ago, the American Fisheries Society had a series of meetings and took a vote on the best way to recover salmon and the declining steelhead. Close to 90 percent said that removal of the Snake River dams was the single factor for recovery. **Mr. Booth** said he believes there can be success in restoration

programs and the money needs to be spent wisely and properly. He believes there are things that can be done without breaching the dams. **Senator Langhorst** asked how Mr. Booth would respond if it came down to the salmon or the dams? **Mr. Booth** said he would hope that if that happened, there would be enough information to make a rash decision based on the science they have, rather than emotions.

There were no more questions from the committee. **Chairman Schroeder** thanked Mr. Booth for appearing before the committee and said his appointment will be voted on Monday.

The **Chairman** said they now have before them four RS's.

- RS 16875** **Restrict shooting or killing with guns or other devices accessed via the Internet.**
- RS 16836** **Restrict importation of carcasses or certain designated parts of carcasses of cervids where Chronic Wasting Disease is known.**
- RS 16977** **Provide for confiscation and sale of certain conveyances.**
- RS 16974C1** **State land access.**
- MOTION:** **Senator Langhorst** said, in the interest of time, he would make a motion to send RS 16875, RS 16836, RS 16977, and RS 16974C1 to print. The motion was seconded by **Senator Stennett**.

Pertaining to RS 16875, **Senator Cameron** asked if his trigger release device, purchased thru Cabelas, would be considered "another device", and would he be prohibited from using his purchase. **Senator Langhorst** said this RS is to prohibit shooting of animals from the Internet. In Texas, there was a game farm and people could go on the Internet and shoot an animal from their office, wherever it may be, using the Internet. There is a gun mounted in an enclosure, with a camera mounted on the gun, and it allowed someone to pay a fee and go online and shoot an animal in the enclosure. It has since been outlawed in Texas. There is no federal law that covers this type of activity. **Chairman Schroeder** asked if the language in this RS is similar to code in other states. **Senator Langhorst** said it was. **Chairman Schroeder** suggested they break the RS's up, have a motion to print this RS and change the language at the same time. **Senator Cameron** said he's not an English major, but this RS sounds like it's prohibiting the access of purchasing weapons or hunting devices, via the internet, rather than prohibiting hunting on the internet. **Chairman Schroeder** suggested printing these RS's, and in the interim, Senator Langhorst could contact someone to make sure the language is appropriate or tweak it a bit.

Following the discussion, the motion passed by **unanimous voice vote**.

Chairman Schroeder welcomed Pete Johnson from Adams County.

PRESENTATION: **Pete Johnson, Adam County Biomass Facilitator** thanked **Vice Chairman Pearce** for inviting him to speak to the committee.

Inserted into the minutes is information Mr. Johnson provided the committee regarding the multi-county proposal. This talk preceded the PowerPoint presentation.

Objective - Adams County is proposing a multi-county partnership to facilitate the development of value added woody biomass industries in Southwest Idaho. In addition Adams County is preparing a resolution for the Idaho State Legislature to form a Woody Biomass Utilization Task Force.

Synopsis of the proposal — The Council School District built the first woody biomass heating and cooling system in Idaho. In June of 2006 Bear, Idaho experienced a tornado that cut a 13 mile long and one mile wide swath through mostly national forest and private lands. The forest service has prepared five salvage sales and is requiring the removal of woody biomass as well as saw logs. This material could be used for a variety of value added products and to produce jobs in rural Idaho. The products include bark and mulch for landscaping, shavings for livestock bedding, tongue and groove flooring from small diameter trees, posts and poles from top wood and small wood, hog fuel for biomass burners that generate heat and electricity, firewood, pulp chips, furniture, etc. We see a future in developing value added woody biomass industries to replace the jobs lost when our sawmills closed. Most of the communities in Southwest Idaho are agricultural and natural resource based, so the development of this industry fits our rural character. We also feel a strong need to reduce the amount of slash burning to reduce smoke pollution.

A Woody Biomass Utilization Task Force needs to be formed to assess the resource availability, determine incentives for industries that use wood waste to produce value added products, determine incentives for schools to investigate and install biomass heating and cooling systems, incentives to developers to deal with fuel mitigation on their properties prior to sale and develop an organization that can assist entrepreneurs develop proposals for utilization of biomass material.

Feasibility possibilities, investments and commitments to date:

- Council residents passed a \$1,200,000 bond for the school biomass burner which will save them 75% on their heating and cooling costs per year.
- Adams County invested \$15,000 in a partnership with Siemens

and the USFS to investigate the feasibility of an electrical generation plant.

- Adams County has invested \$28,000 in a consultant to identify alternatives to develop a woody biomass utilization industry in Southwest Idaho.
- Adams County is holding \$15,000 in their budget to re-enter the Governor's Rural Initiative Program as a partner with other counties.
- The Idaho Department of Commerce and Labor feels that our proposal is one of the best developed they have heard and would entertain an application for the Rural Initiative Program (\$41,000 annually) in May of this year. They have informed us about the Gem Community Grant Program and encouraged us to apply for a grant for a feasibility study tied to identifying ways to stimulate the woody biomass utilization industry in Southwest Idaho and perhaps the State as well.
- The USFS is considering making \$10,000 available for the Southwest Idaho project.
- SAGE Community Resources, a 501(C)(3) non-profit economic development organization which serves 10 southwestern Idaho counties, is willing to supervise and house an employee free of charge to develop the biomass program.
- A grant for \$50,000 from USDA Rural Development is being sought.

Is it possible? — The Montana Community Development Corp. has done exactly what Adams County is proposing. They have achieved tremendous success in helping to establish woody biomass industries in Western Montana. They have developed a website that shares information gathered concerning woody biomass industries and also advertises for a small fee, biomass available, biomass needed and equipment for sale or purchase (smallwoodnews.com and timberbuysell.com)

Other states have established statewide task forces to look at utilizing and developing woody biomass utilization industries and utilities that use wood chips for energy production or for heating and cooling thus reducing the reliance on fossil fuels and reducing costs tremendously.

When? - Startup would be July 2007 for both the Southwest Idaho proposal and the task force. In the interim -- job descriptions, county partnership formulation, grants, vision statements, etc., need to be developed and the resolution passed by the Idaho State Legislature.

What groups have been or will be approached for support of the proposal:

The Idaho Association of Counties
The United States Forest Service
The Idaho Department of Lands
The University of Idaho
The Idaho School Superintendent
The Idaho Rural Partnership
The Governor
The Idaho Legislature
The West Central Highlands RC and D
The forest products industry and associated organizations

Mr. Johnston presented a PowerPoint program to the committee. The slides contained the following information:

What Is Woody Biomass? It is timber sale slash; it is right-of-way debris; it is sawmill waste; it is mill planner shavings; it is bark from a sawmill debarker; it is landfill waste of pallets, spools, etc.; it is landscape waste; and it is construction waste material.

Why Worry About Wood Waste Or Woody Biomass? It can be used to make value added products that are in demand; value added industries create jobs; removing woody biomass from the forests results in less burning resulting in better air quality and less damage to soils, damage to residual stands, less risk to homes near forests and to firefighters; utilizing woody biomass can help resource dependent rural communities recover from the loss of sawmills and establish jobs tied to their agricultural base; woody biomass industries are clean environmentally and are very "green".

So What Value Added Industries Are We Talking About? Wood pellets from sawmill sawdust; landscape mulch from planner shavings; bagged landscape bark from sawmill debarkers; post and poles from smallwood and slash; hogfuel from slash for Fuels for Schools and Electrical Cogeneration; pulp chips from slash and smallwood; firewood from timber sales of non-merchantable sawtimber and shavings; recycled wood products from landfills and recycling centers; bridge timbers from smallwood; bridge decking from sawmill waste; furniture and gazebos from smallwood and sale slash; flooring from smallwood.

Who Should Be Interested? Any rural community where the key economic factors are a dependence on agriculture and natural resources; any rural community in close proximity to national forests; any

community wanting to create jobs; any community wanting to preserve what they have in infrastructure (main street businesses, school quality and quality health care); any community with a landfill that is being overloaded with construction waste, yard waste and recyclable woody materials.

So Why Have We Not Done This Before? Natural resource based industries have been reluctant to utilize wood waste; natural resource based industries are reluctant to share information with each other; communities wanted to keep old style wood products industries; the wood products industry has been reluctant to diversify; efficient woody biomass transportation systems did not exist; there is no one person or organization to facilitate the development of the woody biomass industry in Idaho.

So If It Was Not Economical Before, What Makes You Think It Is Now? Woody biomass utilization organizations have been established and have helped facilitate the development of the industry in Montana (MCDC); equipment has been developed to efficiently handle woody biomass; the United States Forest Service is beginning to require the removal of woody biomass other than logs from the national forests increasing the supply of raw material available for value added products.

Why Is It Essential That We Develop The Industry Now? The Idaho Department of Environmental Quality is developing new standards for smoke management which will make it impossible to burn all wood waste in the forest (to be implemented in the next decade); Idaho's rural communities have higher unemployment rates (some double of the state average) and are losing critical infrastructure essential to their survival i.e. schools, health care and local businesses; there are few good paying jobs to keep youth in their rural communities after they graduate from high school.

What Equipment Has Been Developed? Slide off log bunks and tubs;

Another Reason To Look At Woody Biomass Utilization -- Wildland/Urban Interface Issues (WUI's) Idaho is the third fastest growing state in percentage of population; retirees from all over the nation are moving here and building homes directly adjacent to forests creating a tremendous fire protection problem.

What Do We Need To Do? Develop a system that gathers information from the industry, the US Forest Service, the Idaho Department of Lands,

private timber holders and potential entrepreneurs; hire a facilitator with a forestry background to provide information to potential entrepreneurs and existing industries about the potential to make a dollar from processing woody biomass. The facilitator: (1) assists entrepreneurs in producing a business plan and assessing the financial management and marketing skills needed to start or expand a business; (2) directs entrepreneurs to financial institutions for startup loans; (3) works directly with the Small Business Development Center; (4) creates a website to provide information on developments in the industry, availability of woody biomass, sale of equipment, etc. (www.smallwoodnews.com)

Suggestions For Accomplishing The Establishment Of A Woody Biomass Organization. Approach the Idaho Department of Commerce and Labor and the Idaho Legislature to support a focused effort directed at developing a woody biomass industry in Idaho; work with granting institutions to partially fund the effort (Rural Business Opportunity Grant and USFS); submit a proposal to the state to re-enter the Rural Initiative Program this coming May; form an organization of partners in Southwest Idaho made up of the Idaho Department of Commerce and Labor, SAGE Community Resources and the benefitting counties; create a Strategic Plan with a Vision, Mission and Guiding Principles and a job description for the Biomass Facilitator; hire a Biomass Facilitator (SAGE) financed by the Governor's Rural Initiative, funds from the benefitting counties, grants and funds from the legislature for a three year trial in Central Idaho; base the facilitator in the SAGE offices in Boise and have them supervise the employee.

Next Steps For The Adams County Biomass Working Group. Meet with Senator Pearce, Representative Edmunson and Speaker of the House Denney on January 2nd in Council (Done); meet with the Idaho Department of Commerce and Labor on January 9th to discuss a focused effort on biomass (Done and accepted proposal); meet with the House Resources and Conservation and Senate Resources and Environment Committees (Done with House); meet with Representative Ken Roberts and Representative Edmunson for support (Done); prepare a resolution for the Idaho Legislature to form a statewide task force (February); meet with the Governor and Governor's staff (February); meet with USDA Rural Development for a potential Rural Business Opportunity Grant (RBOG) (February); meet with West Central Highlands R C and D (February 14th); work with SAGE on county partnerships and grants between now and May.

That concluded the presentation and Mr. Johnston said he would answer

any questions the committee might have.

Senator Siddoway asked about the cost to harvest and about the burning effects. **Mr. Johnston** said their burner is a very efficient, closed burner and they will be doing a smoke test soon. As for the logging cost, the Forest Service and the Idaho Department of Lands do not have good cost figures.

Vice Chairman Pearce asked if the Forest Service gave a figure of what they thought was available every year. **Mr. Johnston** said it is a really large figure, but couldn't remember the exact amount. He said they create 80 million board feet of biomass on the Payette alone, each year. It is very easy to supply individual schools with biomass. The schools need to get interested, look beyond the initial investment, and they need to look at long term savings.

Chairman Schroeder thanked Mr. Johnston for his presentation. He then welcomed Mr. George Bacon.

SPEAKER:

George Bacon, Acting Director of Department of Lands, presented the agency's annual report. He provided the committee members with a history and summary booklet, which he said he would refer to later. Inserted into the minutes is a copy of Mr. Bacon's talk.

Upon statehood, Idaho was granted over three million acres of land from the federal government to support various institutions — most notably, the Public Schools. These "endowment" lands are managed by the department under the guidance of the State Board of Land Commissioners who are the Governor, the Secretary of State, the Attorney General, the State Controller, and the Superintendent of Public Instruction.

Our primary mission is endowment trust-land management. Article 9, section 8 of Idaho's Constitution requires us to manage these lands, "in such manner as shall secure the maximum long-term financial return to the institution to which granted." This mandate is our over-arching consideration in endowment land management. Perhaps more than any other state agency, we strive to operate as a business.

Our endowment mission is profit centered, to maximize returns over the long term unlike federal lands which are managed for public use. In fiscal year 2006, the department generated 69 million dollars from endowment land management, against expenses of approximately 15 million.

In addition to our primary mission of endowment land management, the Department has regulatory and assistance duties. The Department is the State's lead wild land fire-fighting agency, with protection responsibilities for nearly six million acres of private, state and federal forest lands. We are also responsible for administering the Fire Hazard Reduction Programs which ensure the proper disposal of logging slash. We administer the Idaho Forest Practices Act which establishes minimum standards for logging, road building and other forest practices. Through our Private Forestry Bureau we assist private forest owners, deliver urban and community forestry assistance, and coordinate forest insect and disease programs throughout the state.

In mining, the Department administers surface, dredge and placer mine reclamation. We also oversee the closure of cyanide facilities.

Besides all this, the Department administers public trust land consisting of the beds of navigable rivers and lakes, below the ordinary high water mark. Activities include the permitting or leasing of encroachments, like dock, marinas, pipelines and other uses.

Finally, we serve as the host agency to the Idaho Board of Scaling Practices, the Clearwater-Potlatch Timber Protective Association and the Southern Idaho Timber Protective Association.

Now, I'd like to draw your attention to the last page of the booklet I handed out. This lists our top ten priorities....

With that Mr. Chairman, I would be happy to stand for any questions.

Vice Chairman Pearce asked about the changes occurring around Tamarack. **Mr. Bacon** explained the resort is on private land and the ski hill and three holes of the golf course are on state land. To be a real high-class resort, they think they need growing room. Tamarack has committed to paying for some of the appraisal work. Mr. Bacon said there are several pieces of land that are within the National Forest and they are hard to manage. Opportunities for land exchange with federal agencies have been really tough lately. The Forest Service is looking at all the land they are willing to trade and set priorities. The Department has a two stage process. First they go to the Land Board with a conceptual idea and if they give the approval to move forward, they will start looking at more specifics. That is where they are now, looking at specific pieces of land. The properties have to be appraised because the trade is of equal value - not necessarily equal size. On the Federal

side, it takes them a year or more to arrive at a decision. **Vice Chairman Pearce** asked if Tamarack Resort will end up with any of the land from the proposals the department is working on now, or if it's only an exchange between the State of Idaho and the Forest Service. **Mr. Bacon** explained if the land change goes through, the department will have to look at that critically and see what is in their best interests. Certainly, part of this would be to let Tamarack expand their lease. There may be other areas that the Department of Lands would have designs on.

A discussion followed regarding a situation of two 40 acre parcels beyond Mountain Home. **Mr. Bacon** said this exchange gives the department an opportunity to lock up their property a little better, plus indications are they are getting better land. This is going before the Board for their final approval.

Senator Little asked if the endowment building that the department wants to move into is rented now. **Mr. Bacon** explained the building is Capitol Park Plaza and there is a vacancy in there that would accommodate about half of the director's office. Another tenant is planning to move out June 1st, and at that time the building will have enough space to accommodate the department. **Senator Little** inquired as to who is the beneficiary of the property. **Mr. Bacon** said he wasn't sure, but thought it might be the science school. **Senator Little** also wanted to know how the department would deal with the tenant/landlord situations regarding rents. **Mr. Bacon** said they would do an analysis yearly and determine what the fair market value is and then notify the tenants.

Vice Chairman Pearce asked if the department was dealing with any endangered species issues on state lands and what the department's top issues for land use programs are. **Mr. Bacon** said right now they are geared up for forestry, grazing, and mining. As Idaho grows, especially with growth here in the valley, the department is seeing their traditional uses going away. They hired a land use planner last year to determine the next steps to take. Currently, the department is working on the forestry program part of the Snake River Basin Adjudication to identify what measures will be taken to get buy-off from the Fish and Wildlife Service and Fisheries for the Section Six agreement.

Senator Siddoway asked about Senate Bills 1039 and 1031. He said they are about constitutional mandates and leasing land to help ranchers. If that were to happen, how would the state go about leasing

those lands? **Mr. Bacon** said Senator Schroeder asked him the same question, and he gave him a letter that outlined some of the department's concerns on the constitutional issues. They asked the Attorney General for a review. **Mr. Bacon** said it presents problems for them, because there is a cost there and they are not being compensated for it now.

A question was asked if someone wanted to put Cervidae on some leased lands, what kind of requirements would you ask that lessee to put forth. **Mr. Bacon** said they started doing an analysis of what those sites of operations would bring in, in terms of revenue, and what some of the problems might be. They are also looking at the more practical side of the matter - what do you need to have a good, safe operation. Mr. Bacon stated that they are moving forward with a recommendation to the Land Board not to enter into that sort of activity. All the land is classified for a primary use, whether it is ranching, mining, or whatever. The secondary use is if they are compatible with the primary use. The primary use can be changed because it is all about revenue and the obligations to the current users. However, it always starts with a financial analysis.

Senator Stennett asked the cost of administering the grazing leases. **Mr. Bacon** said it was about \$1.5 million dollars in costs and that's about what the income is. Senator Stennett said if no money is being made in grazing and grazing leases, what is the long term return the endowment is based on. Mr. Bacon said they make from \$200,000 to \$500,000 a year on grazing, but a few years ago, they did not make as much as it cost. They are looking at ways to fix the cost side of the equation. When Idaho was granted 3.5 million acres of land, we only have 2.5 million left. Of that, 1.5 million is designated primary grazing land. For most of that land, there is no other good use right now. At some point in time, there may be opportunities for something else. One of the strategies that Mr. Bacon would like to see pursued is locking up the scattered land. He would like to see regional state grasslands scattered across Idaho, like we have state forests.

Mr. Bacon said they have hired a contractor to start researching the statewide land exchange process. They will be talking to BLM, all organizations, counties and cities - showing them the need to do this. They have completed phase one and will be making a report to the Land Board. He said they may be beating a dead horse from the standpoint that they can do all the research in the world, and that if BLM doesn't play, then nothing happens. Apparently, they don't have any budgeting for that kind of work.

Chairman Schroeder said he feels Mr. Bacon is doing a good job and is managing the lands under the context of laws and rules under which he has to. The Chairman went on to say that some of the legislation is not directed at Mr. Bacon, but because constituents want it. At a meeting in Orofino, an employee of the state said that state lands are not public lands and in the future we will have to pay to access them. Chairman Schroeder asked Mr. Bacon to comment on that remark. **Mr. Bacon** said the comment was inappropriate and inaccurate. He said the lands are public lands, but they are held for specific purposes. The **Chairman** said his constituents do not want to open up their newspaper and discover that hunting rights on state lands has been leased out and they can no longer go there to hunt, fish, or recreate. There is concern about that and some legislators have been asked to not let that happen. He asked Mr. Bacon to help him address that issue. **Mr. Bacon** said they look at things from a business perspective, but it is not all financial. They look at environmental, social, political - but it is a business decision in the end, but all those factors count.

That concluded Mr. Bacon's report to the committee. **Chairman Schroeder** thanked Mr. Bacon for the presentation.

The **Chairman** said the committee needed to approve some minutes before adjourning.

MOTION: **Vice Chairman Pearce** made a motion to approve the minutes of January 24, 26, 29, and 31 as written. **Senator Siddoway** seconded the motion. The motion passed by **unanimous voice vote**.

ADJOURNMENT: There being no further business, **Chairman Schroeder** adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 12, 2007

TIME: 1:30 p.m.

PLACE: Room 433

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

MEMBERS ABSENT/ EXCUSED: None

MINUTES: The meeting was called to order by **Chairman Schroeder** at 1:30 p.m. Due to time restraints for Senator Burkett, the Chairman allowed him to speak to the committee first regarding his RS.

RS 16932C1 **Senator Burkett** said RS 16932C1, with regard to the time of checking traps in the state of Idaho, he is withdrawing it at this time and will bring legislation back next year. He provided a handout that indicated state laws on times required for checking land set traps, listed state by state. He said there were some issues that needed to be clarified and that was the reason for the withdrawal.

RECOGNITION OF PAGE: **Chairman Schroeder** said this is the last week for this group of Pages to serve. He then asked **Matthew Braden, Page for the Resources Committee**, to come forward. The Chairman presented Matthew with a letter of recognition, signed by the members of the Committee, and a Senate watch. Matthew was very appreciative and thanked the Chairman.

MOTION: The next order of business was the consideration of the Gubernatorial appointment of Bill Booth. **Senator Little** made the motion to recommend the appointment of Bill Booth to the Northwest Power and Conservation Council. The motion was seconded by **Senator Cameron**. The motion passed by a **majority voice vote**. **Senator Langhorst** voted nay and asked to be recorded as such. **Senator Jorgenson** will be the Floor **sponsor**.

The **Chairman** then welcomed Ms. Toni Hardesty who has been reappointed as the Director of the Department of Environmental Quality. Her term commenced January 2, 2007 and will continue at the pleasure of the Governor.

GUBERNATORIAL APPOINTEE: Inserted into the minutes is information regarding Ms. Hardesty, which was provided by her office.

Toni Hardesty is Director for the Idaho Department of Environmental Quality (DEQ). Governor Dirk Kempthorne appointed her to this position in July 2004. As director, she is responsible for leading efforts to preserve

the quality of Idaho's air, land, and water for the use and enjoyment today and in the future.

In addition to heading up DEQ, Director Hardesty serves at the request of the governor on a number of state commissions and boards, including the Western States Water Council, the Basin Environmental Improvement Project Commission, the Pesticide Management Commission, the Idaho Rural Partnership, and the Board of Drinking Water and Waste Water Professionals.

An Idaho native, Director Hardesty earned a Bachelor of Science degree in environmental health from the Boise State University.

Her environmental career began in Boise as an intern in the Air Quality for the Division of Environmental Quality.

In 1988, she moved to Seattle to begin a job with the U.S. Environmental Protection Agency broadening her knowledge of environmental compliance and regulation.

After two years with the EPA, Radian International LLC, an environmental consulting firm in Bellevue, Washington, persuaded her to move into the private sector as a Project Manager and Environmental Scientist. There she developed technical expertise and became skilled in negotiating environmental issues with agencies, citizens, and industry. She also gained considerable experience in developing and managing public relations regarding sensitive issues.

During her 10 years with Radian, Toni was offered a position with EMCON, one of the largest providers of integrated solid waste services in the United States. After one year of service as a Technical Staff Manager and Operation Manager, she was recruited back to Radian, now URS Corporation, to manage the Boise Office. There she sharpened her skills to successfully manage both technical and corporate needs.

Since 2003, Toni has served the Department of Environmental Quality as a Special Projects Coordinator for the Air Quality Division, and as administrator of the Water Quality Division overseeing the agency efforts to protect Idaho's surface, ground, and drinking water resources.

Ms. Hardesty said she is pleased that Governor Otter has reappointed her as director. The agency is working very hard on environmental issues.

A question was asked Ms. Hardesty regarding her disappointment over the grass burning issue in North Idaho. Her reply was there was a court case where the state was sued over that issue. The issue was whether the state of Idaho employed proper procedures in the process in developing the state implementation plan. That was the heart of what was going on with that lawsuit. **Senator Stennett** inquired as to how the Memo Of Understanding (MOU) the department has with the Department of Agriculture relates. **Ms. Hardesty** said there are two MOU's - a specific dairy MOU and a MOU relating to non dairy operations. Senator

Stennett asked if DEQ would be writing the rules for grass burning in the future or would the Department of Agriculture. Ms. Hardesty said it is being evaluated right now and to determine where they go from here. When asked if there would be action before the next burning season, Ms. Hardesty said they are working on getting information out with regard to the court case and advising people that this exists.

There were no more questions for Ms. Hardesty. The **Chairman** said the committee would vote on her appointment Wednesday and thanked her for speaking to the committee.

**ANNOUNCE-
MENT:**

Chairman Schroeder said that with respect to JFAC, (he is to go before them Friday morning from 9:30 - 9:45 a.m.), he asked the agencies to provide him with their two top priority requests. A folder has been provided for each member containing these requests. At the conclusion of today's meeting, the Chairman said he would ask for the committee's recommendations.

The next order of business is to hear the four RS's that are on the agenda.

RS 16999

Resolution to urge State Land Board to do study

RS 16954C1

Authorizing Water Resource Board with regards to water rights

RS 16979

Resolution to support appropriation for the South Central Idaho Isolated Wildlife Tract Cooperative Habitat Program

RS 17004

Prevention of disease introduced in Idaho

MOTION:

Vice Chairman Pearce made a motion to print RS 16999, RS 16954C1, RS 16979, and RS 17004. **Senator Cameron** seconded the motion. **Senator Little** said he will vote for the motion, but is uncomfortable about not having any discussion regarding these RS's. **Chairman Schroeder** said that he would request all the legislation be returned to the committee for discussion. The motion passed by **unanimous voice vote**.

S 1055

The **Chairman** said the hearing for S 1055 would be heard at a later date.

Chairman Schroeder then welcomed **Professor Jay O'Laughlin, Director of the College of Natural Resources Policy Analysis Group and Professor in the Department of Forest Resources, University of Idaho**.

**PRESENTA-
TION:**

Professor O'Laughlin provided a booklet that he and Philip S. Cook have written. It is titled Idaho's Forest Products Business Sector: Contributions, Challenges, and Opportunities. The Professor presented a PowerPoint program which related to the booklet. Inserted into the minutes is information that was referred to in the presentation.

Executive Summary

Forests, logging, and the manufacture of forest products have long been parts of Idaho's history, economy, and culture. Although Idaho has diversified in many ways in the last several decades, forests remain important to the people of Idaho

for environmental, economic, and social reasons. Forests provide the basis for many businesses and jobs in the state, as well as contributing to the general welfare of all Idahoans. This report identifies the current contributions of the forest products business sector to Idaho, the challenges and opportunities the sector faces, and public policy opportunities that might enhance the sector's contributions in the future.

Idaho's forests

Timberlands—forest lands that are producing or capable of producing crops of industrial wood and not withdrawn from timber utilization by statute or administrative regulation—account for 16.8 million acres of the 53.0 million acres in Idaho (31.8%). There are another 3.7 million acres of forests reserved as wilderness, and 1.1 million acres of low-productivity woodlands. Idaho's timberlands contain almost 40.0 billion cubic feet of timber growing stock, and almost 75% of these timberlands are in federal ownership.

In 2005, the timber harvest level in Idaho was 1.16 billion board feet, after averaging about 1.60 billion board feet from the mid-1980s to the early 1990s. The reduction in timber harvest levels is due primarily to a decrease in harvests from federal lands within the National Forest System.

Economic contributions

The forests products business sector provides many economic benefits to the state of Idaho and its communities.

Production. Lumber production in Idaho in 2005 was approximately two billion board feet, with almost all production taking place in the northern part of the state. In 2004, Idaho ranked 8th among all states in lumber production. Almost all wood harvested in Idaho is processed in Idaho, and 86% of primary wood products are exported out of state.

Sales value. The inflation-adjusted value of sales of primary wood and paper products in Idaho has fluctuated between \$1.5 billion and \$2 billion since 1985. In 2005, it was \$2 billion.

Jobs. The forest products industry in Idaho employed about 15,100 workers in 2005, roughly the same as in 2004. Everything else being equal, one forest products industry worker was employed for each 76,800 board feet of timber harvested; i.e. there were 13 workers for each million board feet harvested in 2005.

In 2004, wages and salaries of workers in the forest products industry in Idaho totaled \$422 million. The forest products industry is a high-wage sector, providing an average wage or salary per job of \$32,355, compared to \$22,587 for all Idaho industries. In 2000, 4.6% of total labor income in Idaho came directly from the forest products industry. By this measure, only two other states, Maine and Oregon, have a higher level of dependence on the industry.

Multipliers and total impacts. One way to measure the total contribution of a business sector to the economy is through its linkages to other business sectors. Many business sectors exist to serve other sectors; in effect, these industries are indirectly employed by the others. Multipliers are measures of the interdependence of linkages within an economy.

Based on 2002 data, the output multiplier for Idaho's forest products business sector was 2.01. This means each dollar of sales by the forest products business sector generated another \$1.01 in sales in other sectors of Idaho's economy. The labor income multiplier for Idaho's forest products business sector was 2.44, which means that each dollar of labor income paid to

workers in the forest products business sector created \$1.44 of additional income in other sectors of Idaho's economy. The employment multiplier for Idaho's forest products business sector was 3.09. This means that every 100 jobs in the forest products business sector supports an additional 209 jobs in other sectors of Idaho's economy. Analysis of the 1985-1998 period in Idaho indicates that industries with the highest multipliers did not grow the fastest, but they generated the largest ripple effects on Idaho's economy.

Property taxes. Property taxes are used by local taxing districts (e.g., municipalities, cities, counties, libraries, highways) to provide public services. Timber property in Idaho had a total market value of \$850 million in 2004, or 1.1% of the \$78 billion total for all property in Idaho. Timberland owners in 2004 paid \$10.6 million in property taxes, or about 0.9% of all property taxes collected in the state.

State endowment lands. The Idaho Department of Lands (IDL) manages almost one million acres of timberland as part of the "endowment lands" granted to the state from the federal public domain at statehood. According to the Idaho Constitution, these lands are managed to provide "maximum long term financial return" to the trust beneficiaries, which are primarily the public schools and also include eight other public institutions. Between 2002 and 2004, timber harvest revenues from state endowment lands averaged almost \$50 million and accounted for 85% of all revenues from Idaho's endowment lands.

Community dependence. Reporting the economic contributions of the forest business sector at the state or county level can sometimes obscure the magnitude of contributions at the community level. The most recent assessment of the economic contributions of the forest products business sector at the community level comes from data collected for the Interior Columbia Basin Ecosystem Management Project (ICBEMP) in the mid-1990s. Of the 211 communities of all sizes identified in ICBEMP, 32 were dependent on the wood products sector for more than 10% of employment, a level economists considered to be "highly dependent."

Non-market contributions

Forests are valued for many reasons in addition to the wood and paper products they provide. The non-market values of forests can be categorized into five sets of values: recreation, ecosystem services, proximate land value, social and community values, and passive values. Non-market valuation techniques, such as the travel cost method, contingent valuation, and hedonic pricing, are used to measure these values and their contributions to a state's economy. Detailed information and assessment of the non-market contributions of forests to Idaho are not available. Most such research focuses on either a much broader or more detailed geographic scale. There has not been a comprehensive study at the state level attempting to value all non-market resources associated with forests.

Challenges

The forest products business sector in Idaho faces numerous challenges. The availability of raw material (logs) is the major challenge for many Idaho forest products businesses. Timber is the single largest cost item for forest product manufacturers and has become a competitive disadvantage for western U.S. producers, mainly due to constraints created by public policy.

Markets for wood and paper are international. Globalization and the rise of

low-cost producers overseas pose challenges for domestic manufacturers. In recent years, high energy and transportation costs and low finished product prices have created especially challenging market conditions. Finding enough adequately trained workers is also becoming more difficult. Other challenges include: environmental regulation, trade policies, tax policies, market access, and building materials that compete with wood.

Opportunities

As worldwide population and income grow, demand and markets for forest products expand. The Idaho forest products business sector has the opportunity to help meet the worldwide demand, but must compete with manufacturers of forest products in other U.S. regions as well as other countries.

Policies addressing raw material availability and utilization. Several recent policy changes at the federal and state levels may help to address the challenge of raw material availability in Idaho. The Healthy Forests Initiative is a package of administrative and legislative changes undertaken by the Bush administration to implement the National Fire Plan by reducing the risks of wildfire on federal lands. Fuels reduction is a large part of the strategy on the ground. Woody materials removed during hazardous fuels reduction and landscape restoration activities may be utilized in some manufactured products (e.g., lumber, engineered wood products, paper and pulp, furniture), bio-energy for electric power and heat, bio-based products (e.g., plastics), and bio-fuels (ethanol and bio-diesel).

Much of the material being removed from forests as a result of fire hazard reduction projects is small-diameter timber and other woody biomass not traditionally used by the forest products industry for primary solid wood products such as lumber. Numerous federal laws and policies are spurring research, development, and investment in projects to find new ways to use these raw materials. Several states have policies related to biomass utilization including ethanol production incentives, renewable energy portfolio standards, grants and loans, tax incentives, industrial recruitment incentives, rebate programs, green power purchasing/aggregation policies, utility green pricing programs, and outreach programs. In June 2005, the U.S. Forest Service introduced a national strategy for improving woody biomass utilization through its programs and activities. The transition to smaller-diameter and different woody raw materials is not without challenges, however. Investment of capital in new plants to handle small-diameter timber is risky, especially without an assured long-term supply of raw material.

At the state level, the Idaho Department of Lands has determined that the sustainable harvest levels from state endowment lands can be increased to 30 million board feet per year. This increase of approximately 15% from previous levels is being phased in beginning in FY 2006.

Economic development. In recent years, numerous countries, regions of the U.S., and states have aggressively pursued business cluster development strategies to better understand their local economies and achieve competitive advantage in the market. An industry cluster is a geographic concentration of similar and/or related firms that together provide competitive advantages for members of the cluster and the area economy. Pursuit of such strategies that promote forest products clusters may be good for Idaho.

Expanding the view of the forest sector beyond those activities that are most directly dependent on forests may be useful in analyzing and developing a forest-

based cluster. Opportunities to expand the forest cluster could occur by developing relationships with other potential partners including: agribusiness—as in packaging; recycling—for newsprint and paperboard; transportation—for supply chain management; architecture and engineering—by specifying wood as a preferred environmentally and energy efficient alternative to other non-renewable sources of building materials; high-tech—with potential applications ranging from light-touch harvest equipment to more sophisticated scanning and milling technology to recover higher value from logs.

Innovation and entrepreneurship in value-added secondary processing of forest products is taking place in many rural areas. Value-added producers that are export-oriented increase the economic impact multiplier effect. Building public-private partnerships, organizing regionally, coordinating related and complementary programs, getting commitment from public leaders, and targeting sectors and services are key elements to shaping effective value-added wood products initiatives. Services that might be offered via public institutions or public-private partnerships include: training and education, marketing and export assistance, technological assistance, research, and capital formation assistance.

Programs in other states. Opportunities for the expansion of the forest products business sector that are featured in other states may provide ideas appropriate to Idaho. For example, the state of Washington has a Forest Products Revolving Loan Fund that helps finance projects that implement value-added production processes. The Oregon State University College of Forestry and the Oregon State University Extension Service have created the Oregon Wood Innovation Center, whose mission is to work with private forest products manufacturers to improve the competitiveness of Oregon's forest sector, help the state preserve jobs, and better adapt to a challenging global environment. Wisconsin participates in and helps finance Forward Wisconsin, a public-private state marketing and business recruitment organization whose mission is to attract new businesses, jobs, and increased economic activity to the state. The Kentucky Wood Products Competitiveness Corporation, a public-private partnership promotes the development of the state's secondary wood products industries. Pennsylvania and Maine are also among the states with programs targeted at developing the forest products business sector.

Idaho programs. Idaho currently administers or participates in several programs in which increased and/or more focused involvement by and on the forest products business sector may result in further strides toward the sector's potential. For example, the Idaho Forest Products Commission's education and information mission could be expanded, or another organization created, with a specific mission to assist in the economic development of the forest products business sector. The Resource Conservation and Development (RC&D) program, administered by the U.S. Department of Agriculture's Natural Resources Conservation Service, supports projects in Idaho geared towards 'expanding the potential of the forest products business sector. The Idaho Rural Partnership (IRP) helps rural communities develop and promote private/public partnerships and facilitates rural initiatives in Idaho. A closer relationship with the IRP could benefit the forest products business sector.

The Energy Division of the Idaho Department of Water Resources (IDWR) is responsible for coordinating the Industry of the Future (IOF) project in Idaho. In 2001, the agency created the *Idaho Forest Industry of the Future: Strategic Technology Plan*, in cooperation with the Intermountain Forest Association, the University of Idaho College of Natural Resources, the Idaho National

Environmental and Engineering Laboratory, and several forest products manufacturing companies. Although the plan was completed five years ago, it has not been actively pursued to date. Opportunities identified by the IOF program could benefit the forest products business sector.

The Governor of Idaho established the Workforce Development Council in 1996 with a mission to provide oversight for an integrated Idaho workforce development system and develop policies towards that end. The Workforce Development Council may provide an important opportunity for the forest products business sector to address some of its workforce issues.

The Inland Northwest Economic Adjustment Strategy (INEAS) is a partnership between the states of Washington, Oregon, Idaho and Montana, and the Affiliated Tribes of Northwest Indians. The INEAS was designed in 2004 to address economic distress in the 137 counties and among 23 tribes across the four northwestern states by strategically supporting regional business clusters, entrepreneurial development, technology commercialization, and community sustainability. The forest products business sector in Idaho potentially could benefit from implementation of the INEAS, if Congress were to fund the program.

The Inland-Northwest Forest Products Research Consortium is a cooperative effort between the Forest Products Department at the University of Idaho, the Bureau of Business and Economic Research at the University of Montana, and the Wood Materials and Engineering Laboratory at Washington State University. The consortium investigates forest products and utilization problems important to the Inland Northwest, particularly those related to small-diameter timber. Such cooperative efforts with educational institutions can benefit the forest products business sector.

Conclusions

Idaho's forest products business sector provides important economic benefits to the state. It is not a high-growth sector, but it is highly linked to other sectors of the economy as demonstrated by its multipliers, which are indicators of inter-industry relationships. Development strategies that focus entirely on high-growth sectors miss opportunities for increased contributions from the forest products sector and other industries linked to it.

Firms need access to information and specialized assistance to produce and manufacture high value wood products more efficiently, have a greater production capacity, employ a highly skilled workforce, and sell products in foreign and domestic markets. A needs assessment survey is a good place to start. Idaho is currently without a comprehensive assessment of the needs of the forest products business sector.

Cluster-based strategies are a current, popular model for economic development programs. Idaho may want to explore such strategies, as many other states have already done. With emphasis on innovation and value-added production, the forest products business sector in Idaho can grow despite on-going raw material availability issues.

Idaho's state government does not have a centralized institution that focuses specifically on development of the forest products business sector. Several other states have chosen to go that route. A public-private partnership with the mission of helping the forest products business sector reach its potential could help.

Questions were asked by the committee during Professor O'Laughlin's

presentation. **Chairman Schroeder** thanked the Professor for speaking to the committee and for all the hard work that he is doing and has done.

**COMMITTEE
DISCUSSION:**

Chairman Schroeder said the last item for discussion are the budget requests of the five agencies that report to this committee. The Chairman said that he asked each director or administrator to submit their two top priorities, in writing, to him. A folder with that correspondence has been provided to each committee member.

After reading the correspondence and discussing it, the committee made the following recommendations for the Chairman to make to JFAC on Friday, February 16:

Department of Fish and Game - Restore the spending authority.

Department of Lands - Purchase fire fighting equipment and move its Boise headquarters office.

Department of Parks and Recreation - Procure the final piece of property (Bonnyview) at Thousand Springs State Park (Governor's request) and continue the work that the Eagle Island Task Force began.

Department of Water Resources - Transfer staff to Water Management.

Department of Environmental Quality - Federally Funded Decision Units - (1) Underground Storage Tank and (2) North Idaho Brownfield Position. General Funded Decision Units - Air Information Management System.

Senator Cameron commended the Chairman for the way in which he handled the budget requests.

ADJOURN:

Chairman Schroeder adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 14, 2007
- TIME:** 1:30 p.m.
- PLACE:** Gold Room
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Andreason
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. in the Gold Room and asked the secretary to take a silent roll call.
- The first item on the agenda is the committee consideration of the Gubernatorial appointment of Ms. Toni Hardesty as director of the Department of Environmental Quality.
- MOTION:** **Senator Coiner** made the motion to approve the Gubernatorial appointment of Toni Hardesty and to send it to the Floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion passed by **unanimous voice vote**. **Senator Coiner** will be the **sponsor**.
- The second item on the agenda is the confirmation hearing on the Gubernatorial appointment of **Mr. Jim Caswell as Administrator of the Idaho Office of Species Conservation (OCS)**. Chairman Schroeder welcomed Mr. Caswell.
- APPOINTEE:** **Mr. Caswell** said he has appeared before the committee many times during the past six years and is appreciative to serve the state in the capacity as administrator of OSC. He feels the department has been successful in moving the issues forward on ESA - starting to look at things on rare and declining species - trying to fund it. Also, they are looking at how to protect the life style of the people of this state and at the same time do good conservation, bringing private land into that mix. He is quite proud of the activities and honored to be recommended by the Governor.
- Chairman Schroeder** said he appreciates the work Mr. Caswell has done for the state and the OSC and wished to compliment him on that.
- Senator Langhorst** expressed his appreciation to Mr. Caswell for the work he has done and also for bringing the right people together on OSC issues.
- The **Chairman** thanked Mr. Caswell and said voting would take place at the next meeting, Friday, February 16.

**ANNOUNCE-
MENTS:**

Chairman Schroeder announced that in the committee's blue folder, there are several handouts. The first is Mr. Caswell's appointment information. The second one is a draft of a rule on deer and elk tags by the Fish and Game. There is a followup from DEQ on H 31. Also, the motions that were made on agency budget requests on Monday have been included for your review.

TESTIMONY:

The Chairman invited Ms. Jane Wittmeyer from Intermountain Forest Associates to speak to the committee regarding their support for one of the Department of Lands' budget requests.

Inserted into the minutes is a copy of Ms. Wittmeyer's testimony.

The Intermountain Forest Association (IFA) supports funding for the Idaho Department of Lands (IDL) Fire Preparedness budget as approved by the Land Board in 2006. The original IDL budget request for the Fire Preparedness budget was **\$928,100, of which \$477,200 was designated for a one time appropriation of general funds and the balance - \$450,900 - would be an annual request for 10 years.** The annual request is needed to bring the aged fire fighting equipment fleet back to acceptable safety standards. These General Fund dollars would be used only for replacing critically necessary wild land fire fighting equipment.

The total \$928,100 is needed to immediately begin replacement of aging equipment such as fire engines, pumps, repeater control stations equipment, portable radios and mobile radios needs to be replaced. Safety of wild land fire fighters is critical and the aging fleet puts them at risk.

By funding these purchases with General Fund dollars, the Dedicated Fund, which represents fees paid for by private sector forest land owners (\$.55/acre and \$20/improved parcel) can continue to pay for the successful "initial attack". These "boots on the ground" put fires out before they get big. This initial attack effort keeps State wild fire suppression deficiency payments paid by the General Fund down.

For instance, if initial attack wild land fire fighters kill a fire when it is from 1 to 10 acres, the cost of putting the fire out is, on average, about \$3,500; if fire fighters get to a fire when it is between 10 and 99 acres, it costs about \$58,000 to fight; if they get to a fire between 100 acres and 300 acres, it costs \$213,000, on average, to put out. If the fire escapes and a Type 1 Fire Team is called in, the cost immediately goes to \$1 million.

Last year, Idaho spent \$5 million on fire suppression, paid for by the State General Fund through deficiency warrants. **Having well trained fire fighters, with safe equipment and safe fire engines is a good insurance policy against larger general fund payments for fire suppression costs. Thank you for the opportunity to provide this information to you and to the Committee.**

Chairman Schroeder thanked Ms. Wittmeyer for her testimony.

S 1086

The **Chairman** said at this time the committee would hear S 1086 and welcomed **Chairman Stevenson, Chairman of the House Resources and Conservation Committee**, and also a sponsor of this legislation.

Chairman Stevenson presented S 1086. He said that he hoped it would be presented in such a way that would bring understanding and be successful in passing this legislation.

He stated that the meat of this legislation is on page 2, item 7, lines 42-52. It talks about the commission tags, the purpose, and how they would be administered. It somewhat mirrors the big horn lottery tags and the purpose is somewhat the same - trying to generate funds for the Department and the Sportsmen's funds would not have to be used for wolf management. On page 3, line 6 and line 26, the word wolf has been inserted. On line 34, wolf tag has been inserted. Page 5 identifies the gray wolf tag and the costs. Resident tags are \$9.75 and non resident tags are \$150.00. Both mirror the bear and lion tag fees and it is the intent of this legislation that that will be the fee that is charged now. In the short term, it will help, but in the long term, it may need to be adjusted. The one thing we don't want to do, the Chairman said, is send to the Wildlife Service a message that wolves would be managed inconsistent with what we do with bears and lions. Chairman Stevenson said that concluded his remarks and yielded to **Representative Fred Wood**, one of the co-sponsors of this bill.

Representative Wood said he wanted to try to make sure everyone has a reasonable perspective about what is being done. He said there would be a lot of political rhetoric in the next couple of months about this issue. Some will be used by various organizations for fund raising purposes and some will be used for political positioning for future campaigns. Since 1996, the Fish and Game Commission has brought under management two previous species of concern. In 1996, river otter were not harvested by trapping. In 1996, sandhill cranes were not harvested. Since that time, a management program has been developed and has shown responsible management with a trapping season and hunting season. He said those populations are at least as strong, or stronger, than when the management projects were started.

Representative Wood said he wanted to talk next about biology. Wolves are going to continue to have significant numbers in Idaho. The traditional hunting methods that will be employed are not going to significantly affect wolves from a biological perspective. What's going to affect it is prey-based populations. Prey-based populations will stabilize wolves - management by humans will not, because only traditional methods will be used - shooting them with rifles and trapping them in certain areas. Those two methodologies will not biologically affect the wolf population. Poisoning would be the only way to really affect the wolf population, but that is not going to be done. Representative Wood went on to say that wolves are here to stay, no matter what we do.

Representative Wood said several factors were taken into consideration regarding the managing of large carnivores. (1) Prey populations; (2) geographical areas; (3) carnivore populations; (4) interaction between the

carnivores - bears, lions, and wolves (they all eat the same thing); (5) public safety; (6) significant private property concerns (what the carnivores are doing to livestock, etc.). It is a process and will not be based on anything but sound management as the Commission and the Department of Fish and Game knows sound management. In closing, Representative Wood said that there are people who believe that wolves should not be managed at all; there are people who believe wolves should be eliminated, but neither is going to take place. He feels it is important to let the U.S. Fish and Wildlife Service know, and everyone concerned, that these animals will be managed in an appropriate scientific fashion as we know it today. That concluded Representative Wood's remarks.

The next part of the program will be a PowerPoint presentation by the Office of Species Conservation regarding S 1086.

Due to equipment malfunctioning and the need to work on it, Chairman Schroeder asked **Ms. Sharon Kiefer, Legislative Liaison for the Department of Fish and Game**, to talk about the draft of a rule that will replace the one that was rejected in committee. Hopefully, by the time Ms. Kiefer has responded to the Chairman's request, the equipment will be operating.

Ms. Kiefer said the committee members have been given a copy of the draft. A component of the rule that was rejected had to do with outfitter allocation. They have been working with IOGA and publically scoping this revision to see if it addresses the concerns. The change is under 02. Controlled Hunt Areas. e.i. It states "The number of allocated tags available within the controlled hunt area will be no less than one (1) tag and no more that three percent (3%)." Senator Cameron inquired as to what percent was the allocation prior to the rule change. Ms. Kiefer said it was a maximum of three percent, based on a sliding scale. Senator Cameron said that the committee disagreed about moving it to six percent (6%). Senator Cameron just wanted it verified that it is being returned to three percent and the only change is that there will be no less than one tag or no more than three percent. Ms. Kiefer said that Senator Cameron understood it correctly. Senator Cameron stated that it meets within his desires. There was no more committee discussion regarding the draft of this rule.

Mr. Jim Caswell, Administrator for the Office of Species Conservation, addressed the committee (without the aid of the PowerPoint presentation) regarding wolves in Idaho. He apologized for the technical glitz.

Mr. Caswell said he would talk about two things - the first is regarding the status of the wolves:

- 650 wolves
- 71 confirmed packs
- 41 breeding pairs in Idaho
- 180 pups thru 2006
- population growth rate of 20%

As of December, the department had 99 collars out on 54 of the 71 packs.

This year's total mortality, in terms of control, is 69 wolves killed. This is a summary in terms of status. The colored map shows where the packs are and is accurate thru 2006.

Mr. Caswell talked next about the proposed rule that the Fish and Wildlife Services made public in the federal register a week ago. That rule initiates a 60 day comment period and there will be public hearings. For Boise, it will be held March 6 and March 8 for Spokane. Hearings will also be held in Cheyenne, Helena, and Salt Lake City. Mr. Caswell said he expects there will be thousands of comments. He stated it is possible to have a rule done by next year. There are two important features of the rule - Scenario A and Scenario B.

Scenario A is the description of the distinct population segment (DPS) and that's what is important about the maps. If Wyoming has an acceptable wolf management plan, then the whole area would be delisted under this proposed rule.

Scenario B is that if Wyoming continues to retain their status quo, then the delisting would occur for Idaho and Montana. One map shows a triangle where the wolves are and the area outside the triangle, although within dispersal range, it probably is a range where wolves will probably not sustain themselves. The National Park in the corner of Wyoming is still under federal management and would remain listed under the 10(j) rule.

The Wildlife Service is asking for comments on three things:

- approach to delisting Northern Rocky Mountain Wolf population;
- intention to use Section 6 of the Act to allow adjacent states with service-approved wolf management plans to assume wolf management responsibilities;
- if the proposed DPS should include more or less than the eastern third of Washington and Oregon and a small portion of northern Utah.

These three things will be asked on March 6 at the Grove Hotel. From 3-6 p.m. is an open house affair and 6-8 p.m. is set aside for public comments.

That concluded Mr. Caswell's testimony.

Chairman Schroeder said that he asked the Department of Fish and Game to explain how they manage bears and lions - two large carnivores. Responding to that request was **Mr. Jim Unsworth, Bureau Chief of Wildlife for the Department of Fish and Game.**

Mr. Unsworth said he was asked to talk about what it means to manage bears and lions. He stated that the department is in the process of preparing a species management plan for wolves. They have it for black bears and mountain lions. They analyze the biological information, set objectives for the species and set zones. They have check points and

specific objectives for different areas - and this is what they are doing now with wolves.

He said wolves are different because they will always be managed within the framework of the state Wolf Conservation Management Plan. Within that plan, there will be a minimum number of 15 packs, having wolves in areas that will not be in conflict with other uses; long-term survival; depredation and coordination with Wildlife Services; identify a plan (a requirement) for federal funding; and also identified that they would cooperate with the Nez Perce Tribe on any management with wolves in the future. He said hearings will be held on the plan and they hope to present the plan to the Commission in November.

He then explained how bears and lions are managed in the state. There are seasons, zones, limits, and tags. A mandatory harvest report is required. Within 10 days of a kill, the hide and skull is taken in and a tooth is removed for aging. The hide is tagged for export rules. Bears and lions are challenging to manage because they are hard to count so most of the management is on the harvest end. It is estimated that about 10 percent of the population is harvested. The annual harvest on bears is 2,300 and they think there are about 20,000 bears in the state.

They have a memo of understanding (MOU) with Wildlife Services on bears and lions to deal with depredation and wolves will likely be added to that. There are statements within statutes regarding protection of private property and protection of livestock. You don't need a tag when this occurs. Another part of the bear and lion management is how bears and lions are impacting ungulates. That is tracked very closely and they feel that they do a very good job of surveying the deer and elk populations in determining if they need to be more liberal or more conservative. A likely framework for wolves will be continued monitoring, at least five years post delisting, as long as federal funding keeps up. If federal funding goes away, then monitoring would be at a lower level. They would make sure there are 15 packs and not be forced into re-listing the animals. They are working with the Tribe on developing some new techniques that don't require so intense management and telemetry. Every year, population estimates will have to be obtained.

As far as harvest goes, a mandatory reporting program will be required, just like bears and lions. A zone system will likely be required, similar to the elk zones. Some areas may have quotas, other areas - no quota. A variety of different techniques may be used. Everything from general hunts (everyone has a tag) to controlled hunts (limited tags). Probably the way they will start out will be a general tag combination with a quota. Methods of take would be rifle hunting. After an evaluation, trapping might be considered.

He said coordination with Wildlife Services will continue. The 10(j) rule provides quite a bit of latitude for livestock producers. They would continue to have WLS address specific depredation problems. As far as reimbursement, there are private funds that are reimbursing producers for documented lost livestock. There are some federal funds that are

allocated thru the counties. Mr. Unsworth is not sure how that will work in the future. Depredation hunts might be allowed in the future as another tool. They suspect there will be people who specialize in wolf hunting, similar to the bear and lion specialized hunters.

The whole program will be under an adaptive framework, not knowing what kind of harvest rates to expect.

That concluded Mr. Unsworth's testimony.

QUESTIONS:

Senator Cameron asked if it is correct that there is nothing in the bill to prevent a rancher/farmer from killing a wolf if it is harassing his livestock. Mr. Unsworth that is correct.

Chairman Schroeder inquired as to what would happen if the Nez Perce Tribe does not agree with the management action of Fish and Game. Mr. Unsworth said there are situations now where the Tribe does not agree with management, but the Department moves forward with management.

Senator Langhorst said one of the provisions of the bill allows for the auctioning off of ten tags. He asked how will the tags draw any kind of money if people can buy a tag for \$9.75. Mr. Unsworth said the first few will be valuable for just being first.

Senator Little then asked the bill sponsors if it is envisioned that the auction tags be somehow special and asked how the value would be gotten. The fiscal note mentions that potential of \$10,000. Chairman Stevenson replied that what they envisioned would be that a Foundation would do an advertizing blitz and have it as a specialty thing, drawing in perhaps people from out-of-state, or others, that would be willing to make that kind of an investment for the opportunity for hunting a wolf in Idaho. Chairman Stevenson said that is what he envisions but the Commission might have other ideas.

Vice Chairman Pearce asked Mr. Unsworth how many black bears were in Idaho 10 and 20 years ago. Mr. Unsworth said they harvest bears at about a 10 percent rate. Vice Chairman Pearce then inquired about mountain lions. Mr. Unsworth said they estimate there are between 3,000 and 5,000 mountain lions. He feels the peak was in 1997-98, based on the harvest. They harvested about 800 statewide. Now, the numbers are down to 350. Lion numbers track closely with the mule deer population. The late 80's and early 90's, there were strong deer populations.

Vice Chairman Pearce then inquired about the wolf being designated as a big game animal. He said the Code alludes to the wolf as a predator. It has been said the Code does not need to be changed to accommodate wolves. Mr. Unsworth said the Code says a producer can protect his private property from bears, lions and other predators. The predator statement is a general definition that would include wolves. In the future, the word wolves could be added.

Mr. Dallas Burkhalter, legal advisor for the Department of Fish and

Game, said the Fish and Game Code, 36-201, defines predatory wildlife and mandates five species that have to be included. In 36-1107 b, is the section that says a livestock owner can take without a permit a bear, lion or other predator. His reading of those sections, whether carnivore or predator, is a fairly broad term. **Senator Little** read Code 36-201 and asked because it is not in Code, but an approved management plan, is that how wolves are covered. Mr. Burkhalter replied that because of the approved state management plan and the Commission's action two years ago, IDAPA 13.01.06 (Chapter of Rules where the Commission classifies various types of wildlife), the Commission classified the wolf, at that time, as a big game animal in the anticipation of the delisting process. His recollection was one of the option of the plan to classify them as a big game animal. This was done two years ago. Sen. Little said the part of the Code that addresses specifically predatory wildlife gives authorization to the feds. They are classified by the Commission as a big game animal. **Ms. Sharon Kiefer** said that predatory wildlife is the specific definition that includes these specific animals. Out of it, 36-1107 b, there they are not using the term predatory wildlife and there is a reason. They are using the word predator - used in a broad, generic sense. **Senator Stennett** asked, if after delisting, does a hunter (bird, deer or bear) need to have a tag. Mr. Burkhalter said the question has come up of self defense and defending property. There is no state code or commission rule specifically dealing with self-defense. There is a court law that says a person has the right to defend themselves. Senator Stennett inquired if we needed a state law. He feels we need guidance, since we are in new territory. **Mr. Burkhalter** said they should look to the Department to address that after delisting. Mr. Unsworth said that was a short-coming of the 10(j) rule that people couldn't protect their hounds. When the state maintains total management, they could provide a provision to maintain protection of dogs. They would do it carefully. **Senator Stennett** said he would like a timeline and clear direction to sportsmen.

Representative Wood said that first of all, it's important to know why the wolf was listed as a big game animal. It was listed this way so that Idaho would not be in the situation as Wyoming is in. Wyoming wants to list it as a predator. He said we wouldn't treat it differently, but listed it that way, and it does not change the management.

Representative Wood went on to say that the second most important thing now is to get the wolf delisted. If we start making state law about defending personal property and defending dogs - that sends a bad message. Let's get the animal delisted then change the state law.

Chairman Schroeder said to followup on Mr. Burkhalter's statement regarding the right to defend yourself, when it is out of season, you turn the animal over to the state.

TESTIMONY:

Dennis Tanikuni, Assistant Director of Public Affairs for the Idaho Farm Bureau Federation, said he wanted to state the Bureau's support for S 1086. They think it is an important initial step in the wolf management of Idaho and the preparation for delisting.

TESTIMONY: **Nathan Helm, Executive Director, Sportsmen for Fish and Wildlife Idaho**, expressed support for this legislation.

There was no further public testimony.

Senator Little said he wanted to talk more about the code amendment. The money from the auction of the tags goes to entities that are in the business of conserving that specific species. He asked if it was the intent of this legislation that a premium off these tags goes to - as an example - Defenders of Wildlife. **Chairman Stevenson** said it is not the intent that it would be used there. Some discretion has to be left to the Commission and the Department that those funds would be used in the management of the wolf program in the state. **Senator Little** said if it is dedicated to wildlife conservation, he would like an example. **Chairman Stevenson** said that if the tag was given to the Elk Foundation, that money would be used to help manage wolves to enhance the elk habitat or elk population in that particular area. That is how he envisions this. **Chairman Schroeder** added that the word conservation means "wise use". **Senator Little** asked why the money couldn't be given to the Department. **Chairman Schroeder** said they would get 95 percent. He also said that if a national organization with a national following wants to promote a wolf hunt in Idaho and go thru the time and effort to do that at a national convention, by auctioning off a wolf tag, it brings us a lot of money that we would not otherwise get.

Representative Wood said his understanding of this legislation is that it gives the director of the Department discretion as to who actually gets to advertise for this tag. He said he could not imagine any Director or Commission giving tags to Defenders of Wildlife. We have to trust our Director and Commissioners. The organization gets to keep five percent (5%) for the work they do.

Senator Langhorst said he has received several emails from people who are concerned about the auction tag part of this bill and the question they raised (they were from SE Idaho) was their concern regarding Utah. He asked why the concern. **Chairman Stevenson** said one and a half years ago, he toured one of the Utah hunting preserves. That was a case where tags were being sold for Foundations and other things. The **Chairman** said the reason the Commission and Department wanted this is because rulemaking is started early in the session. This gives them the tool needed in their rulemaking. **Senator Langhorst** said the Utah situation is perceived as a large percentage of very limited tags being auctioned off and that is the heartburn.

MOTION: **Vice Chairman Pearce** made the motion to send S 1086 to the Floor with a do pass recommendation. It was seconded by **Senator Langhorst**. The motion passed by a majority vote. Senator Little voted nay. **Chairman Schroeder** will be the sponsor of this bill.

ADJOURN: **Chairman Schroeder** thanked the committee for all their hard work and thanked all the guests who presented the program and testified. He adjourned the meeting at 2:55 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 16, 2007
TIME: 1:30 p.m.
PLACE: Room 433
MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, and Siddoway
MEMBERS ABSENT/ EXCUSED: Senators Stennett and Langhorst

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

The Chairman said the committee would give consideration to the Gubernatorial appointment of Jim Caswell as the Administrator of the Office of Species Conservation.

After discussion, **Senator Little** made the motion to approve the Gubernatorial appointment of **Mr. Jim Caswell** as Administrator of the Idaho Office of Species Conservation. **Senator Andreason** seconded the motion. The motion passed by unanimous **voice vote**. **Senator Little** will sponsor Mr. Caswell's appointment.

Chairman Schroeder said the next two bills on the agenda, S 1055 and S 1087, is legislation that he is sponsoring. Because of that, he **passed the gavel to Vice Chairman Pearce**.

S 1055

Senator Schroeder said the purpose of S 1055 is to help off-set the high costs of the simulated wildlife used in enforcement activities. He provided a handout, 2004 Product Catalog, Decoys & Accessories to the committee and suggested they look at the cost of replacements. He stated there are two issues involved. The first issue is safety. At times, wildlife is around people's ranches, yards, and fields. The Fish and Game gets complaints from citizens about people stopping along the road and shooting animals in their areas, with bullets flying quite close. The second issue is to try to stop people from shooting across roads, shooting at night, and spotlighting the animals. This is why there are enforcement actions on simulated animals. The decoys are strategically placed to detect and defer unlawful hunting acts. If someone is legally hunting and unknowingly happens upon a simulated animal and shoots it, there is no fine. This legislation would give a judge the latitude to assess the amount of the fine, \$50 or more, for the repair or replacement of the simulated wildlife.

A question was asked if the number of shots fired had anything to do with the citation. Senator Schroeder deferred that question to **Ms. Sharon Kiefer, Legislative Liaison for the Department of Fish and Game**. Ms. Kiefer said it is not the act of shooting the simulated animal itself, but other unlawful acts that are being committed in the course of that shooting. For example, if someone is shooting across a highway, that may only take a shot for the officer to approach someone. If it is a different type of violation, it may take more shots for an officer to feel that he has a probable cause and evidence to make a case. The case is not made on shooting at simulated wildlife, the case is made on a violation while shooting at simulated wildlife.

Senator Siddoway inquired about the amount of a typical fine and also asked as to where the fine money goes. **Ms. Kiefer** responded that fines vary from \$25 to \$1,000 and judges have the discretion to have the money directed to the Fish and Game account, but doesn't know if it is mandated automatically. She said that she would do some research and get back to him with an answer.

Chairman Pearce said Ms. Kiefer had signed up to testify, and perhaps some of her testimony would enlighten the committee.

Inserted into the minutes is **Ms. Kiefer's testimony**.

TESTIMONY:

Chairman Schroeder and Committee:

The Idaho Department of Fish and Game Commission approved a motion during their legislative conference call on February 7 supporting Senate Bill 1055.

Currently, there is no law requiring courts to impose restitution from those convicted of unlawfully taking or attempting to take simulated wildlife. Occasionally, a Magistrate may choose to impose restitution and order a defendant to pay a certain amount to be deposited in the IDFG Enforcement Trust Account. This bill would create a minimum restitution of \$50 in addition to the penalty prescribed by 36-1402(b) or 36-1402(d) which deal with misdemeanor penalty and license revocation.

IDFG officers have issued 20 to 25 citations each year over the last five years for violations of 36-1101(b) 7. Simulated wildlife are used to detect and deter unlawful hunting acts, such as trespass, shooting from the road, spotlighting and closed season hunting in areas of either known or habitual violations or in areas responding to landowner complaints. The financial support from restitution enacted by this bill will help fund the repair and replacement of parts in a timely manner and will assist the Department in continuing our enforcement mission of detection and deterrence.

The department owns several deer, elk and moose decoys. Each enforcement district may have 2-4 deer and an elk decoy. The majority

of these are built by our officers. They often take several days work to complete and material costs include up to \$700 for taxidermy forms, up to \$600 for tanning hides and up to \$450 for mechanized parts. Typically, hides and antlers are either from salvaged wildlife or obtained from seizures. Commercially manufactured robotic wildlife decoys are even more expensive.

Replacement and repair of simulated wildlife varies. A rifle shot in the right place will damage the mechanical parts with a single shot. Normal wear requires the mechanics to be replaced every 2-4 years and hides replaced every 4-6 years. Depending on use, the forms may last many years and can be repaired with new hides and mechanics installed several times.

A fee for restitution to repair the damage to simulated wildlife is analogous to the restitution fee noted in 326-1407 for processing big game for conviction of illegal killing, illegal possession, or illegal waste of game animals. In both cases, there is a defined restitution for work that must be done as a result of the offense, whether it is repairing simulated wildlife or processing meat.

TESTIMONY: **Mr. Nate Helm, Executive Director, Sportsmen for Fish and Wildlife Idaho**, supports S 1055, and anything they can do to encourage law enforcement to provide presence to remove the people that are breaking the law, they support that kind of activity. He also supports having the offenders pay.

DISCUSSION: **Senator Siddoway** questioned the need for **S 1055** since the judges have levity. **Senator Schroeder** said this bill directs an assessment for the repair on simulated wildlife and provides that the judge shall assess \$50 or more, not what the judge might want to do. The intent of **S 1055** is to stop poaching and destruction of simulated wildlife.

Senator Little said he had done some research as to where the fine money goes. The general fund receives two and one half percent (2 ½%); ten percent (10%) to Search and Rescue; twenty two and one half (22 ½%) goes to District Court; and sixty five percent (65%) goes to Fish and Game. That is how the fines are currently apportioned. Spotlighting is classified as flagrant and one conviction on that - a person could lose their license. Ms. Kiefer was asked if judges had imposed this and she replied that she would review the cases and see what judges have done.

MOTION: **Senator Coiner** made the motion to send **S 1055** to the floor with a do pass recommendation, seconded by **Senator Andreason**. There was further discussion of penalties and teaching youth not to abuse the decoys and hunting privileges. A roll call vote was requested. Voting aye were Senators Coiner, Andreason, Cameron, Pearce, and Schroeder. Voting nay were Senators Siddoway and Little. Absent were Senators Langhorst and Stennett. (5-2). The motion **passed by a majority vote**. **Senator Schroeder** will be the **sponsor**.

S 1087

Senator Schroeder said S 1087 would eliminate term limits for the Fish and Game Commissioners. He feels the Governor should be able to have the team he wants to help him do the best job he can for the state of Idaho. If he wants to appoint someone that has already served two terms because it will help him do his job, he should be able to do that. Senator Schroeder said that was his rationale for bringing this legislation forth. There are 170 Boards and Commissions and 27 had some kind of term limits.

TESTIMONY:

Ms. Kiefer said that the Idaho Fish and Game Department has not taken a position on S 1087.

There was no other testimony.

MOTION:

Senator Andreason made the motion to send **S 1087** to the floor with a do pass recommendation, seconded by **Senator Coiner**. **Senator Cameron** voiced opposition to S 1087. His remarks were: "There is some argument for institutional knowledge, but there is also an argument for new ideas and new thoughts, people that are willing to challenge the status quo. If we didn't ever have any new thoughts, we would just keep government the way it is, processes the way they are. It is nice to have new people on the Commission now and then and to say-'why can't we do this or why are we doing it that way?' It is healthy to have that opportunity." He went on to say that this bill is not a good idea and "if it's not broke, don't fix it."

A roll call vote was requested. Voting aye were Senators Coiner, Andreason, Pearce, and Schroeder. Voting nay were Senators Siddoway, Little, and Cameron. Absent were Senators Langhorst and Stennett. (4-3) The motion **passed** by a **majority vote**. **Senator Schroeder** will be the **sponsor**.

Chairman Schroeder thanked **Vice Chairman Pearce** for chairing the meeting during the discussion of the two Senate bills. The Vice Chairman then **returned the gavel to Chairman Schroeder**.

PRESENTATION:

Chairman Schroeder said before them now is a group of people who will talk to the committee about "Landowner Conservation Initiatives" and welcomed Senator Noh, spokesman for the group.

Former Senator Laird Noh offered some introductory remarks about the Idaho Ranch, Farm and Forest Protection Act. It is a grassroots initiative with broad and diverse support. He is the facilitator for a four member steering committee for this group. This group has a very large base, and is made up of the following: Idaho Cattle Association; Idaho Conservation League; Idaho Farm Bureau; Idaho Forest Owners Association; Idaho Grain Producers Association; Idaho Sportsman's Caucus Advisory Council; Idaho Wool Growers Association; Land Trusts in Idaho; Potlatch Corporation; Rocky Mountain Elk Foundation; Sportsmen for Fish & Wildlife; Trust for Public Land; The Nature Conservancy and a number of individuals. This group came together in 2005 committed to protecting Idaho's rural heritage and its working ranches, farms and forests. The group has a workable plan that will be

introduced in the Legislature to ensure that working lands remain working and to reward good stewards of the land.

Senator Noh provided a packet of information to each committee member. One item was RS 16897C1 which will be introduced at a later date in the House Revenue and Tax Committee. This legislation is intended to help keep Idaho's rural working lands working. It would provide a tax credit to owners of agricultural and forest land who voluntarily agree not to develop lands important to fish and wildlife. A landowner who meets the criteria set by the advisory committee will receive a transferable income tax credit equal to 50% of the appraised value of this voluntary conservation donation, with a maximum credit of \$500,000. He said this RS has a cap and a unique set of safeguards relating to the tax credit.

Chairman Schroeder introduced **Mr. Jim Little**, an Idaho rancher and landowner, who spoke about the need for a conservation tax credit.

The **Chairman** welcomed **Ms. Suzanne Schaefer**, Legislative Advisor for the LCI Steering Committee. She presented a PowerPoint program entitled Idaho In 2025. Inserted into the minutes is information that Ms. Schaefer referred to in her presentation.

Ranch, Farm and Forest Protection Act

1. Findings and Intent (Section 1): The proposed tax credit will help keep working lands working and provide the State of Idaho a tool to meet its wildlife objectives.
2. Tax Credit for Voluntary Conservation Donations -63-4503(1): A taxpayer who makes a voluntary conservation donation to a qualified sponsor shall be allowed a tax credit of 50% of the fair market value of the donation. The tax credit cannot exceed \$500,000 per donation.
3. Fiscal Cap -63-4505(6): The total amount of conservation tax credits allowed shall not exceed \$3 million per year.
4. Voluntary Conservation Donation -63-4502(6) is the donation of a conservation easement. Landowners can choose the duration of the conservation easement from 5 years to perpetuity. The donation must ensure that the land can continue to be used for agriculture and forestry.
5. What lands are eligible -63-4502(2): The credit applies only to lands that are actively devoted to ranching, agriculture, and forestry purposes.
6. Who Can Receive the Donation -63-4502(4): government entities and established land trusts that comply with national standards.

7. Wildlife Objectives -63-4503(3): To qualify for the tax credit, a voluntary conservation donation must protect land important to fish, wildlife, or plants, further State wildlife plans, or meet criteria set by an advisory committee.
8. No Tax Credit Where Donation Is Required for Zoning Approval or Other Permit -63-4505(8)(d): If the conservation easement is needed to satisfy a zoning or other permit requirement, it is not treated as a voluntary conservation donation.
9. Transferability -63-4504: The credit may be transferred to other taxpayers.
10. Conservation Tax Credit Advisory Committee -63-4505: The Governor appoints seven-member advisory committee. The committee develops procedures and priorities, reviews proposed uses of the tax credit, and coordinates with the State's wildlife programs. The committee prepares an annual report to review program effectiveness.
11. Application -63-4505(7): Taxpayers must submit an application for the use of the credit. The application explains how the voluntary conservation donation meets the objectives of the law.

**The Idaho Ranch, Farm and Forest Protection Act
FREQUENTLY ASKED QUESTIONS**

February 2007

How would The Idaho Ranch, Farm and Forest Protection Act work? This proposal will help keep Idaho's working lands working. Under the proposal, a landowner would agree not to develop land in exchange for a state income tax credit. The landowner would receive a state income tax credit equal to 50% of the appraised value of the voluntary agreement, with a maximum credit of \$500,000. The landowner could then sell the tax credits or use them against personal income tax.

Idaho contains more than 60 percent public lands. Why do we need to protect private lands? Private working lands – the state's ranches, farms and forests – provide an irreplaceable resource for all Idahoans. These lands are the foundation of much of the state's rural economy. These working lands provide clean water and wildlife habitat that is so valued by all Idahoans. These lands and waters include some of the state's highest quality steelhead and salmon spawning habitat and some of the most important winter range for mule deer, elk, moose and other big game. These rural lands also preserve a heritage and a way of life cherished by the majority of the citizens in our state.

How will the proposed act work? Our proposal is essentially a targeted tax cut to landowners who choose to keep our working farms and ranches working. This program will provide an incentive to ranchers, farmers, and forest owners to protect Idaho's wildlife, water quality, and rural heritage.

How are private property rights protected in the legislation? The proposed legislation protects working farms and ranches using free market real estate transactions between willing buyers and sellers. The marketplace is the arena for conserving land by respecting private property rights. Condemnation and the state power of eminent domain cannot be used.

Why should landowners receive an incentive to stay on their land? Private working ranches, farms, and forests provide many public benefits including clean water to drink and habitat for wildlife. In addition, they preserve the state's rural heritage and quality of life. Idahoans will lose many benefits from clean water, wildlife, recreation, and quality of life if we do not provide incentives for landowners to keep working lands working.

Family farms, ranches, and forests are the lifeblood of Idaho's rural communities, providing the economic base of many rural communities. Study after study has shown that agricultural lands provide net revenue to the county tax base, while residential development costs more in services than it pays in taxes.

How does it help to protect working lands? How does it work? This proposal is for a transferable tax credit. That means tax credit recipients can sell their tax credits allowing traditional land-rich, cash-poor ranchers, farmers, and forest owners to capitalize on their investment in land while continuing to work that land. It's a win-win for all Idahoans and for future generations who will someday enjoy the same Idaho we all appreciate today.

Ranch, Farm and Forest Protection Act Statement of Need

Why is a conservation tax credit needed? The Ranch, Farm and Forest Protection Act will keep Idaho's rural working lands working and give the State of Idaho a tool to meet the State's most important wildlife objectives, including its efforts on rare and declining species. The tax credit will also help Idaho landowners deal with possible land use requirements from federal laws.

How would the proposal work? This proposal would provide a state income tax credit of up to 50% of the value of voluntary donations of conservation easements. To qualify, these voluntary donations would have to further state wildlife objectives or include important fish and wildlife habitat. The tax credit would be capped at \$500,000 per donation. The conservation easement must be for a term of at least fifteen years. Each use of the tax credit would be reviewed by a governor-appointed committee to ensure that it meets the State's objectives. Importantly, the tax credit would be transferable - that is recipients of the credit who do not have a high tax liability would be able to sell the credit to other taxpayers who could use it to off-set their taxes.

Why now? Growth is transforming Idaho's rural landscapes. During this decade, Idaho's growth rate has ranked third in the nation; in the 1990s,

Idaho's population grew 28.5%. In the next 25 years, Idaho's population is forecast to grow by 52%. As subdivisions replace farms, ranches, and forests, existing habitat for wildlife is fragmented or destroyed. Private rural lands contain much of the state's big game winter range, wildlife migration corridors, and salmon and trout spawning areas.

Why aren't existing programs enough? The State of Idaho has primary authority and responsibility for managing fish and wildlife within its borders. Acting on this authority, the State, through the Department of Fish and Game and Office of Species Conservation, has developed active wildlife conservation programs that have achieved some notable successes. However, these successes have been achieved largely by using federal funds handed out by federal agencies.

The State of Idaho currently has no significant state-based financial incentives to help private landowners who commit to protect important habitat. Existing federal programs respond to the priorities of the federal government –not necessarily those of the State of Idaho and are insufficient to meet wildlife needs. This situation can leave Idaho's rural landowners with little help when they face pressures to protect species.

When it established the Office of Species Conservation, the Legislature declared: "The state of Idaho must marshal the various resources of the state in a cooperative, consensus-based approach to address the population decline in some of Idaho species." The proposed conservation tax credit would assist the State meet this commitment by offering financial incentives that may help avoid the need for further regulation.

The current federal and state tax deduction, for conservation donations does little to help Idaho's working ranchers, farmers, and forest owners, who are "land rich but cash poor." These Idahoans do not typically have enough income and hence enough tax liability to gain the maximum benefit from a tax deduction. A transferable state tax credit would provide a meaningful conservation incentive for the typical Idaho landowner by allowing them to sell state tax credits for immediate cash.

How is the conservation tax credit linked to the State of Idaho's wildlife objectives? To qualify for the tax credit, landowners would have to demonstrate how their proposed voluntary donation would further the State's species conservation plan and projects, protect important wildlife habitat, or meet other State objectives.

What is the public benefit of the tax credit? A conservation tax credit would give Idaho its first significant state funding source to meet its key wildlife objectives.

The reasons to conserve wildlife are not easily translated into dollar figures. But, wildlife conservation does provide important economic

benefits. The annual economic output of hunting, fishing, and other wildlife-based recreation in Idaho is estimated at more than \$1.5 billion. Moreover, the failure to conserve wildlife is expensive. Each new Endangered Species Act listing imposes significant costs on private landowners, natural resources industries, and state agencies.

The fate of our wildlife and rural landscapes is important to Idahoans. In a 2005 statewide survey, Idaho voters ranked protecting water quality, family farms and ranches, and wildlife habitat as their top conservation priorities. More than 70% of likely voters said these conservation goals were either “extremely important” or “very important.” Sixty-eight percent favored the creation of a conservation tax credit, and 62% were willing to pay \$20 or more per year to support rural land conservation.

The proposal calls on landowners to step forward with a significant donation of their own. The proposed tax credit would be for only 50% of the fair market value of a conservation easement donated by the landowner. Thus, the State would simply meet the landowner halfway in protecting some of Idaho’s most significant wildlife lands.

How would the proposal ensure accountability? An advisory committee, appointed by the Governor, would oversee the tax credit. The committee would establish priorities, review and approve proposed uses of the credit, and report annually on the program’s effectiveness. The committee would also recommend any needed changes. The proposed legislation sets an exceptionally high standard for accountability.

Who would use the credit? The tax credit would be available only for the owners of working agricultural and forest lands, based on their property tax classification. In order to receive the credit, these lands must remain available for agriculture and forestry.

There is great demand among Idaho’s rural landowners for conservation incentives — as demonstrated by Idaho’s experience with the Farm Bill’s Grassland Reserve Program. In 2004, 130 Idaho ranchers applied to participate in the program, which pays ranchers for conservation easements on working ranchlands. Only three of the applications were accepted due to budget constraints.

How would this proposal affect state revenue? The total amount of the tax credit authorized by the advisory committee shall not exceed \$3 million. The actual amount claimed will on how many of Idaho’s rural landowners choose to make conservation donations and whether these donations meet the State’s wildlife objectives.

What are hypothetical examples for the use of the tax credit?

Hypothetical 1: A Keystone Farm. The Jones family has harvested wheat

and timber on their land since the late 1800s. For years, they have watched with a sense of disquiet as subdivisions and “trophy” homes have popped up on nearby ridges and valley bottoms. Joe Jones is 54 years old (the average age of Idaho farmers). His eldest son wants to continue the farming tradition. His younger son is pursuing a career in Coeur d’Alene. Joe Jones knows that much of the value of his land is tied to its development potential. But, he also knows that he cannot realize that value unless he sells the farm for subdivision-an idea he hates.

The Jones Farm abuts national forest land and sits astride a critical migration corridor that elk use to reach their summer and winter ranges. It is not uncommon for the Joneses to see 200 elk at a time sheltering on their lands. The Idaho Department of Fish and Game has long understood that the Jones Farm is a keystone tract for the regional elk herd.

After talking with his family, Joe Jones voluntarily donates the development rights on his land to the Rocky Mountain Elk Foundation. The donation ensures that the land remains a working farm and is never subdivided. He submits an application to the Conservation Tax Credit Advisory Committee, which finds that the donation provides important wildlife benefits and deserves a tax credit worth 50% of the donated rights. Because Mr. Jones does not have a high income, he decides to use \$20,000 of the tax credit to off-set his state income taxes over the next five years and to sell the remainder through a broker for 85% of its value.

Mr. Jones and his eldest son will use part of the tax credit to retire some of their operating debt. And, part of the tax credit will be shared with the youngest son to offset his state taxes and give him the funds he needs to start a business.

Hypothetical 2: “The Brushy Warbler”. The State of Idaho is working on a conservation plan that would avoid the need to list the “brushy warbler” [not a real species] under the Endangered Species Act. Ranchers throughout the range of the warbler are worried that a species listing will expose them to litigation and could put them out of business. To meet federal requirements to avoid a listing, the plan must demonstrate that existing warbler habitat will be protected. This means the State needs to recruit landowners willing to commit to the plan’s long-term conservation measures. As usual, federal funds are not sufficient to cover the true costs to landowners of the conservation plan.

Rancher Smith wants to continue a multi-generation ranching tradition on her land and is wondering whether she should participate in the State’s conservation plan. This participation would come at a cost:

Rancher Smith will not be able to develop the tracts that include key warbler habitat and she must modify some of her grazing operations. Federal funds will help pay for some infrastructure and vegetation management costs but not for the loss of the land's development value or the impact to Rancher Smith's livestock grazing operation. These impacts reduce the fair market value of Rancher Smith's land by \$300,000.

Rancher Smith signs on to the conservation plan after state officials explain that she can secure a tax credit worth \$150,000 by donating a conservation easement to the State of Idaho that conforms to the conservation measures in the State plan. Rancher Smith's actions will benefit other ranchers by helping to keep the warbler off the Endangered Species Act list. Her step is not unrewarded: the State has used a targeted tax credit to recognize her commitment and provide her with a source of funds to help her stay in business.

Ms. Schaefer concluded her presentation. She said the estimates for the fiscal impact of this will be about \$3 million. A workshop is planned on March 1.

Senator Schroeder asked about access to properties. **Will Whelan, Director of Government Relations for The Nature Conservancy of Idaho**, said they wrestled a lot about what to do with access. They had some good ideas, but decided it was important that it be left to the landowners. There is nothing that requires that public access be granted. However, it does provide some disincentives if someone decides not to provide it. If access is provided, and there is a market value impact on the property as a result of providing that public access, that market value is subject to the credit. It depends on what you give up as to the value of your donation.

Senator Schroeder asked Mr. Whelan to explain to him how he should answer his constituents when they ask him about someone leasing out land, getting tax credits, and no public access. Mr. Whelan replied that each tax credit has to be individually approved, so in order to get it, the application has to say how the donation will benefit wildlife. Tax credits can be carried forward for 15 years.

Mr. Whelan said this is a program aimed at trying to give the state of Idaho a tool to protect some of the most valuable fish and wildlife habitat. Any lands or rights donated are subject to an appraisal made by someone who meets IRS requirements, and licensed by the state of Idaho, and follows the uniform standards of professional appraisal practice.

The plan is to get this legislation started in the House this year.

Sen. Schroeder thanked the LCI group who participated in the presentation and he also thanked the committee for the hard work they are doing.

**ANNOUNCE-
MENT:**

He announced next week's schedule - Monday, in the Gold Room, is a Joint meeting with the House Resources to hear a report on water by the CDR consulting group. Wednesday, in the Gold Room again, there will be some Gubernatorial hearings and also a panel discussion with the Fish and Game Commissioners. Friday, in this room, several bills will be heard.

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

Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 19, 2007
- TIME:** 1:30 p.m.
- PLACE:** Gold Room
- MEMBERS PRESENT:** Chairman Schroeder, Senators Andreason, Coiner, and Siddoway
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Pearce, Senators Cameron, Little, Stennett, and Langhorst
- MINUTES:** This was a Joint meeting with the House Resources and Conservation Committee. **Chairman Stevenson**, House Resources Chairman, chaired the Joint meeting and called the meeting to order at 1:30 p.m. He asked the secretaries to take a silent roll call. The Chairman then welcomed Mr. **Jerry Rigby, Chairman, Idaho Water Research Board.**
- INTRODUCTIONS:** Mr. Rigby said Senate Concurrent Resolution 136, passed by the Idaho Legislature last April, requested that the Idaho Water Resource Board (IWRB) provide a status report and a framework for the plan during this session. The Board is here to report, as per the requirement.
- Mr. Rigby then introduced the other two **Board members** that were present. They were **Leonard Beck** and **Vic Armacost**. Also introduced were **Hal Anderson, Division Administrator** and **Dave Tuthill, Director, Idaho Department of Water Resources (IDWR).**
- BACKGROUND:** Mr. Rigby then provided a background of the report. He stated that after the Resolution was passed, the Board decided the best way to address the request was to hire a facilitation team. The team they chose and hired was Diane Tate and Jonathan Bartsch of CDR Associates. Many meetings were held to frame the issues. The Framework provides an outline of the Comprehensive Plan development process, and offers an opportunity for Legislative feedback on proposed management alternatives. Mr. Rigby said one big issue is continued funding of this process. On behalf of the Board, he said that he would like to request that.
- Mr. Rigby then introduced Ms. Diane Tate and Mr. Jonathan Bartsch of CDR Associates. They provided a booklet to the committee members - Eastern Snake River Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan FRAMEWORK.
- PRESENTATION:** A PowerPoint program was presented. Following is information that was on the slides and to which they directed their remarks.

OUTLINE

- Framework development process
- Stakeholder involvement and input
- Board Recommendations
 - Goal and objectives
 - Management alternatives
 - Interim measures
 - Developing the Comprehensive Aquifer Management Plan
- Request to the Legislature

FRAMEWORK DEVELOPMENT PROCESS

- Project launch in August
- Initial interviews in September
- Public meetings in October
- Management Alternatives Working Group meetings in December and January
- Framework drafted in January
- Public meetings in January to get feedback
- Board review in January
- Presentation to Legislature in February

STAKEHOLDER INVOLVEMENT

- Over 350 interested and involved stakeholders from across the basin
- Significant personal investments of time in the process
- Stakeholder support for continuing with everyone represented at the table

QUESTIONS TO STAKEHOLDERS

- Interim measures - What can we do now?
- Management alternatives - How do the options compare?
- Funding - Where can resources for implementation be found?

STAKEHOLDER INPUT - INTERIM MEASURES

- Focus on overcoming obstacles that could limit recharge, CREP enrollment
- If water conditions permit, recharge in spring 2007
- Action in 2007 is necessary to show forward momentum and keep everyone at the table

STAKEHOLDER INPUT - MANAGEMENT ALTERNATIVES

- Recharge is critical, but can't be the only tool
- Need to continue existing levels of incidental recharge
- What is the role of administrative curtailment?
- Explore option of new storage

STAKEHOLDER INPUT - FUNDING PRINCIPLES

- Everyone who benefits from ESPA 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 from the state, some from ESPA
- The state should be responsible for one-time costs
- Fund activities that “solve the issue”
- Simple and efficient collection

STAKEHOLDER INPUT - FUNDING OPTIONS

- 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 ESPA conservancy district with taxing authority
- Increase annual property tax to build a “water fund”
- Per well fee for domestic well users in the ESPA
- Surcharge for municipal customers in the ESPA
- Statewide per-head tax

BOARD RECOMMENDATIONS

- The Framework document contains IWRB recommendations on:
 - A goal and objectives for aquifer management
 - Management alternatives
 - Interim measures
 - A process for developing the Comprehensive Aquifer Management Plan (CAMP)

GOAL FOR AQUIFER MANAGEMENT

Sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies.

OBJECTIVES FOR AQUIFER MANAGEMENT

- 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

- Spring 2007 Recharge
- Increase CREP Enrollment
- Targeted Demand Reduction

MANAGEMENT ALTERNATIVES

- Managed Recharge
- Incidental Recharge
- Site-Specific Augmentation
- Additional Surface Water Storage
- Conversions - Groundwater to Surface Water

CAMP DEVELOPMENT PROCESS

- Board solicits nominations and forms Advisory Committee
- Committee makes consensus recommendations to the Board

- Committee works with ESHMC and Board staff, contracting for technical assistance as required

ADVISORY COMMITTEE REPRESENTATIVES

- 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)

GOVERNMENT AGENCY EX-OFFICIO

- Bureau of Reclamation
- Idaho Department of Water Resources
- Idaho Department of Environmental Quality
- Idaho Department of Fish and Game
- Idaho Legislature and Governor's office
- US Fish and Wildlife Service
- More?

REQUEST TO THE LEGISLATURE

- Continued leadership and involvement during the next phase
- \$10 million in 2007 for targeted demand reduction through market-based mechanisms
- \$850,000 for continuation of the CAMP development process

That concluded the presentation by Ms. Tate and Mr. Bartsch. Time was allowed for questions from the committee.

ADJOURN:

Chairman Stevenson thanked the presenters and the committees for their participation. He then adjourned the meeting at 3:10 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 21, 2007

TIME: 1:30 p.m.

PLACE: Gold Room

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Coiner, Siddoway, and Stennett

MEMBERS ABSENT/ EXCUSED: Senators Andreason and Langhorst

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m. in the Gold Room. He said on the agenda today, there are three Gubernatorial appointees that are here today for their hearing and also members of the Fish and Game Commission who will participate in a panel discussion.

APPOINTEE: **Donald Chisholm** was reappointed to the **Board of Environmental Quality**. His term is from July 1, 2006 to July 1, 2010.

Mr. Chisholm is an attorney in private practice in Burley, Idaho. The firm focuses on representation of small businesses, real estate, estate planning, municipal law and civil litigation. He received his Bachelor of Business Administration from the University of Portland and his Juris Doctor from the University of San Francisco School of Law. He was formerly the Prosecuting Attorney for Minidoka County and City Attorney for the city of Rupert.

He served on the Board of Health and Welfare from 1999-2000. He was originally appointed to the Idaho Board of Environmental Quality by Governor Dirk Kempthorne on July 1, 2000, and reappointed for a second term in July 2002. His area of expertise/interest is general.

Mr. Chisholm's professional activities include: former Fifth District Bar Association President; former member of the Appellate Rules Committee of the Idaho Supreme Court; former member of the Idaho State Bar Disciplinary Committee; former panelist Idaho State Bar Association Bar Exam Preparation Committee; former member of American Arbitration Association panel of arbitrators for Northwest Region. He has also been very involved in community and public service.

Senator Stennett said he wished to compliment Mr. Chisholm and the Board on the job they have done this past year on the mercury issue and the mercury rule. He feels the state of Idaho is in a better position now. He then asked Mr. Chisholm what he sees facing the Board as a major issue in the next year and the next five years. Mr. Chisholm said much of what they deal with is handed to them by either the EPA or the Legislature

and they act on what is presented. The growth in the state could cause problems in many different ways. He said that he is somewhat skeptical about ethanol being a solution to some of the problems. Too many demands are now being made on land, water, and resources and he feels that better planning is needed regarding those resources. He said there is a need to not impair water quality and air quality of the state. Mr. Chisholm said we need healthy citizens to realize the opportunities that we have here. If we can hold down the cost of health care by having a healthy, safe environment, he feels we will be a lot better off.

The **Chairman** thanked **Mr. Chisholm** for talking to the committee. He then welcomed **Kermit Kiebert**.

APPOINTEE: **Mr. Kiebert** was appointed to the **Board of Environmental Quality** to serve a term commencing July 6, 2006 and expiring July 1, 2010.

Mr. Kiebert is president of Bio-Clear Systems, a private community sewer system serving commercial and residential properties in Bonner County, and president of Natural Resource Services Inc., a consulting firm specializing in logging, road building, construction, excavation, silva cultural management, and specialty wood production.

His career includes service as District 1 Idaho State Senator, director of the Idaho Department of Transportation, and a teacher and principal for the Bonner County School District. Mr. Kiebert graduated from the University of Idaho with a Bachelor of Science in education and completed graduate studies in natural history.

He has an extensive history of public service including the Bonner County Historical Society and the National Heritage Trust Advisory Board. Mr. Kiebert currently serves on the board of the Ice Age Floods Institute. Other public service includes serving as a state senator from 1973-1987.

Mr. Kiebert told the committee he is proud to serve on this board and with his background, he feels it is a good fit. He said that he was pleasantly surprised at Director Hardesty's leadership in customer relations and feels it is very good for the department, especially when customers are faced with rules and regulations that they must follow.

The **Chairman** thanked **Mr. Kiebert** for talking to the committee. He then welcomed **Ford Elsaesser**.

APPOINTEE: **Mr. Elsaesser** was reappointed to the **Lake Pend Oreille Basin Commission** to serve a term commencing July 24, 2006 and expiring July 24, 2009.

Mr. Elsaesser said this Commission is charged with monitoring and making recommendations with regard to water quantity which primarily addresses the lake level in Lake Pend Orielle, and water quality with Pend Orielle and Priest Basin in Bonner and Boundary Counties. He feels they have done well and have gotten involved in a number of issues. They have taken a number of affirmative steps, including implementing programs with departments to get people to use less fertilizer on their

lawns that slope towards the lake. They have continued their main mission, and that is to work with the Corps of Engineers to maintain the best possible lake level for Pend Oreille, both winter and summer. Mr. Elsaesser said the Commissioners for the Lake Basin are a good working group from a broad spectrum of residents of Bonner County.

Chairman Schroeder thanked Mr. Elsaesser and said the committee would vote on all appointments Friday, February 23.

**PANEL
DISCUSSION:**

The **Chairman** welcomed the Fish and Game Commissioners that are here to participate in a panel discussion. In attendance were Chairman Cameron Wheeler, Vice Chairman Tony McDermott, Alex Irby, Wayne Wright, Gary Power, and Bob Barowsky. The purpose is to continue the dialogue that has started with the Fish and Game Department and Commission, so that in the future, we can work together for the benefit of Idaho's resources.

Chairman Schroeder invited **Chairman Wheeler** to make some introductory remarks to the Committee.

Chairman Wheeler said that he appreciates the opportunity for this discussion. He also said that he understands the role of the Legislature and the Commission needs the support of this committee.

He stated that the quality of his cohorts on the Commission is great. They spend a lot of time on sub-committees and take on tough issues. They all volunteer their time.

Chairman Schroeder said the Senate is just half of the operation here. The Body across the rotunda has their ideas at times, and sometimes to get legislation, it is necessary to work with them. That is what happened on the wolf fee recently. The Chairman's goal has been to get wolves delisted and to make them a big game animal and allow Idaho hunters to go out and bag wolves. When people can go out and harvest things, they take ownership of that resource. When there was talk about a \$26.50 license, the legislation that was written in the House had \$9.75. When the bill came to the Chairman, he understood there had to be an agreement on the \$9.75 amount. He said that his objective was not to argue over the amount, but to get a wolf tag, get wolves delisted and let Idaho hunters start harvesting them. There is a good working relationship with the House committee.

Senator Stennett said this is a great opportunity to have the Commissioners here all at once. What has interested him is habitat and access. He said you can't look back and say there use to be good hunting close by. Now, you have to drive for miles, plus find a place to hunt. He asked the Commission to address habitat and the ACCESS YES program or any other ideas that they might have to create more access.

Chairman Wheeler acknowledged that he has had conversations with Senator Stennett regarding pheasant hunting and he said a lot of thought has gone into the issue. Commissioner Wright has worked on a pilot

program in Magic Valley regarding access. With respect to the CREP program, there is a great opportunity to do something for pheasants. The thing that the Commission lacks is the flexibility to respond to the opportunity. Chairman Wheeler stated that they need to look at their set-aside accounts. If they had the flexibility to use some of the money, they could have applied some funds and enhanced the program. He feels the Commission needs to be more responsive and with the changing landscape, they don't have a lot of time. Chairman Wheeler asked the committee what they wanted the Commission to look like. Did they want them to be more aggressive on those types of issues, take a leadership role on habitat issues, or not? He would like the committee's concept on the limited amount of funding they have, as their hands are tied.

Commissioner Wright said he was glad to discuss the access dilemma. Access is one of the major hindrances to hunting and fishing in America. Our forefathers, in their wisdom, made the critters "public", but not the habitat. Most of Idaho's lands are public and the small amount that remains has most of the water and good habitat. Private individuals are more and more controlling access to our hunting and fishing. Thirty years ago, there were 50 million hunting and fishing licenses. Now, it is down to 38 million. That trend is occurring with urbanization in Idaho. Mr. Wright said that in the Magic Valley, they have most of the ACCESS YES monies and most of the rancher appreciation permits.

This is a good area to try a pilot program regarding access. The Commission unanimously approved that pilot project a few months ago, with the help of several key individuals in Magic Valley, including the Regional Director, Dave Parrish. They are in the process of putting together a program that they think will make a difference. ACCESS YES has been very successful, but the problem is - they don't have enough money. The sportsmen would like to put restrictions on the landowners and make all their property accessible. The problem is the landowners hold all the cards. There has to be a way to make the landowners and sportsmen work together. Mr. Wright said they are trying to make that happen. To make this happen, he said they needed the help of the legislature. They do have surplus land and if some money becomes available to them, it might purchase access in perpetuity. There may be tax incentives, state and federal, that could help incentivise the ranchers and increase access. Pledges might also be a good way. An example might be that sportsmen's groups would be willing to go out on a ranch and help build fences or help out with some ponds - to do some work if they are able to access the property. Enforcement is a big deal to the ranchers. They are tired of having their stock tanks shot at or their fences cut and they want some help regarding enforcement. Mr. Wright suggested have sportsmen, citizens, retired Fish and Game employees help out with enforcement. The Commission has a good relationship with the Fish and Wildlife Foundation and they might find some funds there for access. Donations might be solicited and the donor might receive a hat or something as an appreciation gift. If a gift went through the Foundation, it would be tax deductible. Mr. Wright feels there are many ways that they can improve availability of not only public lands, but private lands. He stated that he solicits the Committee's thoughts and if there is

legislation that can help them, he would like to know about it.

Senator Little asked the Commissioners what their thoughts are about funding. **Chairman Wheeler** said other states take certain kinds of fines, some take certain income the state raises in various ways, others take from the general fund. He said the Commission hasn't come up with any particular way to go, as funding is an extremely complex problem. Mr. Wheeler said the funding issue seems to be a moving target and they would like guidance and long-term direction.

Senator Cameron said in the past, in order to justify increases, the department had to show they were efficient and providing more opportunities for the hunting public to have good hunting experiences. Other agencies, in their desire to create revenue, have been creative. He said that he had hoped the Commissioners would arrive at a solution. Mr. Wheeler said they need a source that is sustainable.

Chairman Schroeder suggested that an ad hoc committee could be put together and then meet this summer to discuss this. Senator Cameron said he would be willing to participate in that. Senator Cameron went on to say that he wondered if the Department and Commission had fully explored all options. He then referred to fees that are charged for trophy hunts and open hunts. He also said maybe there needs to be consideration for all types of services that the Department provides. Non game activities might contribute more. Some states have conservation type tags/licenses.

Chairman Schroeder said he would talk to Chairman Stevenson and see if they could get two Senate members and two House members to be on a committee. He would also talk to the Pro Tem and the Speaker to see if travel money could be arranged for the legislative members. He asked Chairman Wheeler for two Commissioners to be on the committee also.

Chairman Wheeler said one reason they put so much into the Mule Deer Initiative (MDI) was because of the out-of-state sales. That carries a lot of the financial burden of the Department.

Senator Pearce said his contact with hunters indicates there is a need for (1) winter feeding for our elk herd and (2) concern regarding wolves. He then asked about the elk in general. Chairman Wheeler said the elk population is real spotty. There is a large area in the Upper Snake where the Department is up against what they can handle there. Regarding wolves, he feels that when they are delisted, it will level out.

The Chairman then asked Commissioner Power to speak to the issues. **Commissioner Power** said that in the Salmon area, they are above goals that they agreed to. The Lemhi and East Fork are controlled hunts. The wolf issue is very polarized. He said they went through the same thing with mountain lions in the 70's when they became a game animal and people wanted them all dead. Now, about 700 are harvested each year. He feels zones would be a good idea, where there would be areas where there would be no wolves. Some would be sport harvest and others would be specific control actions. Mr. Power said there needs to be a

broad-based approach and the main reason people are so polarized is because they were against the federal action of bringing the wolves in here. **Senator Pearce** then asked what the policy and plan is for increasing the elk numbers in the areas where they are deficient. Chairman Wheeler said they are looking at their winter feeding policy. They do have a feeding advisory committee and there is different criteria and different reasons for the recommendations the committee makes to the Department in the region affected. To feed elk for the purpose of increasing elk, Mr. Wheeler said he personally didn't know if that is the way to go. He feels a long term solution would be to have free roaming herds, rather than artificial feeding.

Senator Pearce said he just wanted to make a comment regarding feeding. As population increases and winter feeding grounds disappear, if an elk herd is expected to be maintained during tough winters, and it is hard to raise them on snow, they have to have something to survive on or we lose them. Then hunting is impacted.

Chairman Schroeder inquired about continued access to state lands and asked how we could help one another to achieve objectives. **Chairman Wheeler** said they are aware that large industrial landowners have found value in recreation and wildlife. It takes money to secure access. He then asked Vice Chairman McDermott to speak to the issue. **Mr. McDermott** said in the Panhandle, the large private timber holdings have figured out that there is value in selling access. He said that in the north, if they took the animal units and converted them into cash, that the Panhandle's value of those animal units would be worth about \$100 million. Mr. McDermott said he feels that access is the single biggest problem that they face in the state. If a solution isn't worked out, sportsmen and recreational users will be left out. New Mexico and Colorado have a fee; Nevada has a percentage of the lottery; Arizona has a percentage of the sales tax; and Wyoming has oil money. Voters of other states have figured out how to fund some of their underfunded programs. **Commissioner Irby** of Region Two said that area is a hotbed right now. He said they have applied for a grant with the Parks and Recreation for access through the country. He feels most users in North Idaho are willing to pay some kind of access fee to utilize private land. Potlatch, at one stage, was deep into the forest legacy program. There is 2,000 acres set aside now that is in perpetuity for sports people and others. He said the Department of Lands works hand-in-hand for allowing access on their lands if you abide by their rules. Forest Capital, the second largest landowner in North Idaho, appreciates ACCESS YES. They don't receive a lot of money, but they do appreciate the conservation officers working with them, making sure the gates are closed at the proper time. By working with the landowners in a positive way will help to obtain access.

Chairman Schroeder said state lands are public lands and that was confirmed in a recent committee meeting and again in his office. With the events that have taken shape, with respect to the timber companies, some of the sportsmen are now coming across with the thought - we should have done something while we had the chance, with respect to access. So the question is, with a window of opportunity, will people see

a glimpse of what the future may be like? He said that he senses a change in the sportsmen's attitudes.

Senator Stennett said that he, Senator Little, and Senator Schroeder have worked hard with Potlatch to try to figure out a way to keep that land open. He was unaware, until recently, that Potlatch was applying for Access Yes money. Because it was such a significant amount, it would have eaten up most of the budget. He said that he would have tried to figure out a different mechanism to help if he had known about it. Without access, there is not much opportunity for sportsmen.

Senator Stennett directed a question to Commissioner McDermott and it was in regards as to what Montana has done with settlement money from BPA. **Mr. McDermott** said he was living in Montana at the time and he thought that the Department of Fish and Game was awarded about \$20 million for the damage caused by dams in Montana. The Department used that money to put in their Access Yes program and have purchased a number of good winter parcels. He wondered why Idaho hadn't settled with them (BPA). The property value in Northern Idaho is increasing and he said he thought BPA would be interested in a settlement because nobody has bothered to convert the animal units, and the damage was not in animal use. They have never tied a dollar to that, and when a 100 acre piece of property came up for sale by a landowner in the middle of Sand Creek winter habitat range, the BPA purchased it and gave it to the department, using litigation money. **Mr. McDermott** said they are interested in pursuing it to the next level. They have a list of surplus lands that the state owns and BPA settlement money makes it an opportunity. In **Mr. Irby's** area, it is about 40 percent unsettled. In **Mr. McDermott's** area, it is about 80 percent unsettled. **Chairman Schroeder** asked **Chairman Wheeler** to put together some information on this litigation issue and he will make some time in a committee meeting for the committee to be briefed on so that they understand it more fully. **Chairman Wheeler** indicated he would and he also said that he has a meeting lined up with Senator Crapo who is working with the BPA. It's these kinds of things that would make a difference. He also said that buying the land is the easy part, but it's the taking care of the land that gets more difficult.

Senator Pearce directed his comments to Commissioner Barowsky. He said that he has received numerous complaints from his constituents about the tactics used by some Fish and Game agents. He said the feeling is across the state that the agents seem to be more aggressive on the law enforcement side than the public would like to see. **Mr.**

Barowsky said he has had the opportunity to ride with some of the officers and he has not experienced anything like what was described. He said there is always the perception that an officer could be a little rough. He said that he would follow up with the regional supervisor to see if there is a problem in Senator Pearce's district.

Senator Siddoway directed his question to Chairman Wheeler. He said that there are ways to access private land. The department has a monopoly on wildlife in the state and if you want to be aggressive and get some access to those private lands, you could use that wildlife, through landowner permits. The people that do want access are going to have to

recognize that they are second in line on those private lands and that wildlife is a valuable commodity. The department shouldn't have to come up with any money, but the ability for the landowner to convert the wildlife to money has to be given to him. **Chairman Wheeler** said he agrees with him and it is a part of the pilot program in Magic Valley. He said the larger the antler, the more value they have. There is a political part of the issue and that's where this committee comes in. He said they "ran it up the flagpole" and not having the authority to pursue it any further, they were not treated very kindly with that thought. There is no other way to get on private land without something of value and there has to be some trade-offs.

Senator Coiner said feeding creates a false habitat. He asked if there were any organizations that would maintain these habitat areas.

Chairman Wheeler said that is somewhat like what the BPA is doing. They secure critical areas that have a high property evaluation based on wildlife criteria. It is just another way to appraise property and there are organizations that do that. In Region Six, the Rocky Mountain Elk Foundation bought property and it is held in their name but managed by Fish and Game. On the federal side, there will be large amounts of money put into BLM for areas like what Senator Coiner is talking about. At Craig Mountain, there is logging, grazing, snowmobiling, and hunting. He said that multiple use thinking can be applied to these large tracts of land and get a lot of benefit for society.

Chairman Schroeder said there was an issue earlier this year with respect to the Fish and Game Foundation. He asked Chairman Wheeler what has been done to address that issue. **Chairman Wheeler** said that from the House side, they thought perhaps a conspiracy was going on and some people were benefitting from that relationship. They looked at the MOU and there was nobody from the Commission that had ever seen it, nor was it signed by the Commission, and it wasn't very transparent. There were two employees of the department that sat on the decision making body and also a commissioner, Wayne Wright. Mr. Wright became concerned about making decisions as a commissioner and okaying the spending of the money. Chairman Wheeler said they dug into the situation and rewrote the MOU with the help of their new commissioner, Randy Budge. There are no members of the Commission or members of the Department sitting on the voting board. **Chairman Schroeder** thanked Chairman Wheeler for getting that done. He said that he would respectfully suggest that other Foundations in the state need to be cleaned up in the same way.

Senator Stennett said he appreciated having the opportunity to do this today and hope it can be done again. He also gave the Chairman credit for putting it together. He thanked the Commissioners for their commitment to wildlife and representing wildlife to the fullest extent.

Chairman Schroeder said he would like to echo Senator Stennett's remarks and he feels that today, they have accomplished a lot. He would also like to make this an annual event.

Commissioner Irby said in relationship to one of the questions that was

brought up, he would be more than willing to offer his services in trying to bring the new leadership of Potlatch, together with a small group, for discussion to bring everyone back together. **Chairman Schroeder** said he feels they need to get pro active on addressing those issues and he suggested that he, Commissioner Irby, and Senator Stennett get together for such a discussion. He thanked everyone for coming.

Chairman Wheeler said on behalf of the Commission, he wanted to extend their appreciation for this opportunity to address the Committee.

ADJOURN:

Chairman Schroeder adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 23, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Senators Cameron, Little, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Pearce and Senator Andreason
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- He welcomed Senator Broadsword who will present her RS.
- RS 17118** **Senator Broadsword** said the intent of this legislation, RS 17118, is to narrow the focus of the North Idaho Water Adjudication to the Rathdrum Prairie. The Rathdrum Prairie was designated as the highest priority last year due to concerns over Washington state's interest in Idaho's water. Seventy four percent of the water rights in that drainage are on the Rathdrum Prairie. By taking a step back, and instead of doing the entire St. Joe Basin and just doing the Rathdrum Prairie aquifer, the state will gain a better knowledge of the extent of the problem in the north, if indeed there is a problem. Currently, there are a number of studies being done and the results should be out within the next six months. There would be a fiscal savings of \$411,600 in general funds in FY 2009. She feels there is a lack of understanding about water adjudication, as a whole, in the northern area. Senator Broadsword said if the committee votes to have this RS printed, she would like for it to be sent to State Affairs, a privileged committee, for the print hearing.
- MOTION:** **Senator Coiner** made the motion to send RS 17118 to a privileged committee for print. The motion was seconded by **Senator Siddoway**. The motion passed by **unanimous voice vote**.
- MOTION:** **Chairman Schroeder** said the next order of business would be to approve some minutes. **Senator Siddoway** said that he had reviewed the minutes of February 2, 5, 7, and 9 and found no corrections to be made. He made a motion that they be accepted as written. **Senator Little** seconded the motion. The motion passed by **unanimous voice vote**.
- The **Chairman** said the committee would now give consideration to the three Gubernatorial appointees that were heard on Monday, February 21.
- MOTION:** **Senator Stennett** said he would move that the committee send a recommendation to the floor of the Senate to approve the appointment of

Donald J. Chisholm to the Department of Environmental Quality Board, as recommended by the Governor. The motion was seconded by **Senator Cameron**. The motion passed by **unanimous voice vote**. **Senator Cameron** will be the **sponsor**.

MOTION: **Senator Little** moved that **Kermit Kiebert's** nomination to the Department of Environmental Quality Board be sent to the floor with a do pass. The motion was seconded by **Senator Stennett**. The motion passed by **unanimous voice vote**. **Senator Keough** will be the **sponsor**.

MOTION: **Senator Coiner** made the motion that **Ford Elsaesser's** appointment to the Lake Pend Orielle Basin Commission be sent to the floor with a do pass. The motion was seconded by **Senator Little**. The motion passed by **unanimous voice vote**. **Senator Keough** will be the **sponsor**.

Chairman Schroeder said the next order of business would be the presentation by Senator Stennett on RS 17099, which is a resolution.

RS 17099 **Senator Stennett** said that he would like RS 17099 be sent to State Affairs for a print hearing, then sent directly to the floor, and requested that questions be answered now, if it is the will of the committee.

Senator Stennett said that he, Senator Little, Senator Cameron and Senator Coiner have spent a lot of time trying to figure out a way to develop a program for the Eastern Snake Plain Aquifer to try to find 600,000 to 800,000 acre feet a year that could be taken out of production. They spent a lot of time on the CREP (Conservation Reserve Enhancement Program) program trying to find a plan that would work.

The present program is not working. There are less than 20,000 acres signed up and the window closes at the end of 2007 and then the opportunity will be gone. Senator Cameron has been successful in securing some money from the state to match. Senator Stennett gave an example of the situation and it was if a person has 500 acres and puts 200 acres in the CREP program, he still has to farm 300 acres and doesn't qualify for the \$50,000 annual payment. There is a restriction in the CREP program. He feels they need to try to do something. This resolution asks for the Secretary of Ag and Congress to look at the payment limitations specifically for the CREP program to allow people to receive more than \$50,000 in the annual payment so that more people would sign up.

Senator Cameron asked if this information had been shared with the Water Users and if there are concerns, it could be pulled back from the floor and a hearing held. **Senator Stennett** said if there is any consternation at all, he would agree to bring the bill back to committee, rather than having it go to the floor.

MOTION: **Senator Cameron** made the motion to have RS 17099 be sent to the State Affairs committee for printing. The motion was seconded by **Senator Coiner**. The motion passed by **unanimous voice vote**.

ANNOUNCE- **Chairman Schroeder** said there is a handout in the blue folder for the

MENT: committee members. It is a memo relating to the UI steam plant answering some questions that were brought up in an earlier meeting.

S 1128 **Senator Langhorst** said the basic idea of this bill is based on legislation that has been passed in 30 states regarding penned shooting. An example of this was in Texas where an operator of a penned shooting reserve hooked a gun and camera with a scope to the internet and started to book hunts. He got about 350 people signed up. However, the first hunt went poorly. The remote hunter lived in Chicago and wounded a hog in the pen. The operator then had to put the animal down. When Texas found out about this, they banned the operation and other states followed suit. He originally used the language in other states' bills that had passed, but has since received suggestions and feels S 1128 is a better bill than originally introduced. Senator Langhorst presented an amendment, which he explained, and asked that S 1128 be sent to the 14th Order.

In discussion, Senator Cameron made some suggestions. Senator Langhorst was assured by the bill writer the bill was written correctly. He said he appreciated the Senator's interest and would discuss this further with him.

A handout was provided that had an article about hunting by remote control.

TESTIMONY: Written testimony was submitted by the **Conservation Voters** which is inserted into the minutes.

Members of the Committee:

Conservation Voters for Idaho (CVI) is an Idaho based bipartisan organization that advocates for clean air and water and the protection of natural areas.

We support this bill and urge your support,

Senate Bill 1128 (Restrict shooting or killing animals via the Internet)
We support SB 1128 because this practice violates Idaho's fair chase ethic. This practice is not currently happening in Idaho—and it is prudent to restrict the practice before any such operations exist in our state.

Responsible stewardship and protection of our air, water, land and wildlife are commonly held values of Idahoans. By working together we can protect these resources that are vital to our health, our economy, our recreation, and our quality of life.

Please vote YES on SB 1128.

Thank you for your consideration of this bill.
Lee FLinn, Executive Director

Inserted into the minutes is the testimony of **Sharon Kiefer, Legislative**

Liaison for the Department of Fish and Game.

To: The Senate Resources and Environment Committee
Testimony of Sharon W. Kiefer, Legislative Liaison, Idaho
Department of Fish and Game
Senate Bill 1128

Chairman Schroeder and Committee:

The Idaho Department of Fish and Game Commission has not taken a policy position on Senate Bill 1128, other than to monitor this bill.

However, the Commission did give staff guidance to provide this Committee with the technical analysis of the bill, as discussed by the Commission during their publicly noticed conference calls on February 15 and February 22.

The Commission reviewed the following issues:

There is concern that amending 36-1101 to add a new section 8 about "Devices Accessed via Internet" may be too broadly interpreted to affect the use of guns or other devices which are legally obtained by sale through the internet. This includes the references "accessed via, accessing, regulating access to" in lines 28 and 29. Line 29 also uses "regulating the control of a device" which is more descriptive of the intent of this bill to restrict remotely shooting animals with devices that are controlled by and connected to the Internet. In summary, we recommend more specific phrasing, such as "controlled by and connected to the Internet" to replace "access". As an example, Section 8 would be titled: Devices Controlled by and Connected to the Internet. Section (A) might read: No person shall shoot at or kill any bird or animal in Idaho with any gun or other device controlled by and connected via an internet connection.

This bill only affects the taking of birds or animals in Idaho that are regulated by Title 36.

MOTION:

Senator Little made the motion to send S 1128 to the 14th Order. The motion was seconded by **Senator Stennett**. The motion passed by **unanimous voice vote**. **Senator Langhorst** is the **sponsor** of this bill.

The **Chairman** said he would expect Senator Langhorst to take care of the amendment and work with Senator Cameron and any others who might have suggestions to further improve the bill.

SCR 107

Senator Stennett said that Senate Concurrent Resolution 107 urges the State Land Board to conduct a study to determine whether the lease of

state lands to enclosed penned hunting operations is consistent with its long term obligations to the endowment beneficiaries. There were two proposals that the committee spent some time on this year, as well as the Ag Committee. There was a proposal in North Central Idaho, as well as in Eastern Idaho, to utilize state lands for shooter bull operations, but both have been withdrawn. He expects there could be more legislation in the future. Senator Stennett said this bill is asking the Land Board to undertake a study to determine what the effect would be on vegetation, noxious weeds, fencing, etc., should any proposal come before the Land Board in the future.

Senator Little inquired if there would be unintended consequences opposite of the desire. **Senator Stennett** said that he has a desire, but is looking for a study.

Chairman Schroeder said there are two bills, no formal opinion from the Attorney General, just a letter pointing out that the Land Board has a constitutional responsibility to maximize the return for the endowment. **Senator Cameron** said it sounds to him like a legal opinion is being requested, rather than a study. **Senator Stennett** said this bill is to try to get a handle on this so that the Land Board has some information about the impact of a significant change in use of state endowment lands. **Senator Cameron** said a study would cost a lot of money and man hours. **Senator Little** suggested the committee write the Attorney General a letter and specifically ask him the questions and request an opinion.

Chairman Schroeder said the committee needs to take a little time to discuss this issue regarding state lands. A state land employee stated at a meeting in the Chairman's area that state lands are not public lands. At the same time, the Lewiston Tribune had an article about Potlatch Forest and what they are going to do with some of their lands. In December at Orofino, there was a meeting of ATV people and they were convinced that the Department of Lands and Potlatch were in a conspiracy to lock up lands and auction the rights off to the highest bidder. These people see the possibility of access to these lands possibly being excluded. The Chairman said all he and Senator Stennett want to do is to assure their constituents that they will be able to hunt and fish and access those lands. In Utah, the Fish and Game pays the Endowment Board one half million dollars a year. They essentially lease the sporting rights for the public. A legislator in Utah is writing some legislation that when lands are traded, they want to tie in public access. The Chairman said that he and Senator Stennett want two things: (1) to guarantee access and (2) not lease land out for elk ranches. The AG said the landlord has a responsibility to maximize the return of the endowment, so those things would probably not pass constitutional muster. Rather than going ahead with that, the Chairman chose not to. He said that maybe we should go about this like Utah. But the problem does need to be resolved.

Senator Langhorst said after seeing the fiscal note, the Department of Lands would look at all these things. This is a different type of proposal than what they've seen before and he hopes they would look at this within the confines of their budget. He feels the idea is good and it would have the Department of Lands armed with information to make a more effective evaluation based on potential expenses associated with certain types of leases that they may not have now.

Senator Stennett said using Senator Little's idea of the committee writing a letter to the Land Board was good and that it should say that when you get another one of these proposals in front of you, before you go forward, do a study. **Chairman Schroeder** asked Senator Stennett to write the letter, then the committee would take a look at it.

Senator Cameron said he is certain the Land Board is doing their due diligence in acquiring all the information they need to in order to make a decision about whether to lease a piece of property to a timber company, a mining company, or an elk ranch. That is slightly different than a study. When you ask for a study, you are asking them to dig for further information than what they would necessarily be looking for at their current charge. You could ask JLOC for a study, but it will take money. He went on to say that the last two studies that were funded cost between \$250,000 to \$300,000. If you want an objective study, you have to get someone who has no personal ax to grind on the issue. That costs money and you get what you pay for. You may be disappointed with the outcome whether it's a letter or a resolution.

Chairman Schroeder asked **George Bacon, acting director** for the **Department of Lands** to speak to this issue. Mr. Bacon said they prefer to do site specific studies. He said they look at the proposals on a case-by-case basis, looking at impacts, esthetics, other uses, water quality and a whole gamut of things. Financial income is the driver but it can't be the only point to make a decision on. Mr. Bacon said they do studies every time one of these proposals come forward to see how all the issues interplay and what might be the best recommendation.

Chairman Schroeder suggested that he write a letter on his letterhead to the Land Board members stating that we do not want any state land leased out for elk ranches and allow the members of the committee to sign it, if they so choose.

Senator Little said the unintended consequences with this are significant.

MOTION:

Senator Langhorst made a motion to hold SCR 107 in favor of Senator Stennett drafting a letter to come back to the committee for consideration. **Senator Little** seconded the motion. The motion carried by a **majority voice vote**. Voting nay was Senator Siddoway.

SJM 103

Senator Cameron said this memorial is sponsored by himself, Senator Stennett, Representative Hagadorn and Sportsmen for Fish and Wildlife. He said it is to encourage our Congressional delegation and Congress to appropriate funds as they have the ability to do so under the federal Sikes Act so that those funds can enhance the upland game bird habitat and protect that habitat.

Senator Stennett said the Sportsmen group has done a great job in putting this together. They have been installing guzzlers and doing a number of things on these wildlife habitats and have discovered that in order to do it right, they need some matching money from the federal government. There will be some additional money over the years designated by the BLM and from Fish and Game. It will affect about 35,000 acres scattered across 284 wildlife tracts in southern Idaho that all have public access.

Senator Cameron said there is a draft copy of the application for the committee members and it is interesting reading.

Representative Hagadone said he appreciated Senator Stennett and Senator Cameron bringing this to the committee. Sportsmen for Fish and Wildlife has really worked hard on this to improve habitat for wildlife. Fish and Game has been doing a number of projects also.

TESTIMONY:

Nate Helm, Executive Director, Sportsmen for Fish and Wildlife, said there are 33,000 acres on relatively small isolated tracts that makes them unique scattered throughout the Magic Valley area. He said they are looking at a 15 year project and the total appropriation would come to \$2.147 million. He said the application has been submitted to Senator Craig's office. Mr. Helm said this is the Act used by other states to fund their non game wildlife management programs in their state.

TESTIMONY:

Inserted into the minutes is the testimony of **Sharon Kiefer, Legislative Liaison for the Department of Fish and Game**.

Chairman Schroeder and Committee:

The Idaho Department of Fish and Game Commission and the Department support SJM 103 as demonstrated by the attached letter of support, which is jointly signed by the Chairman of the Commission and the Director of the Department.

Nathan T. Helm, Executive Director
Sportsmen for Fish and Wildlife
55 SW 5th Avenue, Suite 100
Meridian, Idaho 83642

Dear Mr. Helm:

This letter is in support for the request of up to \$1 million to fund cooperative efforts between the Idaho Office of the Bureau of Land Management (BLM) and the Idaho Department of Fish and Game (Department) to manage and enhance habitat through the Isolated Wildlife Tracts Habitat Cooperative Management Program. With the support of the Idaho Fish and Game Commission, the Department has committed a position and operating funds to partner with BLM on this program. The Department has also organized and directed the efforts of a large volunteer work force to assist in habitat management on these Isolated Tracts. This volunteer program greatly enhances the effectiveness of the cooperative BLM and the Department program and exemplifies the broad public support for enhancing wildlife habitat on these Lands.

In addition to complementing efforts by BLM and the Department to enhance wildlife habitat on public lands in South Central Idaho, this increased funding for the program would increase efforts to control noxious weeds which will also benefit adjacent private lands. This concept of using partnerships to increase the effectiveness of habitat enhancement programs on public land is consistent with the Department's Strategic Plan and focus on the importance of habitat in achieving goals and objectives related to improving hunting opportunities statewide.

In a related matter, the Department recommends an increase in, or redirection of, existing funding to ensure BLM can complete the required National Environmental Policy Act (NEPA) compliance process for projects proposed under the Isolated Tracts Cooperative Program. The Department is also interested in working with BLM to identify opportunities to obtain additional public access to these Isolated Tracts in an effort to couple this program with the popular ACCESS YES program in the Magic Valley Region. Increasing public access for hunting will provide tangible benefits and helps justify the expenditure of public funds proposed for the Isolated Tract Cooperative Program.

If you have any questions related to our support for this funding proposal, feel free to contact either of us.

Cameron Wheeler, Chairman

Cal Groen, Director

MOTION:

Senator Langhorst made the motion to send SJM 103 to the floor with a do pass recommendation. The motion was seconded by **Senator Coiner**. The motion passed by **unanimous voice vote**. The **sponsors** will be **Senator Stennett** and **Senator Cameron**.

H 26

Mr. George Bacon said H 26 is a cleanup bill. Right now, Idaho Code requires them to do grazing leases between January 1 and May 1 and the

date set in the lease. They would like to use the date set in the lease because if someone came to them on May 2, they would have to issue a temporary lease, then issue one on January 1. By using the lease date, it would simplify things and also not cause spikes in work loads.

MOTION: **Senator Langhorst** made the motion to send H 26 to the floor with a do pass recommendation. The motion was seconded by **Senator Coiner**. The motion passed by **unanimous voice vote**. The **sponsor** of the bill is **Senator Langhorst**.

ADJOURN: **Chairman Schroeder** adjourned the meeting at 2:45 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 26, 2007

TIME: 1:30 p.m.

PLACE: Room 433

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

MEMBERS ABSENT/ EXCUSED: None

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m.

He welcomed **Will Judge**, who has been **reappointed to the Outfitters and Guides Licensing Board**.

APPOINTEE: **Mr. Judge's** term is from April 20, 2006 and will expire April 20, 2009. He is from St. Maries. He and his wife own a back country fly fishing operation on the St. Joe River. They have been there for 22 years and have owned it for 18 of those years. The fishing is all catch and release.

Mr. Judge said this is his third term on the Board and he appreciates that time as he likes to see things through.

Senator Andreason asked Mr. Judge what he considers to be the most important issue the Board is dealing with. Mr. Judge replied he felt property issues are very important, as well as the overcrowding of the South Fork.

A question was asked of Mr. Judge as to the location of the Potlatch land where the state has a perpetual lease. Mr. Judge replied that he didn't know.

Senator Stennett said that he had heard that the Outfitters Board is staying away from permitting anyone to do bird hunting except on an incidental basis on a float trip, or shooting a grouse in camp. He inquired if there were any permits, plans, or applications pending for that kind of activity. Mr. Judge replied that to his knowledge there were no requests. Senator Stennett further inquired if it was the Board's position to stay out of that business. Mr. Judge said as far as he knew, that was the Board's plan.

Chairman Schroeder asked Mr. Judge to tell the committee what the major accomplishments have been during his six years. Mr. Judge said he felt the allocation for the distribution of tags would be the major accomplishment.

Senator Langhorst asked if an outfitter's territory could be expanded or if there was some kind of litigation for that. Mr. Judge said that every hunting outfitter in Idaho has a geographical defined hunting area. Most of those are adjacent to each other. Unless an area became vacant (for a reason), he didn't see how a territory could be expanded.

The **Chairman** thanked Mr. Judge for speaking to the committee and said that consideration of the appointment would be given on Wednesday.

Chairman Schroeder then welcomed Pro Tem Geddes. The Pro Tem will present HCR 12.

HCR 12

Pro Tem Geddes said this legislation simply allows them to continue the work that has been underway for a number of years. They are in anticipation that there will be a decision from the Supreme Court in the foreseeable future regarding our water issues. The tenure for the committee that was established for natural resource issues expired November 30, 2006. The anticipation is that when the Supreme Court issues the all-important water decision, we will be prepared and ready to address whatever actions are subsequent to that decision.

There were no questions or other testimony in regards to this bill.

MOTION:

Vice Chairman Pearce made the motion to send HCR 12 to the floor with a do pass recommendation. The motion was seconded by **Senator Stennett**. The motion passed by **unanimous voice vote**. The **sponsor** will be **Pro Tem Geddes**.

The **Pro Tem** noted that this resolution would be put in with a grouping of concurrent resolutions that the Legislative Council will evaluate to determine what the interest is and determine if it should be funded.

S 1129

Senator Langhorst said S 1129 is a simple bill and would expand the category of items that can be confiscated for felony fish and game violations. He said this legislation was brought to him by Citizens Against Poaching (CAP).

TESTIMONY:

Mr. Fred Christensen testified in favor of S 1129. He is the current president for CAP and has been for five years. He said this bill would not cover a lot of cases, but is a hammer against poaching. Mr. Christensen is adamantly opposed to poaching and as time has gone by, the effects of CAP rewards has been good. CAP was started a number of years ago by a group of citizens and offers rewards to people who report violations.

Chairman Schroeder asked **Mr. Jon Heggen, Bureau Chief of Enforcement, Department of Fish and Game**, about felonies regarding commercialization. Mr. Hagen replied that felonies are under the jurisdiction of county prosecutors and conservation officers and they don't have discretion to charge under felony. The Code talks about knowingly selling unlawfully taken animals.

Senator Little inquired if spotlighting is a felony and what other things might result in a felony. **Mr. Heggen** said felonies include knowingly and

intentionally selling or offering for sale, exchange, or purchase of wildlife or parts of wildlife taken as a result of poaching. Releasing of certain animals in the wild, without a permit, is a felony. Killing and wasting of meat is also a felony.

TESTIMONY: Inserted into the minutes is the testimony of **Sharon Kiefer, Legislative Liaison for the Department of Fish and Game.**

Chairman Schroeder and Committee:

The Idaho Department of Fish and Game Commission approved a motion during their legislative conference call on February 15 supporting Senate Bill 1129.

This bill would amend 36-304 to allow seizure of unlawfully used "conveyances", i.e. aircraft, vehicles, or vessels. Currently, the statute speaks to the seizure of unlawfully used equipment as evidence and the magistrate may order confiscation and sale of the equipment. The amended statute would allow the courts to review Title 36 felony convictions and order the confiscation of unlawfully used conveyances in addition to unlawfully used equipment and order them sold by the IDFG Director at auction with proceeds placed in the fish and game account.

Currently the statute specifically requires that any lawful equipment that is held as evidence shall not be subject to confiscation and sale; the amendment does not change this.

Title 36 felony convictions represent the most egregious wildlife crimes committed primarily by habitual wildlife offenders. Felonies are brought by county prosecutors and go through the prosecutor's office for formal charging. Each year there are about seven felony convictions. There are several other cases each year where there is a felony charge through the prosecutor's office, but the case is subsequently plea bargained as a misdemeanor. In a plea bargain, the county prosecutor, the defense, and the court can currently agree to voluntary forfeiture of equipment and even conveyances in a misdemeanor. This circumstance is not dictated by the Department, it is dictated by the court, the prosecutor, and the defense.

Although some additional income may be derived for the Department from seizure of conveyances used in felonies, the most meaningful and useful application of this statute amendment is as additional deterrent to habitual and commercial wildlife offenders, those most likely to be convicted of felony violations.

Discussion centered around "what if's" regarding activities, intentional and

unintentional, and possible felony convictions. **Chairman Schroeder** said discussion on S 1129 would continue Wednesday.

He then welcomed **Ms. Toni Hardesty, Director of the Department of Environmental Quality.**

SPEAKER: **Ms. Hardesty** provided a handout to the committee members outlining her report which she referenced her remarks and it is as follows:

Agency Highlights & Issues of Interest

Topics Outline

- Permit Streamlining
- NPDES Primacy Update
- PO 2.5 Standard
- State Implementation Plan Decision
- Federal Funding Cuts

Permit Streamlining

The Problem: (Why We Went Through the Process)

- Backlog of permits - Initial backlog in 1980's, 2000, and 2006
- Long lead time for processing permits
- Identify Solutions: Design a program to reduce chances of future backlogs; Speed processing time

Permit Streamlining

The Goal:

- The goal of the initiative was to “develop and implement a streamlined air permitting process that results in expeditious issuance of environmentally sound permits in a timeframe not to exceed 100 days.”
- The process we used was the Kaizen method. Kaizen means “to take apart and put back together in a better way”.

Process Improvements

- Improve upfront help and streamline internal process
- Reduced the number of steps in the process by 75%
- Reduce the number of people involved in the permitting
- Reduce the amount of time for permit processing from 229 days (best case) or 311 days (worst case) to 95 days (best case) or 99 days (worst case)

Update on NPDES Primacy

- House Bill 176 was passed during the 2005 Legislative Session. Requested DEQ to develop a report and submit to the legislature
- DEQ submitted report on January 27, 2007
Currently roughly 900 permits in Idaho.
Funding & FTEs required for Primacy
23 FTEs \$2.125 Million
- Federal Funding Fee Proposal

Federal Changes to Air Quality Standards

- Environmental Protection Agency (EPA) made revisions to the National Ambient Air Quality Standards (NAAQS) for particle

- pollution.
- The revisions address two categories of particle pollution:
 - (1) Fine particles (PM_{2.5}) which are 2.5 micrometers in diameter and smaller; and (2) Inhalable course particles (PM_{0-2.5}) which are smaller than 10 micrometers in diameter but larger than PM_{2.5}.
- Previous national standards for fine particles (PM_{2.5})
 - 65 ug/m³ 24 hour average
 - 15 ug/m³ annual average
- New Standard
 - 35 ug/m³ 24 hour average
 - 15 ug/m³ annual average
- Previous national standards for course particles
 - 150 ug/m³ 24 hour average (PM₁₀)
 - 60 ug/m³ annual average
- New Standard (PM_{2.5-10})
 - 70 ug/m³ 24 hour average
 - No annual Standard
 - Applies only to metropolitan areas with populations greater than 100,000

Potential Ramifications of New Standards

- Potential for increased non-attainment areas in Idaho
 - St. Maries, Salmon, Pocatello, Franklin/Preston, Boise

State Implementation Plan (SIP) Ninth Circuit Court Decision

- SAFE sues EPA over approval of Idaho's State Implementation Plan Issue is whether this was an "amendment" or a "clarification"
- 9th Circuit Court rules in favor of SAFE
- No crop residue disposal burning allowed in Idaho off reservations
- Legal and technical review to determine path forward

Federal Funding

- DEQ funding is 60% federal
- Biggest funding cuts include Air Monitoring and Waste Water Loan monies
- Increased demand for services from agency
- Potential of more user fees to cover program demands

Chairman Schroeder thanked Ms. Hardesty for her report to the committee.

ADJOURN:

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 28, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He welcomed ten students from the Meridian Medical Arts Charter School, then explained the legislative process to them.
- The **Chairman** said the first order of business would be to give committee consideration to the Gubernatorial appointment of Will Judge to the Outfitters and Guides Licensing Board.
- MOTION:** **Senator Little** made the motion to send the appointment of Will Judge to the Outfitters and Guides Licensing Board to the floor with a do pass recommendation. The motion was seconded by **Senator Langhorst**.
- MOTION WITHDRAWN:** After some discussion, the motion and second was withdrawn and the appointment will be reconsidered Friday, March 2.
- S 1129** **Senator Langhorst** said he appreciated the good conversation on S 1129 this past Monday and pursuant to that, he has talked to prosecuting attorneys. The feedback he got was enlightening and indicated that he has some more work to do on the bill. What Senator Langhorst would like to do is to come back next year with a more complicated bill but covering all the bases. He asked for unanimous consent to hold S 1129 in committee. There was no objection to the request.
- S 1136** **Senator Stennett** provided a draft of the new bill, S 1136a, with the amendments. He said this bill will provide for minimum stream flow water rights on the Little Wood and Big Wood River. The Water Resource Board is basically in charge of holding the water rights in these two stream stretches. It is a unique situation and he asked Rich McIntyre to address the committee.
- TESTIMONY:** Inserted into the minutes is Mr. McIntyre's testimony.
- Chairman Schroeder, members of the committee. My name is Richard McIntyre and I am the managing partner of CCG (Crystal Consulting Group) and the project director for the Wood River Legacy Project, known to you as SB 1136.

I am here today to ask your support of a water project in the Wood River basin that has bi-partisan support, one which has the support of irrigation districts, conservation organizations, business interests and ordinary citizens. Five Wood basin counties— Gooding, Jerome, Minidoka, Lincoln and Blaine--have given their unanimous endorsement to the Legacy Project, as have seven basin cities and the Idaho Water Users Association.

There was a time not so long ago when if you could not agree with someone on everything, you could work with them on almost nothing. Today, you are hearing testimony from people who have broken that cycle, who look to a future where finding common ground is as important as standing up for principles.

The bill before you accomplishes two objectives. First, it will enhance agricultural water supplies down basin. Second, it will concurrently enhance stream flows in the BRW and Silver Creek. For too long, the down basin counties in the Wood basin have watched water deliveries drop along with their well levels and farm income. The combination of drought and development in the upper Wood River basin has left farms and communities from Shoshone and Richfield to Gooding and Jerome with diminished supplies and an uncertain future. For someone from a family farm background who also fishes, that does not sit well, and is the reason I started this work nearly two years ago.

The bill before you begins the process of providing more water to agriculture while concurrently providing water for recreational uses. The availability of donated water rights from the upper Wood River Valley is real. Many people in the Wood River Valley have expressed interest in participating in this program once the legislation passes. In a low water year, the importance of that additional water for basin family farms and ranches cannot be overstated. The contribution of that water will also provide enhanced stream flows for the lower Big Wood River, an important economic resource for the basin community. To quote a friend of mine who farms near Shoshone, "I don't care if they play in my water before I irrigate with it."

The project has been brought to this point by people from Gooding to Galena Summit. It has gone through numerous changes to insure all interests are represented and that the bill is well vetted. You have before you a bill that protects and enhances the agricultural use of water while concurrently aiding stream flows. In brief, it works for all the people of the basin. I respectfully ask your support of SB 1136.

Mr. Chairman, thank you for allowing me to speak. I would be pleased to answer any questions you may have at this time.

TESTIMONY: Inserted into the minutes is the testimony of Carl Pendleton.

Mr. Chairman and members of the committee:

My name is Carl Pendleton and I live and farm north of Shoshone, Idaho. I have been a director of the Big Wood Canal Company (BWCC) for over 12 years and have represented the canal company on the Wood River Legacy Project Advisory Board and Steering Committee. I have also represented Lincoln County in the same capacity.

I ask the support of your committee in the consideration of Senate Bill 1136.

The sole source of irrigation water for my farm is Magic Reservoir and the passage of this basin specific legislation has the potential to help re-establish river flows to the reservoir from the upper basin. Historic water supplies delivered from Magic Reservoir over the last 30 years have declined, resulting in numerous water short seasons in the tract. Prior to the 1970's, a significant water short year was recorded in about 1 in 10 years. Over the last 30-odd years, shortened water years have occurred about 1/3 of the time. I can only speculate that weather patterns might be partially to blame, but most likely domestic development and a change in irrigation appropriation from the upper basin aquifer are potentially more to blame.

As an elected official of the BWCC, I have fiduciary responsibility to protect, and in this case, enhance the water supplies available to our water users. At the same time, the Big Wood River and Silver Creek have the potential to further develop into enhanced recreational streams within the upper valley. It appears obvious that enhancement of recreation in the upper valley by the re-establishment of a flowing Big Wood River and potential enhance of flows in world famous Silver Creek, while at the same time irrigation enhancement is realized in the lower valley, constitutes a win-win situation.

I would remind this committee that the potential for increased stream flows is made possible under this legislation by the donation---yes, donation---of water rights to the stream by individuals who place a high regard for 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.

The advisory committee for the Legacy Project has been particularly careful in garnering support for this project from many camps. Support and criticism from area cities, counties, irrigation companies, conservation groups, concerned citizens and representative groups, such as the Idaho Water Users Association have helped mold the legislation. The road has

not been without potholes, but I feel that Senate Bill 1136 has great potential to work for the people of both the upper and lower Wood River basin.

Again, I ask your support for Senate Bill 1136.

Thank you for your time and consideration. Are there any questions?

TESTIMONY: Inserted into the minutes is the testimony of Richard Dinges.

Chairman Schroder, members of the committee. My name is Richard Dinges and I farm 400 acres near the Gooding/Lincoln County line on the Little Wood River. I am also a member of the Wood River Legacy Advisory Board and have been well over one year.

The importance of this project to my farm is quite simple: it will place more water in the Silver Creek/Little Wood system from which I draw my irrigation water. Although this project has clear benefits for down basin water users, it also provides substantial benefits to valley farms and fish.

It is unusual, to say the least, to find a water project that represents a win-win for all parties. That is precisely that opportunity that SB 1136 provides.

Mr. Chairman, members of the committee, thank you for hearing me out. I would be pleased to answer any questions you might have.

Chairman Schroeder said no one else had signed up to testify and there is no opposition to the bill.

Senator Stennett said he really appreciated all the work that these gentlemen have done and also thanked Norm Semanko, Idaho Water Users, for his involvement to make this come together. Senator Stennett said, as a disclosure, he owns a ranch, east of Shoshone, on the Little Wood River.

Senator Schroeder said a motion would be in order now.

MOTION: **Senator Langhorst** made a motion to send S 1136 to the 14th Order. **Vice Chairman Pearce** seconded the motion. The motion passed by **unanimous voice vote**. **Sponsors** of the bill will be **Senator Stennett and Senator Cameron**.

H 25 **George Bacon, Acting Director for the Department of Lands**, asked for a delay on the hearing of H 25 until Monday.

H 27 **Mr. Bacon** presented H 27 and it is basically a clean up bill. This bill is to clarify that all forest products sold, not just timber, should be measured.

Products included could be pine cones, mulch, bark, and salvage.

There was no opposition to this bill.

MOTION: **Senator Andreason** made the motion to send H 27 to the Consent Calendar with a do pass recommendation. The motion was seconded by **Vice Chairman Pearce**. **Senator Andreason** will be the **sponsor**.

Senator Schroeder said there was an issue with the gypo loggers a year ago on limits. A rule was not written last year and it was indicated that a rule would be written this year. The Chairman asked Mr. Bacon if that had been done. Mr. Bacon said they do not get into the rulemaking process with timber. They launched an effort to look at the rules (21 sets). In the meantime, in the field they are following the existing rules up to 100,000 board feet, but not over 200,000. They anticipate that if they tackle three sets of rules a year, it will take them seven years to cover all of them. They will prioritize them and get them done as soon as possible.

Chairman Schroeder said there were some minutes to be approved.

MOTION: **Vice Chairman Pearce** made the motion to approve the minutes for February 12, 14, and 16, as written. The motion was seconded by **Senator Coiner**. The motion passed by **unanimous voice vote**.

ANNOUNCEMENTS: The **Chairman** announced that on Friday, Ron Abbott from the CREP program will be here to explain what is going on with that program. Also, the consultants that are working with the Department of Water Resources will be here to answer any questions that any of you may have.

He will also have a letter for the committee's review regarding his presentation at the federal hearing on wolves next Monday. He asked for the committee's input because when he testifies, he said that he is going to tell them that the recommendations are from the Senate Resources Committee. Chairman Stevenson is doing the same thing in the House with his committee.

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 2, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Cameron
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- He said before them was the consideration of the Gubernatorial appointment of Will Judge to the Outfitters and Guides Licensing Board.
- MOTION:** **Senator Little** made the motion to send to the floor with a do pass recommendation the appointment of Will Judge to the Outfitters and Guides Licensing Board. **Senator Andreason** seconded the motion. The motion passed by **unanimous voice vote**. Senator Stennett and Senator Langhorst were absent at the time of voting. **Senator Broadsword** will be the floor sponsor.
- Chairman Schroeder** welcomed **Ron Abbott, Farm Program Chief for the U.S. Department of Agriculture (USDA)**, to the committee. He is with the Conservation Reserve Enhancement Program (CREP) and is here to offer more information regarding the program.
- A handout was provided to the committee regarding the number of acres offered and the number of acres approved, by county. The state total number of acres offered is 43,479.3. The state total number of acres approved is 17,127.5. The target number of acres is 100,000. **Mr. Abbott** said they expect most of the acreage offered will be approved for the program. It was asked who did the approval and Mr. Abbott replied that it is by the county committee for the farm service agency, in the county of application.
- Senator Stennett** asked if the Department of Water Resources needed to first determine if there was water for those acres. **Mr. Abbott** said that was an eligibility determination. When the producer makes the offer, it is then sent to IDWR to make sure the ground meets all the irrigation requirements. If it does, the application then goes to the Soil Conservation Commission who writes the plan. The plan then comes back to Mr. Abbott's office and the county committee then reviews it for approval.
- Senator Stennett** then inquired if there were water rights attached for the

43,479.2 acres currently being offered. **Mr. Abbott** said they didn't know that for sure, but expected it to be a very high percentage. Part of the eligibility requirement is that the land must be legally capable of being irrigated at the time of allotment. As soon as the producer is told that his ground is not legally capable of being irrigated, he is notified. **Senator Stennett** inquired as to what constituted notice. **Mr. Clive Strong, Division Chief, Natural Resources Division, Attorney General's Office**, was asked to respond. Mr. Strong said his understanding was that as long as the lands have applied for enrollment in CREP, and there is a water issue, they would still be eligible. But if they have not filed an application and there is a water issue curtailing water on those acres, then they would not be eligible. **Senator Stennett** asked if the 43,000 acres also include the 17,000 acres. **Mr. Abbott** said what they are looking at now are the 43,000 acres, but they expect the number to rise to 100,000 plus acres.

Senator Stennett said there was a bill (memorial) to determine if it was worth asking Congress to give us a waiver on \$50,000 annual payments. The bill was withheld after they heard the testimony from Wayne Hammond that everybody in the world wants this. He asked Mr. Abbott if that was an impediment. **Mr. Abbott** said no.

Senator Pearce inquired as to how many acres would be impacted by the court decision. The answer was they didn't know. Senator Pearce then wanted to know if all 43,000 acres would be impacted by the court decision. **Mr. Abbott** said if the acres were within the Eastern Snake Plain Aquifer, then they would be impacted.

Senator Stennett said the effective date of the bill is July 1 and asked if the program would be full. The response was that it would not be full.

Chairman Schroeder thanked Mr. Abbott for briefing the committee and answering questions regarding the CREP program.

H 25

Mr. George Bacon, Acting Director, Department of Lands, presented H 25. He stated that after the bill was passed in the House, he became concerned with some things regarding the bill. After checking, he prepared an amendment proposal. Mr. Bacon said what was intended at the time of the endowment reform in 2000 was for the fees collected on state land activities to be credited to respective earnings reserve accounts. However, they were inappropriately credited to the general fund. This bill, along with the amendment, would get the money to the right account.

There was no one signed up to testify on this bill.

MOTION:

Senator Little made the motion to send H 25 to the 14th Order. **Senator Langhorst** seconded the motion. The motion passed by **unanimous voice vote**. The Chairman asked **Senator Little** if he would take care of the amendments and be the **sponsor**. Senator Little agreed to it.

Chairman Schroeder said the purpose of the next presentation is for the committee members to have an opportunity to ask questions to the

presenters regarding the Eastern Snake River Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan. This Plan, called "Framework", was presented February 19 in the Gold Room at a Joint Meeting with the House Resources and Conservation Committee. With 18 House members and nine Senate members, it was a challenge to have an opportunity to ask questions.

Representing the **Idaho Water Resource Board** were **Jerry Rigby and Leonard Beck**. From the **Idaho Department of Water Resources** were **Dave Tuthill, Interim Director and Hal Anderson, Administrator**. **Consultants for CDR Associates** were **Jonathan Bartsch and Diane Tate**.

DISCUSSION:

Mr. Rigby led off the discussion by providing some background information. Following that, he said the issues are (1) CREP; (2) recharge; and (3) reduce the demand. He stated that if reducing the demand makes sense economically, they want to be in a position to do so. The only way to do that is through funding.

Chairman Schroeder said that no one knows when the Supreme Court is going to issue a decision. A resolution was passed two days ago for an Interim Committee on Natural Resources to be funded for the next year. He asked the committee members to look at the membership list to see if they are listed. He also told the committee members to ask their questions today, because of the expertise in the room, they could possibly be answered

Senator Andreason inquired about the need for \$10 million dollars. **Mr. Rigby** replied that the \$5 million they have now is not going to be sufficient. They fear if they don't have ample funds, they won't be able to make an offer. If they do get an offer that will make a "bang for the buck", they want to make sure they have the money. He said to make it happen, it has to be a willing seller/willing buyer. When questioned about the total amount wanted, Mr. Rigby said they are asking for \$10 million, in addition to the \$5 million they have, making the total amount \$15 million. **Senator Andreason** asked Mr. Rigby where he thought the money would come from. The reply was that they are looking to the Legislature for guidance and feel that the money should come from the State.

Senator Pearce asked as to what amount would be an offer that couldn't be resisted. **Mr. Rigby** said, "At this moment in time, I cannot answer that question. The seller has to make an offer, then the Board will evaluate it and use all the best sources of the department's ability, the Attorney General's Office, and anyone to determine if it's a good bang for the buck, then they will negotiate." Mr. Rigby said that even if he did know that number, he would not want to make it public because he fears that would then cause problems with some offers that are out there.

Senator Pearce feels there should be a guideline. He stated that Bell Rapids was bought right, so the Board must have some figures or ideas. He then asked how many acres did they hope to buy to resolve this problem. **Mr. Rigby** said no two water rights and no two locations are alike. Taking out one water particular water right may relieve the pressure

significantly different than another one at twice the cfs. That's the concern and that's why it is so difficult to answer. **Senator Coiner** said that perhaps the state could be the broker for this like they were for the Bells Rapids transaction.

Mr. Strong said, for the purpose of new committeemen, he would provide a background of how things came to be. He started with the Strawman Proposal (ESPA Conceptual Settlement Framework) which was put together by the Resources Interim Committee, 9-15-04. There is an inequity or imbalance in the water budget and there are three things (legs) that can be done to bring that budget back into balance. One leg is to put more water back into the aquifer. Another leg is to reduce the demand of water out of the aquifer. The third leg is to reduce the amount of demand on the spring flows. Mr. Strong said that the central premise of the Strawman Proposal was that any one of those three legs alone would not be sufficient to solve the problem - they need to work on all three. Two of the ways have been addressed. One is the CREP program - trying to reduce the amount of demand on spring flows. The ground water districts are working through conversions which would release the amount of demands to put water back into the streams through various agreements and efforts that are ongoing. They haven't focused on "below the rim" demand kind of issues. Mr. Strong said they would not get back the levels that were historically high levels in the late 1960's. The best they can hope to do is to stabilize, or improve slightly, the current water budget. One of the legs of the Strawman Proposal was to look to try to influence about 200,000 acre feet of water change below the rim. He stated that Mr. Rigby was correct in stating that not all water rights are equal. Mr. Strong said if they wait until they get a court order, they just put off the day of reckoning. If you don't have the money, the opportunity is not there and he sees that as the objective.

Senator Little asked who will make the decision to take the \$10 million out of the general fund. **Mr. Rigby** said that is a major concern.

Mr. Bartsch said the charge for the advisory committee would be to include the measures that Mr. Strong mentioned and develop some measurable goals that would effect supply and demand. There would be check points at five years, ten years and twenty years to see if progress is being made. The Strawman Proposal called for an annual water budget savings of 600,000 to 900,000 acre feet. The goal is to define specific steps to get there. The modeling committee would help to identify some of the goals and the advisory committee would look at how to implement the quantifying goals.

Mr. Anderson said there are technical details that needs to go along with the process part. The funding recommendations that were made to the Water Board were really two components for the \$850,000. Earmarked for processing and advisory on the plan itself was \$400,000. The second component that was earmarked by the staff was \$450,000 for technical studies. They have identified 17 tasks that need to be accomplished, with two major areas. One is primary data related tasks. Like, how much is going to be available for recharge at Milner. The other component associated with those is (technical studies) how many more acres might

be available for conversion, both below the rim and in the American Falls area. **Senator Coiner** inquired if there was a time component involved. Mr. Anderson said there was. They are working with the University of Idaho to give them a general scoping with the 17 different tasks in a matrix sort of form. Economics is a big part of some of the studies that are going to be done.

Senator Little inquired why all this couldn't be done through the Water Resources budgeting process and do it with decision units like JFAC always does. **Mr. Anderson** replied that there was a decision unit in the department's budget. Former Director Dreher put a placeholder in the budget as a zero dollar amount associated with it. At the time, they didn't know how much it would cost, but there is a placeholder in the budget. **Senator Bair** said the subject did come up in JFAC and a conscious decision was made with the co-chairs that we would wait until a little bit later in the session, towards the end of the budgeting process, and that issue is going to be readdressed. **Senator Little** said he felt that budget detail was lacking in this document. **Mr. Anderson** said they could furnish the details regarding the 17 studies and they have a spreadsheet from the facilitators. The \$850,000 is for phase two and he reassured the committee there would not be a phase three.

Senator Siddoway said that he had read Judge Wood's decision and he recalled that the Judge talked about a "futile call" in five or six different places. He said that he is not going to get excited about spending a lot of money to buy senior water rights if that doesn't affect what is going on. He said perhaps they need a definition from the AG's office as to what a futile call is. **Mr. Strong** said the heart of the debate is (1) a disagreement on what is meant by the prior appropriation doctrine. On the one side are the senior users - first in time, first in right. On the other side are the junior users. Mr. Strong said that you can't focus just on futile call. There are three elements: (1) Optimum use of resource and that is recognized as both part of the statutory law and constitutional law. (2) Reasonable means of diversion and are you entitled to protect the artesian pressure to get the water to the system. (3) Futile call - and what that says is if the water doesn't reach the senior in a meaningful time and a meaningful amount, then that does not provide basis for calling out the water right. He said that they have a lot of law on futile call and surface water contacts. If the doctrine is defined too narrowly, you take away the security of the senior water rights. Once the outcome is determined, there is no going back, but now there is an opportunity to try to resolve the problem through working together. In his opinion, neither side is going to get all of what they are asking for. This should not be based solely on science, not based solely upon water rights, but based upon a balance of public policy on how we want to use that aquifer and what springs we want to protect. He feels CDR has done a good job of finding a long term goal and saying what we are really looking for is sustainability of resources. But you can establish interim goals that is moving in the direction of sustainability and we will know when we get to the end of the road because the conflict will resolve itself. To simply wait for a decision, in Mr. Strong's judgement, is not good policy.

Senator Coiner asked Mr. Strong if he was talking about the effect on senior surface water users or the effect on senior ground water users. **Mr. Strong** said he was talking about both. The way the issues will be resolved may be different because of the way water is regulated. On the overall impact, the doctrine applies to both. **Senator Coiner** then asked if other states have defined futile call. **Mr. Strong** said some have to a degree. Colorado has, but in so doing, one of the dilemmas you have to deal with is the type of aquifer. The ones that have been dealt with in Colorado are more of an alluvial type aquifer that are hydraulically connected very directly to the stream. To be able to reach out to another state and say lets take that principle, would not work too well on the groundwater context.

Senator Pearce asked **Mr. Rigby** what the request for money would be next year. **Mr. Rigby** said participation from all stakeholders, including the state, should help fund the project. Senator Pearce then asked if they needed anything else besides money. Mr. Rigby said he is hoping that they will not be asking for anything else.

Senator Andreason said to Mr. Rigby that he is asking for general funds very similar to an agency and he is wondering how the taxpayers will respond to that. He also asked if this would be one-time money or ongoing money. **Mr. Rigby** replied that it is a unique situation. He stated that last year the Legislature asked the Board to come up with a plan. To put a plan together in one year was too great of a task. He said the Board (eight members) has to rely on others to help them do their work.

Senator Stennett said the CREP program has a window and it is going to close and the Legislative session will be over in two weeks. He asked Mr. Rigby what the Legislature needed to do to try and enhance to make sure they get the full value of the 100,000 acre feet out of CREP. Mr. Rigby deferred the question to Mr. Anderson. **Mr. Anderson** said that the economy plays a big part and it is hard for people to retire their land for 15 years. There are other impediments to the program, including the \$50,000 limit. Situations to change the federal program are fairly limited. **Senator Stennett** said an allocation of \$150,000 is to be used this spring for recharge and he inquired if recharge sites have been identified, have all the goals been reached, and has all the money been spent. **Mr. Anderson** replied that \$150,000 has been allocated by the Board for 2007 if water is available. The Board issued a request for proposals (RFP) to canal companies and irrigation entities. A RFP was requested for additional costs for operating costs to be able to carry the Water Board recharge water. They received three responses. The money has not been spent as it is too early for recharge this year.

ADJOURN:

Chairman Schroeder said that was all the time they had for questions. He thanked everyone for participating in today's presentation, then adjourned the meeting at 3:05 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 5, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- ANNOUNCEMENT:** He announced that the committee members have been provided a copy of the Attorney General's analysis of Domestic Cervidae Farm Fences, at the request of the Chairman.
- He then called on Norm Semanko to present H 86.
- H 86** **Mr. Semanko, Executive Director of Idaho Water Users Association,** said H 86 is an extension of the statute that was enacted by the Legislature eight years ago. Irrigation districts have been growing in terms of their populations, they have less and less eligible land owners as the farms are getting bigger and less people that are actually farming. In order to serve on an irrigation district board, you have to be a voter in the district. In order to vote, you must own land within the district. Under Idaho Code 43-111, irrigation districts of 15,000 acres or less have an option to amend their bylaws to allow electors who live within fifteen miles of the district to vote. The purpose of H 86 is to remove the acreage limitation so that all irrigation districts have the option to change their voter qualifications. All other requirements would remain the same.
- There was no opposition to this bill.
- MOTION:** **Senator Coiner** made the motion to send H 86 to the floor with a do pass recommendation. **Senator Little** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Coiner** will be the **sponsor** of this bill.
- H 87** **Mr. Semanko** presented H 87. He said that this bill is meant to clarify some existing provisions in the code that applies to irrigation districts, specifically the process for redemption of a water right. Eventually, if you don't pay your assessment to the irrigation district, your right to the use of the water is lost. Mr. Semanko said there is a process for that to be redeemed and when that happens in the chain of title, that ought to be reflected through title recordation.

There was no testimony and no opposition to this bill.

MOTION:

Senator Little made the motion to send H 87 to the floor with a do pass recommendation. **Senator Coiner** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Little** will be the **sponsor** of this bill.

Chairman Schroeder said without objection, H 86 and H 87 will be sent to the **consent calender**. There was no objection.

H 24

The **Chairman** said H 24 has generated a lot of interest. Testimony and explanations will be taken today, with possible extension of testimony on Wednesday. Voting will be Wednesday.

Presenting H 24 was **Mr. George Bacon, Interim Director of the Department of Lands**. He said they didn't mean for this bill to be controversial. It was primarily cleanup - amending the name from "state " to "Idaho" because the name is more identifiable to areas outside the state. It also amends the name of the industry association updates to the current name which has gone through several revisions since the statute was enacted. It also amends the association member requirement some flexibility in submitting nominees for appointment when they may not have a member residing in that area of the state. The State Board of Scaling Practices oversees the forest products. Two organizations were recognized as standing on the Board when it was created. The two organizations with representation on the Board are Intermountain Forest Association (representing mills) and Associated Logging Contractors (representing loggers). There is also a private landowner on the Board, plus the Director of the Department of Lands. There are two representatives from IFA , two from ALC, and two land representatives. The two associations are having difficulty recruiting members from certain parts of the state, especially where there are no mills left in those areas. Mr. Bacon said he thinks the concerns raised by the two groups relate to things that are not necessarily part of the amendment.

Mr. Ernie Bauer, Executive Director, Board of Scaling Practices, was called on to explain the scaling practices. He said the Board was originally created in 1969 in response to concerns raised mainly by people in the northern part of the state, but also in the south end. At that time, the Legislature put together this vehicle for membership representation on the Board, with two members representing industry, two members representing the loggers, and the Director of Lands represented landowners. This worked well for a number of years, but in the mid 90's, the Idaho Forest Owners Association (small non-industrial private landowners) petitioned to also get representation. The Legislature then allowed that to occur. In the late 60's and early 70's, about half of the forest products industry worked in the northern part of the state and the other half in the southern part. Through the 90's with the change in the federal approach of staying off federal ground, much of the timberland base dried up in south Idaho. Due to that, there were a number of mill closures. Currently, there is only one commercial sawmill south of the Salmon River and that mill is not a member of the Intermountain Forest Association. What this legislation is intended to do is to allow the IFA a

vehicle whereby they can submit a nominee to the Governor for the appointment to the Board, so that they can have a full contingency on the Board for a three part balance.

Mr. Bauer was asked to explain log scaling, which he did.

TESTIMONY: Testifying was **Rodney Krogh** and an outline of his testimony is inserted into the minutes.

Mr. Chairman, members of the committee, my name is Rodney Krogh and I am with Evergreen Forest, the sawmill at Tamarack, Idaho. I am not in favor of House Bill 24, for the simple reason that it will not truly represent the interests of the forest industry south of the Salmon River. The interests I am referring to would be the Idaho Department of Lands, private landowners, sawmills and loggers. By passing the bill, it could lead to the north dominating the Idaho Board of Scaling Practices and changing the taper rules and/or Point of Origin vs. Point of Scale (scaling site location).

1) Point of Origin vs. Point of Scale (scaling site location)

- History —20 year on-going battle to change the taper rules
- Idaho Forest Industry Council — Boise Cascade
- June 6, 2005 — Idaho Board of Scaling Practices made a mention to do a study on the North-South Taper Rules (Exhibit A)
- June 8, 2006 — The Taper Study Report was presented to the board
- Recommendations: No change should be made to the current standard taper rules. It would be impractical
- The study was conducted at the request of the south representative nominated by Intermountain Forest Association who works for a North Idaho mill
- South Idaho Timber
- Difference between north & south Idaho timber
- North — tall, straight, very little taper
- South — short and lots of taper
- Forest Service timber compared to IDL & private
- Timber more tapered today than years ago

2) The argument

- Point of origin vs. point of scale
- North mills want to scale on North Idaho taper rules from logs they purchase from south Idaho
- The southern mills would have to continue to use the south taper rules
- Grangeville to Lewiston mills would purchase logs from South Idaho for less scale — pay less for the same log
- North argument
- Pay more for logs
- Not true — with competition they would only pay \$1 more than the next bidder
- Overrun
- What a mill does with the log once it is inside the mill
- Money
- North Idaho mill owner's pocket

- Back door approach
- Load-up board with majority of northern Idaho members

3) HB24

- Wording needs to change so the Representative to the Board of Scaling Practices is from south of the Salmon River
- How one is nominated
- Have to be a member of Intermountain Forest Association or Associated Logging Contractors
- Start up *South Idaho Forest Association*
- This association would nominate two members to the board

TESTIMONY:

Oscar Baumhoff, a timberland owner, testified that his concern is the changing of the word “from” to “to” on lines 23 and 24, involving the north and south areas. He said the rest is strictly housekeeping and he doesn't have a problem with that.

TESTIMONY:

Steve Gurnsey, General Manager Idaho Lands, Western Pacific Timber LLC, testified and his testimony is inserted into the minutes.

Mr. Chairman and Senators, Thank you for the opportunity to address your committee concerning HB 024.

A. POINTS:

1) HB 024 does not represent the conditions that exist in Idaho in 2007. It represents those conditions found in Idaho during the 1950's through the early 1990's when the majority of the timber was produced on federal lands, and sawmills were located in every hamlet adjacent to timberlands.

2) The majority of wood produced in south Idaho now comes off private nonindustrial forests.

3) There is only one significant mill - Evergreen Forest Products at Tamarack (25 MMBF/Year log scale) south of the Salmon River.

4) Neither IFA nor any other forest industry group has any members south of the Salmon River. IFA primarily represents the mills who hire the scalers. Why should the people who hire the scalers have more say over the scaling rules their employees use, than the NIPF's who produce the timber that the mills buy.

5) WPT, a private non industrial timber company, currently produces more wood than either the IDL or USFS south of the Salmon River, but with the proposed change in the law, we could end up without having **any** representation by **any** party with vested interest, to protect the interests of South Idaho.

6) Through having professional of staff and understanding the timber business, at WPT we can conduct our business so to protect our interests. One of the first things I did was to hire a check scaler to look

after our interests and make sure the scale is accurate. We scale lots of logs, so we scale them under a sale agreement, not a mill purchase agreement. By doing this we can set the provisions of the log sale, not the mills. If scaling rules are changed, we would review the change, so to understand the change, and then adjust to the new conditions. The majority of small landowners do not have the resources to conduct business as we do and do not understand scaling or what the differences in scale mean to them.

7) There needs to be more representation of the nonindustrial private landowners. There has been good honest representation in the past, but the **potential** exists that no one will look after the interests of the NIPF sector in the south.

8) The proposed changes could produce the opportunity to eliminate **adequate** representation south of the Salmon River.

a) A move was made in 2005 and 2006 to change the scale to region I (north of the Salmon) , versus region 4 (south of the Salmon), or from **point of origin to point of delivery**.

b) This move was spearheaded by the very first person (Dick Wilhyte with Bennett Forest Industries) nominated by IFA "to represent the **interests**" south of the Salmon River. Through my phone calling this last two weeks I have found not one of the "interests" were contacted by this individual or the IFA, to find out how they felt about the proposed change.

c) Region I scale, that this individual desired, allows for less taper in odd diameter, multiple segment logs and thus reduces the scale. (Explain the details as shown on the diagrams.)

d) Such a move would have impacted the gross scale on odd diameter logs by 8 to 25%.

e) A taper study of logs south of the Salmon showed the taper was proper and fit the provisions Idaho logs are currently scaled under, and the motion was dropped. I am grateful that we presently have honest individuals of unquestionable integrity on the scaling board. Can this be guaranteed in the future? While working for mills in another state, during a period when the profit margins dropped, I have been involved with writing "utility grades" with the sole purpose of legally reducing what the mill paid to the landowners and loggers. If the profit margins at the mills drop, without representation, how can the landowners in the south ensure undue pressures won't result in changes to the Idaho scaling practices.

9) WPT currently supports over 200 internal and external employees that make wages at a level that can support a family. In 2008, WPT paid out almost **\$18 million dollars** for our logging. While this may be small potatoes in the big picture, keeping our operations profitable greatly impacts many of the smaller communities where our contractors and their families live.

10) Logging and timber growing in south Idaho already exists on a lower profit margin than up north due to:

- Higher logging costs;
- Poorer growing conditions (It doesn't rain very much down here), our trees average 14 inches of growth per year while many areas

- of North Idaho average 24 inches or greater;
- There are fewer markets to build competition and thus increase our log values;
- Transportation costs to the markets are double to triple as compared to up north.

11) While demand for wood from S Idaho has been high, **we need representation to insure we get the most value for our product to keep our operations profitable.**

12) Similar controversy has happened in the past. One resulted in changing the way logging contractors in Idaho get paid by gross scale, not net scale. Similar actions will probably be looked at in the future. Will there be anyone to look after the landowners in South Idaho?

B. RECOMMENDATIONS: (Listed in Priority)

1. Leave the word **from** in the language.
2. Add one more landowner/timber producer to equalize representation.
 - i. Owns more than 500 or (X) acres and/or
 - ii. Produces > = 1 MMBF or (Y) MBF ever 5 years.
3. Pay by cubic. Cubic is the only accurate way to calculate the scale in small logs. I personally do not like cubic because I do not understand it, but I can learn. After talking to several individuals who know more about cubic than I do, they have indicated this scale also has problems.
4. Pay by weight. An intensive study would need to be conducted, to establish the weights to be used. It is different by every species, by geographical region, and every sale within a region. In my opinion, after working with weight to scale ratios for 20 some years, this method is too variable to be feasible on a large scale basis.

In conclusion, small logs are the future and moves to change the scaling rules have the potential to reduce the revenues from all timberlands south of the Salmon River due to the substantially greater taper in our logs. South Idaho needs representation.

Finally, I want to thank you Mr. Chairman and Senators for the opportunity to present my arguments. Having grown up in Idaho and then having lived in the socialist State of Oregon for 23 years, where this situation would have been dictated by an administrative rule handed down by the State. It truly is wonderful to live in a Democracy when all citizens have the privilege and honor to express their view to the legislative body.

Thank you Mister Chairman and Senators for hearing me out.

TESTIMONY: **Denny Pomerleau, Check Scaler for Western Pacific Timber**, also testified. Inserted into the minutes is a copy of his testimony.

The Board of Scaling Practices was established to protect loggers and haulers, and to be paid by gross scale or gross weight of logs.

Five members on the Board appointed by the Governor:

Two from industry to be nominated by the Industry Association, one representing North of the Salmon River (USFS Region 1) and one representing South of the Salmon River (USFS Region 4).

Two from logging to be nominated by the Logging Association, one representing North of the Salmon River (USFS Region 1) and one representing South of the Salmon River (USFS Region 4).

Director of Department of Lands acting as chairman of the Board.

Each member must be from the district they represent.

Later a sixth member was appointed by the Governor, representing small wood lot owners, having 100 through 5,000 acres, statewide.

At least two Board members must have log scaling experience.

The Board is to adopt rules and govern the log scaling activities throughout the state.

All log scalers are required to be state licensed to scale for payment and are required to pass a state exam (written and practical) to receive a state scaling license and after receiving the state scaling license, pass a check scale by a State Board of Scaling Practices Check Scaler, every two years.

The law was originally for regulating gross scale, but is also regulating net scale, presently. Net scale is an agreement between buyer and seller, which are required to be posted at the point of delivery. If there are no rules posted for the State Check Scaler to follow, there are default rules set by the Board of Scaling which are used for net scale.

To fund the Scaling Board there is a per thousand charge assessed to the mills receiving the logs, the assessed fee is set by the Board of Scaling Practices using the parameters set by the state statute.

The Board of Scaling Practices throughout the years has updated the scaling rules to better reflect today's timber, logging processes, and mill processes. These rule changes are done through the process required by the state statute.

We are now embarking on one of those rule changes. Instead of each member being from the district they represent, the change would be a member from either district could represent any district. This could cause a loss of capital for the landowner selling logs and an increase in cost to the mill for the raw material. Instead of making piecemeal changes to the

law, maybe an overhaul should be made to reflect who the Board represents because of the changes in the number of mills, the addition of large land owners in the state, and the process of nominating Board members to the Governor.

The number of mills has declined by 60%. The mills that are left are more modern and up-to-date, and in most cases, are cutting a completely different log than in the past, keeping in mind the mills are the people who fund the Board of Scaling Practices.

The log “specs” are completely changed, to a smaller top and to a longer log in some species, which are not being accurately measured for payment or in some cases over payment.

Large land/timber owners are not represented on the Board of Scaling Practices.

A state scaling assessment is charged to mills outside the state with no services rendered for the log seller, who indirectly pays the state assessment.

It seems odd the Chairman of the Board of Scaling is the Director of the Department of Lands. The Department of Lands being a major log seller and landowner should be more involved with the process, rather than on their own, so to speak.

There are only two states in the United States that require a license to scale logs, Idaho and Maine. Though the system may have a few flaws, it is a great law and does set a standard that is needed. Instead of just offering short comings of the Board, some solutions may be offered:

The type of measure for the small logs;

Revising the Scribner Log Rule to reflect the small log;

Using cubic scale by which any small log can be measured;

Using weight for buying and selling the smaller logs;

Reconfigure who the members represent because of the private timber which makes up a large amount of the raw material to the mills today;

Keeping in mind the mills are where the monies come from to fund the Board of Scaling Practices and the mills seem to be less and less;

The members of the Board of Scaling Practices being nominated by the Idaho Forest Council and the members have a term limit;

The Board of Scaling Practices fall under a different state organization and the Department of Lands become more involved as other log sellers/land owners;

Services offered for logs being sold outside of Idaho or a reduced rate to the mills outside of the state;

Keeping in mind this system works well and the intent is to improve the Board of Scaling and care should be taken when bringing the system into the 21st century not to undo what we have.

Because of the Mr. Scribner Log Rule, (that is the rule that is recognized and used today) and is the state of Idaho's official Log Rule, with updates and revisions, and is used throughout the state of Idaho. When Mr. Scribner developed the Log Rule in the mid 1800's, there have been many changes in the type of logs and size of logs from then to now. The smallest log then was 12 inches on the small end. So the log rule throughout the ages has been adjusted for the smaller logs. The other thing to mention is the log length then was a 16 foot log and the Log Rule was developed for that length. Today, all lengths are used, from 8 foot through 20 foot single segment and 21 foot through 40 two segments and 41 foot and longer three segments logs.

Today we are producing long small logs that were not part of Mr. Scribner's original Log Rule, and so the Log Rule has been adjusted to accommodate this type of log, which seems to be the size and type of logs we are dealing with throughout the state. In the smaller logs 6 through 9" the logs 8 foot through 14 foot have the same log scale in most cases. The logs 16 foot through 20 foot have the same log scale. An example is a 16 foot log with a 7 inch small end will have the same scale as a 20 foot log with a 7 inch small end, even though there is an increase of 25 % in the length of the log. This is the rule we all live with and accept.

Because of the height of the trees in south Idaho verses the height of the trees in north Idaho, the trees in north Idaho are taller and the taper is less in a segment of these trees, if the large end (stump) and the tip are the same. There was a year long study done to establish taper in butt logs that are longer than 20 feet. This study was conducted throughout the state and taper tables were established for north Idaho (north of the Salmon River) and south Idaho, which were approved and accepted by the Board of Scaling Practices. Because of the greater taper in south Idaho, it was determined the actual taper was two inches in most species. Western larch's taper is one inch. In north Idaho, the taper worked out to be 1.5 inches on most species. To make this useable and fair, a system is used where the odd diameters are one inch and the even diameters are two inches. I would also like to mention these taper tables have been used for many years by industry and agencies and have not seemed to change from

the past.

Mr. Pomerleau provided a four page handout that contained diagrams of logs showing the difference of scaling in the two regions.

The **Chairman** announced that the discussion on H 24 would continue on Wednesday.

HCR 16

Representative JoAn Wood presented HCR 16 and said that this concurrent resolution would reject a subsection of a pending rule of the Idaho Fish and Game Commission pertaining to Rules Governing Licensing. It changes the percentage from six percent back to three percent for the allocation of tags and in some zones it provides at least one tag.

MOTION:

Senator Pearce made the motion to send HCR 16 to the floor with a do pass recommendation. **Senator Andreason** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Pearce** will be the sponsor of this bill.

ADJOURN:

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 7, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:40 p.m.
- ANNOUNCEMENT:** He said that he had decided not to reschedule H 24, but due to lack of time Monday, Ms. Jane Wittmeyer, Idaho Forest Association, did not get to present her testimony. He will allow her to do that Friday. The Chairman said he is hoping the two sides will get together and have a bill they can agree on next year.
- GUBERNATORIAL APPOINTMENTS:** **Chairman Schroeder** said there are four **Gubernatorial appointees to the Idaho Water Resource Board** here today for their hearing. They are **Gary Chamberlain, Charles Cuddy, Robert "Bob" Graham, and Jerry Rigby. Mr. Dave Tuthill, Interim Director for the Idaho Department of Water Resources** was also present.
- APPOINTEE:** Testifying first was **Gary Chamberlain** of Challis who has been reappointed for a four year term, with the term expiring January 1, 2011.
- Inserted into the minutes is Mr. Chamberlain's biography which he provided.
- I was born in Long Beach California and moved with my family to Sylmar, California at the age of 4, where I lived until I discovered Idaho in 1961. Having seen this eye opening experience, I could not rest until I made my home in Challis, Idaho. I completed High School at San Fernando High in 1962 and attended Pearce College during the winters from 1962 thru 1965; spending the summers working in my beloved Idaho.
- In the fall of 1965, I chose not to go back to California to College but instead stayed in Idaho and began my career as a Rancher. I purchased my first ranch consisting of 160 acres in 1966, filed on a desert land entry in 1967 and was given the go ahead to prove up on 320 acres in 1969. I purchased another 100 acres from a neighbor in 1979 and bought the final 220 acres in 1985 giving my family a total of 800 acres that we are

farming today. We run 250 head of mother cows, 200 head of sheep, 30 head of horses, produce hay and grain and manufacture hay cubes.

During this time I have been active in many community affairs. I served as a director on the local Farm Bureau Board and then President of Custer County Farm Bureau. I also served as a director on the State Board of Farm Bureau. I have been involved with Challis Irrigation Company since 1967, first as a director and then as President and water master, positions that I still hold today,

I served as trustee on the Challis School Board for one term. I have been a director of the Custer County Livestock Marketing Association (CCLMA) for over twenty years. I have served on two planning and zoning commissions for Custer County, the first in 1980 which was unsuccessful and the present one that I believe will be successful. I served as director of Salmon River Electric for nine years and was chairman of the board for one year. I am currently president of the Custer Weed Management Area (CWMA);

I have served as a member of Idaho Water Resource Board for five years being first appointed to fill Clarence Parr's position then reappointed by Governor Kempthorne and now reappointed by Governor Otter. I look forward to serving another four year term on the Water Board.

He told the committee that he appreciated the opportunity to stand before them and hoped that they would approve his appointment by Governor Otter. He said he would answer any questions the committee might have.

Senator Stennett said that he would like to thank Mr. Chamberlain for a speech he made at a meeting regarding water. His comments touched a lot of people and Senator Stennett wanted him to know that.

APPOINTEE:

Charles Cuddy of Orofino testified next. His appointment is from January 25, 2007 to January 1, 2011. He is replacing D. Richard Wyatt on the Board.

Inserted into the minutes is Mr. Cuddy's biography which he provided.

Objective

I am very interested in serving as a Water Resource Board Member and think my past experience in both the political realm, the private sectors and as a public employee will serve me well as a member of the Idaho Department of Water Resource Board.

Experience

1974 - 2006

Cuddy and Associates - Surveying and Consulting Orofino, Idaho
Owner and operator land surveying and consulting firm in Orofino, Idaho.
Experience with boundary surveys, road and street projects, water and

sewer systems, bridges, log handling facilities, experimental streams, hydroelectric projects, subdivisions, city planning and piping projects.

1985 - 1988

Oxford Energy Company

Retained as a consultant to assist with Hydro Electric project Licensing, reviewing and analyzing existing Permits and License for possible Purchase in the West. I also Managed the construction and operation of a 1.5 Megawatt Hydro Power Plant. I successfully Licensed a 2.1 megawatt hydro power plant, which I sold prior to construction.

1957.- 1974

Idaho Department Of Transportation, District II, Lewiston, Idaho

Responsibilities included field layout, quality control, construction layout, final quantity determination, final payment, change orders and additional right-of-way purchases on county secondary and primary multi-lane projects. Responsible for inspecting all state highway bridges in Highway District Four.

Education

1957 Kendrick High School, Kendrick, Idaho
High School Diploma

Lewis-Clark State College Lewiston, Idaho

Vocational Education Classes including: Trigonometry, Calculus, Solid Geometry, Chemistry, Fundamental Economics and Physics.

Professional Land Surveyors License by Examination in February 1973.

Interests

Prior Board Member for the following boards:
Clearwater Valley Hospital, Riverside Water and Sewer
Orofino Chamber of Commerce.

Appointed and elected Idaho State Representative District 7 and 8, 1991-2004

Served on the following committees:

Resource and Conservation Committee, Revenue and Taxation Committee and Sub-committee Chairman,
Transportation and Defense, Legislative Council, Rivers Governance Committee, Federal Lands Pilot Project Committee, Co-Chairman Federal Lands Task Force, Western States Forestry Task Force and the Joint Resource Committee.

Mr. Cuddy said it is his pleasure to be appointed to the Board and he hopes he can be of benefit to the North Idaho group with some of the issues they may have.

The **Chairman** inquired as to how many terms Mr. Cuddy served in the House. Mr. Cuddy replied that he served seven terms. **Senator Stennett** said that Mr. Cuddy served on the Resources committee for many years in the House and has a good grip on southern Idaho's water issues. He asked what role the Board would play and how can things be resolved. **Mr. Cuddy** said the new committee could help the Legislature, and with the current court ruling, there is opportunity to come together and reach more of a consensus than has been available in the past. **Senator Little** inquired of Mr. Cuddy what the temperament is of the citizens in the north to have to go through an adjudication process. Mr. Cuddy said it is not a lot different than when they started the other one. Some see it as a plus, others think there is no need for it when they have a surplus of water at various times of the year. He said there are areas that adjudication would serve quite well, such as the Coeur d'Alene Basin.

APPOINTEE: **Robert "Bob" Graham** is from Bonners Ferry and has been reappointed to another four year term commencing January 23, 2007 and expiring January 1, 2011.

Inserted into the minutes is Mr. Graham's biography.

My name is Bob Graham, and I live in Bonners Ferry. My wife and I moved there in 1972 and I was the District Ranger for the US Forest Service for the Bonners Ferry Ranger District.

I attended Washington State University and after an interruption of a couple years in the US Army, graduated with a bachelor degree in Forestry. Went to work for the US Forest Service and spent all but two years of that career stationed in various towns in Idaho. We have lived in Priest Lake, Sandpoint, Orofino, Pierce, North Fork of the Clearwater, on the Salmon River at Slate Creek, and Bonners Ferry. I retired from the Forest Service after thirty years of service in Fire and Supervisory positions, including Smokejumper.

My wife, Mag and I had six children, all born in Idaho. Meg is from Richland, Washington. In the mid nineties, I was elected as County Commissioner and was Chairman of the Board of County Commissioners. I served as Secretary Treasurer of the North Bonners Ferry Water and Sewer District. I'm very much involved with Homeland Security and related activities and serve as the Incident Commander (IC) for all emergencies for Boundary County. I am appointed by the County as the POC, (Person of Contact), for Homeland Security Grant programs for Boundary County. I do Forest Consultant work for woodland landowners in the northern portion of Idaho, and am a Resource advisor to County officials.

Mr. Graham said the only thing he would add is that he is retired from the “old” Forest Service. There were no questions asked of Mr. Graham.

APPOINTEE:

The last to testify was **Jerry Rigby** of Rexburg who has been reappointed to a four year term commencing January 23, 2007 and expiring January 1, 2011.

Inserted into the minutes is Mr. Rigby's biography.

Born and raised in Rexburg, Idaho area. Attended Madison High School in Rexburg.

Earned a B.A. degree in Economics from Brigham Young University (Utah) in 1976.

Earned a J.D. degree from J. Reuben Clark Law School at Brigham Young University in 1979.

Was admitted to practice law in the State of Idaho in 1979. Also admitted to practice in the Idaho Federal Courts and in the 9th Circuit Court of Appeals.

Married Shelly Parker from St. Anthony, Idaho and together they have 5 boys and one girl.

Is currently the managing director and a shareholder of the law firm of “RIGBY, THATCHER, ANDRUS, RIGBY & MOELLER, CHARTERED” in Rexburg and has been with the firm for over 28 years.

Practices law with emphasis in Water Law, Electric Cooperative Law, Business, Real Estate and Estate Planning. Regular Presenter and Instructor at Idaho Water Users Legal Seminars.

Presently serves as the chairman of the IDAHO WATER RESOURCE BOARD, and was appointed to that position by Governor Batt in January of 1995 and reappointed by Governor Kempthorne in 1999 and again in 2002.

Represents several business enterprises, water Irrigation Districts, Canal Companies and Electrical Cooperatives in the Southeast Idaho area. Examples include: Fremont Madison Irrigation District; New Sweden Irrigation District, Egin Bench Canals; Fall River Rural Electric Cooperative, Inc.; Raft River Rural Electric Cooperative, Inc.; Mitigation, Inc. and one of the attorneys for the Committee of Nine (representing the water users of Water District 01).

In his capacity of representing the irrigation districts and canal companies associated with the Committee of Nine and Mitigation, Inc., in the upper

Snake River Valley, he represents both surface and ground water right holders' interests and believes the interests of both surface and ground water rights can be sustained while protecting the senior water right holders.

Member of Rotary (past president); past member of the Board of Madison Economic Development Corporation and past Board member of Rexburg Chamber of Commerce.

Mr. Rigby said that he is a lawyer and enjoys working on the Water Resource Board.

That concluded the hearings for the four gentlemen.

Senator Stennett said the statute that creates the Board says that no more than four members can be from one political party and he noted that Mr. Chamberlain hadn't provided that information. Senator Stennett said that for the record, he would like to know Mr. Chamberlain's party affiliation, to which Mr. Chamberlain replied that he is an Independent.

The **Chairman** said voting on the appointments would take place Friday. He then turned the gavel over to **Vice Chairman Pearce** so that he could present his RS.

RS 17147C1

Senator Schroeder said RS 17147C1 is legislation to provide for certain restrictions on the importation and disposal of cervid carcasses or parts of cervid carcasses from chronic wasting disease endemic areas.

He stated that two bills were presented earlier by two committee members addressing this issue and he felt that improvements needed to be made to both of them. Senator Schroeder stated that rather than send either bill to the amending order, he would present this bill and invited the two members to join him as sponsors.

Senator Schroeder said that definitions of parts are more clearly defined. Chronic Wasting Disease (CWD) is found in spinal columns and brain material and this bill specifically addresses that. Also, for enforcement purposes, states are designated rather than counties.

There was discussion regarding CWD and the areas where it is found.

Phil Mamer, Wildlife Veterinarian, Idaho Department of Fish and Game, said the states with CWD keeps increasing slowly, but close to us the states that have it are Utah, Colorado, and Wyoming. It is also found in Nebraska, the Dakotas, and on the border between Alberta and Saskatchewan, Canada, as well as a number of other states.

Senator Langhorst said he wished to thank Senator Schroeder for looking at the two bills that were brought to the committee earlier. He said that his bill specified counties with the thought that people living on the Wyoming border might object since CWD is not in those adjoining counties. He agreed that enforcement would be difficult.

MOTION: **Senator Langhorst** made the motion to send RS 17147C1 to the State Affairs Committee for consideration to print. **Senator Andreason** seconded the motion. A roll call vote was requested by Senator Schroeder. **Voting aye** were Senators Langhorst, Stennett, Coiner, Little, Andreason, Schroeder and Chairman Pearce (7). **Voting nay** was Senator Siddoway (1). Absent from voting was Senator Cameron.

Chairman Pearce then returned the gavel to Senator Schroeder.

SPEAKER: **Chairman Schroeder** welcomed **Director Toni Hardesty, Department of Environmental Quality**, who will provide a presentation on Mercury Monitoring Activities for 2006.

Ms. Hardesty said their mercury monitoring goals are to gauge the extent of a mercury problem; identify mercury hotspots; complete mercury Total Maximum Daily Loads for Salmon Falls Reservoir and Jordan Creek and to determine the sources, if possible.

She posed the question - why are we concerned with mercury? Ms. Hardesty said it is toxic to humans, especially pregnant women and children; primary route of exposure is diet (fish that eat fish and humans that eat fish); and sources can be natural or man caused.

Ms. Hardesty said mercury sampling has been done at the following places: Jordan Creek, Orofino Creek, Salmon Falls Creek, Snow sites, USGS Sites, Lake Lowell, Brownlee Reservoir, Brownlee Tributaries, and Large River Sites.

At the Salmon Falls Reservoir Mercury TMDL Monitoring, they have done a complete water monitoring; second round of fish sampling; second round of snow sampling; completed wet and dry air deposition monitoring; and finalized the sediment coring report.

At the Jordan Creek Mercury TMDL Monitoring, the fish, water and sediment monitoring has been completed and the TMDL is out to public comment.

At the Brownlee Reservoir Tributary Monitoring, they are determining the concentrations of mercury in water from tributaries at high and low flows.

Brownlee and Lake Lowell Fish Tissue Sampling - evaluating current fish tissue data against DEQ mercury fish tissue criterion.

Large River Fish Tissue Sampling by DEQ: nine different rivers; 13 sites; processed over 210 fish for analysis. By USGS: seven different rivers.

Ms. Hardesty said their plans for 2007 is to continue the statewide survey of fish tissue in lakes and reservoirs. They now have a background mercury monitor for air deposition at the Craters of the Moon site. Idaho was one of the states that did not have one. They are also working with Nevada to develop a MOU (memo of understanding) with EPA Region 9 and 10, with regards to sharing data relative to mercury. There are

significant mercury emissions that come from northern Nevada. Nevada has been doing studies related to that and Idaho is doing studies as well.

That concluded Ms. Hardesty's presentation.

H 31

Director Hardesty said H 31 relates to the Bunker Hill Mining and Metallurgical Complex Superfund Facility and is to clarify the nature of removal and remediation contracts. It would designate DEQ as the authority for letting and overseeing these contracts.

She provided a handout that provided information and answers to questions that were posed when the bill was presented at an earlier meeting.

Inserted into the minutes is the handout that Ms. Hardesty referred her remarks to.

HB 31 Bunker Hill Superfund Site Contracting Changes

Current Contracting Situation:

1. The contracts in question entail property remediation and sampling on mostly private property. The property remediation work entails excavating 6 to 12 inches of contaminated soil from properties and replacing it with uncontaminated soil. It could be likened to landscaping. The sampling contract is for sampling soil and gravel. Neither of these activities fit the category of a contract for public works of the state (Public Works Contract). DEQ would not be building a bridge or public building or working solely on public property. The Department of Administration has determined that these contracts are not Public Works Contracts, but rather as contracts for the acquisition or purchasing of services (Purchasing Contracts).

2. Division of Purchasing is managing these contracts in tandem with DEQ as Services Contracts. Purchasing Contracts do not necessarily require bonding. However, because of the size and extent of the Property Remediation work and the potential to cause harm to private property, the Division of Purchasing, with concurrence from DEQ, opted to make bonding a requirement. Division of Purchasing has this discretionary authority under 67-5717(8) of Idaho Code.

Proposed Legislation to Transfer Contracting Authority to DEQ:

1. The intent of the legislation is to change contracting authority from the Division of Purchasing to DEQ and identify appropriate sections of the Idaho Code that would apply to the Superfund Contracts. This authority would enable DEQ to adapt quicker to changing situations such as material and resource availability. The citations provided in the bill text

were included to allow DEQ to mimic the authorities that Division of Purchasing is currently using to administer these contracts. See #3 below for the list of chapters included in the bill text.

2. Specific questions asked by the Senate Committee:

a. Would DEQ be required to call for bonding for these contracts?

No. Since these would be Purchasing Contracts, bonding is not and would not be mandated by statute. However, the Division of Purchasing currently has the discretion to require bonding for specific Purchasing Contracts and DEQ would have the same discretion as expressly stated in the bill text and as provided in 67-5717(8). DEQ intends to require bonds for the Property Remediation Program contracts as was done by the Division of Purchasing.

b. Would DEQ be required to openly compete contracts?

Yes. DEQ would be required to openly compete contracts to the same extent that the Division of Purchasing is required to openly compete contracts. See 67-5717(2).

c. What does the sentence about not being a public works contract mean particularly when it refers to “any other provision of Idaho Code” (see line 20 of the bill text)?

The purpose of this sentence is to confirm that these contracts are not Public Work Contracts consistent with the current interpretation and practice of the Department of Administration. The phrase “or any other provision of Idaho Code” pertains solely to provisions of Idaho Code regarding Public Works Contracts. This sentence and this catch-all provision ensure that the Superfund Contracts will not be subject to those Idaho Code provisions regarding Public Works Contracts which are specifically referenced and any other provisions regarding Public works Contracts that may exist. The deputy attorney general responsible for drafting this provision confirmed to DEQ that this catch-all phrase was included in an attempt to be thorough and that it would not exempt the Superfund Contracts from any provision of Idaho Code EXCEPT those pertaining to Public Works Contracts.

d. Would DEQ be released from any contracting requirements that currently apply to these contracts under Division of Purchasing?

No. The legislation is designed to maintain the same processes and requirements that are currently in place except that DEQ, rather than the Department of Administration - Division of Purchasing, will administer the contracts.

3. Idaho Code Citations in Bill Text from Title 67 Chapter 57 Department of Administration. Deputies Attorney General assigned to DEQ and the Department of Administration identified the following statutory authorities and requirements that would be necessary for DEQ to administer Superfund Contracts in the same manner and subject to the same requirements as the Department of Administration.

- 67-5715 PURPOSE OF ACT
- 67-5716 DEFINITIONS OF TERMS
- 67-5717 POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF PURCHASING
- 67-5718 REQUISITIONS FOR PROPERTY – NOTICE – FORM – GUARANTEE – PROCEDURE FOR BIDDING
- 67-5718A ACQUISITION OF PROPERTY BY CONTRACT – AWARD TO MORE THAN ONE BIDDER – STANDARDS FOR MULTIPLE AWARDS – APPROVAL BY ADMINISTRATOR
- 67 5725 PRESERVATION OF RECORDS – WRITTEN CONTRACTS – VOID CONTRACTS
- 67-5726 PROHIBITIONS
- 67-5729 APPLICATION OF ADMINISTRATIVE PROCEDURE ACT
- 67-5730 QUALIFICATION OF VENDORS – DISQUALIFICATION OF VENDORS – NOTICE – APPEALS
- 67-5733 DIVISION OF PURCHASING – APPEALS

MOTION: After some discussion, a motion was made by **Senator Little** to send H 31 to the floor with a do pass recommendation. The motion was seconded by **Senator Andreason**. The motion passed by **majority vote**. Senator Stennett voted nay. **Senator Little** will be the **sponsor** of this bill.

ADJOURN: **Chairman Schroeder** thanked Director Hardesty for her time and information. He then adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 9, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 433
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- MINUTES:** The meeting was called to order at 1:40 p.m. by **Chairman Schroeder**.

He said committee consideration would be given to the four Gubernatorial appointments to the Idaho Water Resource Board.
- MOTION:** **Vice Chairman Pearce** made a motion to accept the Gubernatorial appointment of **Gary Chamberlain** to the Idaho Water Resource Board and to send it to the floor with a do pass recommendation. **Senator Siddoway** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Siddoway** will be the sponsor.
- MOTION:** **Senator Little** made a motion to accept the Gubernatorial appointment of **Charles Cuddy** to the Idaho Water Resource Board and to send it to the floor with a do pass recommendation. **Senator Stennett** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Heinrich** will be the sponsor.
- MOTION:** **Senator Little** made a motion to accept the Gubernatorial appointment of **Robert "Bob" Graham** to the Idaho Water Resource Board and to send it to the floor with a do pass recommendation. **Senator Cameron** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Keough** will be the sponsor.
- MOTION:** **Senator Stennett** made a motion to accept the Gubernatorial appointment of **Jerry Rigby** to the Idaho Water Resource Board and to send it to the floor with a do pass recommendation. **Senator Andreason** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Hill** will be the sponsor.
- Chairman Schroeder** said the next order of business would be to approve some minutes.
- MOTION:** **Senator Siddoway** said that he had reviewed the minutes of February 19, 23, and 28 and made the motion that they be approved as written. **Senator Cameron** seconded the motion. The motion passed by **unanimous voice vote**.

MOTION: **Vice Chairman Pearce** said that he had read the minutes of February 21 and 26 and made the motion to accept them, as written. **Senator Cameron** seconded the motion. The motion passed by **unanimous voice vote**.

H 170 **Chairman Schroeder** welcomed **Dave Tuthill, Interim Director of the Idaho Department of Water Resources**, who will present H 170.

Mr. Tuthill said the purpose of H 170 is to improve efficiency of government for the water users in the adjudication process. Presently, each water right claim requires notarization and it has not been found to improve the quality of adjudication. By removing notarization, Internet filing of claims could be allowed, thus improving efficiency for both water users and the department. Mr. Tuthill stated that they worked with the Idaho Water Users Association on language to demonstrate the significance of filing a claim in this manner.

Senator Cameron said that on page 2, line 26, where it reads that each claimant "solemnly swear or affirm under penalty of perjury", perjury carries a heavier weight than going to a local notary and submitting it.

Written testimony was submitted by Food Producers of Idaho, Inc., Lloyd Knight, President, in support of H 170 and it is inserted into the minutes.

TESTIMONY:

Food Producers of Idaho supports 170 dealing with electronic filings of water rights and the elimination of the need for a notary public to witness the filing. Our membership has been advised on this issue by a number of different groups who see this as a very positive move in how water right are filed in our state.

Food Producers represents agriculture commodity and farm organizations in Idaho. We are asking that you vote in support, sending measure to the Senate floor with a "do pass" recommendation. H170 passed the Idaho House on February 22 by a vote of 66-2-2.

Our members believe this is sound legislation. Efficiencies we can add to how we do business are a cost savings for our producers as well as the agencies that support the filing of water rights.

MOTION: Following a short discussion, **Senator Cameron** made the motion to send H 170 to the floor with a do pass recommendation. The motion was seconded by **Senator Coiner**. The motion passed by **unanimous voice vote**. **Senator Cameron** will be the sponsor.

H 230 **Chairman Schroeder** welcomed Representative Brackett who will present H 230.

Representative Brackett said H 230 amends existing law to facilitate the development of geothermal resources. This bill has been worked on for several years, so it has had time to be refined. He stated that it amends Section 42-4003, Idaho Code, to revise filing fee provisions; amends

Section 42-4004, Idaho Code, to revise procedures relating to the processing of applications and investigations; amends Section 42-4005, Idaho Code, to revise requirements relating to the provision of good and sufficient security. The basic fees are to help cover the Idaho Department of Water Resources costs to review applications. It also broadens the bonding ability of geothermal developers by allowing a wider range of financial instruments and provides a greater blanket assurance and flexibility for well abandonment bonds.

MOTION:

After some discussion, **Senator Cameron** made the motion to send H 230 to the floor with a do pass recommendation. **Senator Little** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Cameron** will be the sponsor of this bill.

**ANNOUNCE-
MENT:**

Chairman Schroeder announced that in the committee's blue folder there is a letter from Cal Groen, Director of the Idaho Department of Fish and Game. The Director has followed up with requested information regarding Northwest Power and Conservation Council's Fish and Wildlife Program.

Due to the significance of that information, it is inserted into the minutes.

Thanks again for a very productive meeting with you and your committee. I wanted to followup on the request for a briefing about the wildlife mitigation component of the Northwest Power and Conservation Council's Fish and Wildlife Program, which is funded by the Bonneville Power Administration (BPA). This issue came up in regard to the Commission discussion that the Department is exploring settlement agreement with BPA for the wildlife mitigation debt in Idaho.

Enclosed is a briefing paper that provides both background material and a synopsis of the settlement agreement concept. As you can see, our exploration of the concept is quite preliminary but we think it is worth pursuing in more detail.

Each of your committee members has received this information. Please let me know if you desire a more detailed presentation for the Committee during this legislative session.

Cal Groen, Director, Idaho Department of Fish and Game

**Briefing Paper for Senate Resources and
Environment Committee**
Bonneville Power Administration and Northwest Power
and Conservation Council
Wildlife Mitigation Program Settlement Agreement
March 2007

Introduction

The passage of the Northwest Power Act of 1980 established a program to mitigate the damages to the fish and wildlife resources resulting from the Federal Columbia River Power System*. The Northwest Power and Conservation Council (Council) developed a fish and wildlife program, funded by the Bonneville Power Administration (BPA), to implement the Act. The Council's program includes both fish and wildlife: approximately 70% of the program funds go towards salmon and steelhead with 15% each allocated to resident fish and wildlife programs.

The participants in the program include the "fish and wildlife managers" in the basin, which are the fish and wildlife agencies in Oregon, Washington, Idaho, and Montana as well as 13 Tribes and the US Fish and Wildlife Service and NOAA Fisheries.

Wildlife Mitigation in Idaho

In Idaho, the wildlife mitigation program is tied to the impacts associated with Palisades, Minidoka, Anderson Ranch, Black Canyon, Deadwood, Dworshak, and Albeni Falls dams and associated reservoirs. Wildlife loss assessments were prepared for each of these facilities and are the basis for the mitigation program. The assessments specify how much and what kind of habitat was lost and this wildlife mitigation "debt" is expressed in habitat units. The Tribes in Idaho and the Idaho Department of Fish and Game (IDFG) both have some ownership in the wildlife mitigation debt under the Council's program and through BPA's Tribal Trust responsibilities.

IDFG and the Tribes are reducing the wildlife mitigation debt through two projects: the Albeni Falls and Southern Idaho Wildlife Mitigation projects. The mitigation debt is slowly being reduced through fee title acquisition, easements, conservation agreements, and habitat enhancement projects. Projects are funded by BPA through a competitive process established by the Council.

Since 1996, IDFG, Shoshone-Paiute, Shoshone-Bannock, Kootenai, Coeur d'Alene, and Kalispell Tribes have been implementing the wildlife mitigation program under the Southern Idaho and Albeni Falls programs. More than 50% of the total wildlife mitigation debt remains.

Settlement Agreement

A settlement agreement concept would retire the mitigation debt through a cash payment by BPA to IDFG and Tribes. Settlement agreements have been negotiated with BPA in the past. Montana settled for their wildlife mitigation debt early in the program; Idaho and the Nez Perce Tribe settled for Dworshak Reservoir. Other entities discussed this option, but there have been no recent settlement agreements with BPA.

A wildlife mitigation settlement agreement will take considerable time to develop due to the number of parties involved. The Tribes, IDFG, BPA, and the Council will need to agree on a wide range of issues including how to allocate the debt among the parties, what a settlement agreement should look like, the time frame of the agreement, restrictions on how the settlement funds could be used, etc.

Use of Settlement Funds

The IDFG is seeking a settlement agreement on the outstanding wildlife mitigation debt as a way to establish and permanently fund a long-term and large scale habitat conservation program. Given the origin of the funds and the law that authorizes their use, it is likely that there will be specific constraints on their use. These constraints will be spelled out in a potential settlement agreement and will likely specify that they will have to be used to protect and/or enhance wildlife habitat. They will not be available for other purposes or general IDFG operations.

It is premature to speculate on the amount of funding the IDFG could realize from a settlement agreement. As alluded to above, it would be divided among five Tribes and the IDFG.

Progress to Date

IDFG has started working with the parties to develop a potential settlement agreement. IDFG has met with the Council and BPA to discuss the concept of settlement. BPA has agreed to provide some funding to help develop a potential settlement agreement. IDFG and the Tribes have met and agreed to explore the settlement option. Initial proposals have been made by both Albeni Falls and Southern Idaho partners on settlement approaches. IDFG and our partners are in the process of finding out how

others developed settlement agreements. We have arranged a meeting with all the parties, Council, BPA, Tribes, and IDFG, to advance the settlement option.

Summary

Development of a settlement agreement with BPA for the wildlife mitigation debt in Idaho is a viable option. Determining if it is a desirable option will depend on the outcome of settlement negotiations with both the BPA and our Tribal partners. We are currently at the initial stages of these negotiations and much remains to be done. We are, however, optimistic about the prospects and believe it is worth our time and effort to explore this option.

*The Northwest Power Act of 1980 states:

- *“The Council shall develop and adopt a program to protect, mitigate, and enhance fish and **wildlife** while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply.” Section 4(h)(5)*
- *“The BPA shall fund to protect, mitigate, and enhance fish and wildlife to the extent **affected** by the development and operation of the Federal Columbia River Power System (FCRPS) in a manner consistent with the Council’s Columbia Basin Fish and Wildlife Program.” Section 4(h)(10)(A)*

This briefing paper was prepared by:

Tracey Trent, Chief Natural Resources Policy Bureau,
IDFG, (208) 287-2710
Gregg Servheen, Wildlife Program Coordinator,
IDFG, (208) 287-2713

RELATING TO H 24:

Chairman Schroeder said that when H 24 was presented Wednesday, March 7, time ran out before **Ms. Jane Wittmeyer, Vice President of Idaho Affairs for the Intermountain Forest Association**, could testify. He told her that he would allow time today for her to address the committee. Inserted into the minutes is a copy of her testimony.

TESTIMONY:

Mr. Chairman and Members of the Committee:

My name is Jane Wittmeyer and I am VP of Idaho Affairs for the Intermountain Forest Association. The Intermountain Forest Association

(IFA) is an organization of wood product manufacturers, timberland owners and related businesses in the northern Rockies. The Association develops and implements solution-oriented policies aimed at securing a stable and sustainable supply of timber on public and private lands.

One of the issues I follow for the Association is the activities of the Board of Scaling Practices, which is what I came today to discuss. I appreciate the time on the agenda today.

As you know from the Monday meeting on the Department of Lands (DL) bill, H 24 scaling issues are complex, contentious and emotionally charged. I did not come today to rebut every allegation that was made earlier in the week. However, I did want to provide a small slice of information and provide an option that could lead to a consensus agreement on the issue that initially brought H 24 to your committee.

The reason Idaho has a Scaling Board was because back in the 1960's the loggers wanted to have a standardized way of determining that they were paid for the logs they delivered to the mills. The original Board was quite small and reflected the working circles and interests of that day and time. It was a simple organizational chart. The IDL Director was the Chairman (and tie breaker) and there were two representatives from the major logging contractor association—the Associated Logging Contractors and two representatives from the association that represented the largest number of lumber/paper mills-- which was the Intermountain Forest Industry Council IFIC later changed its name to the Intermountain Forest Association, the group I represent here today.

In the 1960's, there were many more mills in Idaho and many more logging contractors in Idaho. Working circles for mills and loggers were much different then than now.

It remains important to note that there is a difference between forests in north Idaho and south Idaho. The northern forests are much wetter and have different dominant tree species than the hotter dryer southern Idaho Ponderosa Pine forest. There is difference in growth habits between these two forest types.

As a result of the differing forest types, the original Scaling Board was organized with the geographical requirement of having one member of the ALC from south of the Salmon River and one ALC member from north of the Salmon River. The same was required for IFA representatives—one from north and one from south of the Salmon River. The Salmon River was chosen as the dividing line, I have been told, because it was an easy boundary for all to understand although the hot dry Ponderosa Pine forest extends well into the Clearwater Country.

Regardless of the accuracy of the placement of the dividing line, it was

statutorily set and was meant to reflect the interests of the differing working circles and differing forest types of that day.

Once legislated, the Scaling Board was successful in working out a standardized Gross Scale, created and maintained a teaching program for certified scalers in Idaho, conducted check scales on certified scalers and recertified scalers. You heard on Monday that the mills hire scalers and that is true. Mills want to know the amount of usable wood they are buying. To help ensure that the scalers are correctly doing their jobs, DL check scalers periodically visit sites and make sure it is being done right.

Having not been involved in the timber products business sector during the 1980's and 1990's, I have no knowledge of what the issues of the day were before the Scaling Board during those times. However, in 1999, my first year in my current job, the issue of lack of representation on the Scaling Board by the small private forest land owners (collectively represented by the Idaho Forest Owners Association) became an issue. IFA indicated support for the participation of the IFOA and I personally assisted in lobbying the legislation that added one voting seat for the IFOA on the Scaling Board.

The issues since then have revolved around the reduction in funds to support the Scaling Board and its activities, an effort to create standardized net scale which has thus far been unsuccessful, the unsuccessful effort to change the "origination" taper requirement you heard about on Monday, the creation of a Scaling School at the Workforce development center in Post Falls and the lack of certified scalers in Idaho.

Until recently, there was little concern expressed about a lack of participation by southern Idaho large land owners on the Scaling Board. However, there have been changes in the forest products business sector that may necessitate a review of the make up of the Scaling Board.

For instance, the closure and sale of the Boise Cascade mills in Cascade and Emmett have reduced the mills in the area south of the Salmon River to one. The last mill is in Tamarack, Idaho and is owned by one of the gentlemen you heard from on Monday—Mr. Krogh. His outfit is both north and south of the Salmon River.

Another change has been the sale of the Boise Cascade forest lands to Forest Capital Partners Limited, a real estate investment trust, who in turn sold the forest lands to Western Pacific owned by Mr. Blixeth, who is known for his large land developments in the western US. Western Pacific is harvesting substantial amounts of trees that are marketed both to the west in Oregon and to the north, particularly to the Grangeville area.

Another change has been the building of a new dimension lumber mill in

Grangeville. Their wood basket is both south to the Western Pacific selling circle and north throughout the Clearwater and Palouse areas.

Other major changes in this business sector are the rise in REIT's. Companies like Forest Capital Partners Limited in the Panhandle of Idaho and Potlatch are REITS. Forest Capital Partners Limited do not own any mills. They raise and sell timber. Potlatch is no longer a lumber and paper milling organization that owns forest land to meet the mill needs. Potlatch is now a REIT and the focus is on the growing and sale of timber. The mills are secondary.

Additional changes in this business sector are the advent of the small dimension lumber mills. This has created a demand for fiber that used to be too small to be removed from the forest.

The reason I highlight these changes in the forest products business sector is because it may be time for the Idaho Department of Lands to review the make up of the Idaho Scaling Board. As you heard on Monday, there is now concern expressed over the make up of the Scaling Board, by one large forest land owner and one small forest land owner from south of the Salmon River, and concerns from one mill that is physically located south of the Salmon.

After the hearing on Monday, I spoke with DL Director George Bacon about the possibility of the DL holding a series of meetings with pertinent stakeholders over the interim, to identify issues and concerns and move through a facilitated process to see if a consensus agreement could be reached on a fair and equitable re-organization of the Scaling Board.

He has agreed to pursue such a course of action and IFA will participate fully in such as process with the goal of bringing consensus legislation back to the Legislature.

Mr. Chairman and members of the Committee you have been very gracious in your allowance of time for me to speak today. I thank you and would stand for any easy questions you might have for me.

Ms. Wittmeyer provided an organizational chart of the Board of Scaling Practices. By adding seats to the Board, it will change the dynamics of the Board.

**ANNOUNCE-
MENT:**

Chairman Schroeder thanked Ms. Wittmeyer, then announced that George Bacon had been named as Director for the Department of Lands and is no longer the Interim Director.

He also stated that the timber industry is very important to the state and it is not in the best interest of the state to have a feud over scaling. The Chairman said if Director Bacon agreed, it would be beneficial to get the

two sides together this summer to reach a consensus and come back next year, if necessary, with a bill.

**PRESENTATION
BY DEPT. OF
LANDS:**

The **Chairman** welcomed Ms. Kathy Opp from the Department of Lands.

Mr. Chairman and Senators - Good Afternoon, my name is **Kathy Opp. I am the Division Administrator for Support Services with the Idaho Department of Lands.** In this capacity I also drive our strategic planning and serve as the endowment lands Asset manager. Managing endowment assets in Idaho is delivered jointly by the Endowment Fund Investment Board, who oversee the cash and financial assets of the trust, and the Department of Lands, who manage 2.4 million acres of land for income generating purposes. Both entities are governed by the State Board of Land Commissioners.

To start off my presentation today, I would like for us to view a video about the gift of endowment lands that we received at statehood. This video was produced by CLASS, the Children's Land Alliance Supporting Schools. CLASS is a non-profit corporation comprised of education leaders including parents, teachers, administrators and school board members from 19 western states who meet annually to learn more about school trust lands and how to increase their impact on the public schools in their state. I would like to introduce **Sherrie Feist, Vice President of Legislation for Idaho PTA, and Cindy Schiller, representing the Idaho chapter of CLASS**, as these two groups are the primary beneficiaries for the trust.

Following the video, **Ms. Opp** provided a handout to the committee members which was a copy of a slide presentation titled "Endowment Trust Asset Management Overview". (Attached.) She reviewed each slide as follows:

- In 1890, the Federal Government gave the State of Idaho 3,650,763 acres of land to manage to generate revenue for various institutions. Public Schools received two sections of every township to be managed in perpetuity. Idaho continues to own over 2.4 million acres. The corpus of the trust is the land and permanent fund generated by the sale of land, timber, minerals, leases, royalties, from statehood until 2000.
- The Endowment Mission, Article IX, Section 8 of the Idaho Constitution states the lands are to be managed *"...in such manner as will secure the maximum long term financial return to the institution to which granted."*
- Board of Land Commissioners Fiduciary Duty - The constitution names the Board of Land Commissioners as the sole trustee of all endowment assets, both land and financial. As trustee, they are fiduciaries and have responsibility under trust law to act in the best interest of the endowment beneficiaries in all their decisions.

Strictly speaking, Ms. Opp stated that there is no obligation to provide

multiple use, sustain Idaho industries, etc. The Board's undivided loyalty is to the beneficiaries.

- Who are the beneficiaries? Nine endowments - 14 legal beneficiaries. Public schools are the largest beneficiary. Each trust must stand on its own; be self sustaining.
- Goal of Most Endowments: Provide a perpetual stream of income. Success criteria: Maximize total return over time at an acceptable level of risk; provide equitable for future generations; providing stable distributions.
- Mix of all endowment assets: Timberland - 49%; equities - 32%; fixed income - 14%; other land - 5%. Over 75% of the gross annual trust revenue is generated by land management activities. Total value of all assets equal approximately \$2 billion.
- A defining point in the last 100 years since the statehood gift has to be endowment reform that began with a study initiated by Governor Batt. In 1996, there was an Endowment Reform Task Force, known as the Dorn Report. The key concept was that a change in focus in total portfolio management was needed. There were two issues - central governance (from individual parts to a whole trust) and over arching strategy to fulfill mission (no longer emphasizing individual securities or parcels, rather emphasizing overall goals and cash flows).
- What is an asset management plan? A document used to ensure assets can be managed, preserved and protected for long-term goals and strategy. Defines over-arching beliefs and philosophy about a set of collective investments. Includes elements of financial analysis, asset selection (and divestiture), asset allocation (diversification), plan implementation and ongoing monitoring of the investments/assets.
- Key Land Management Concepts Contained in the Working Draft. In the current land asset portfolio there are 1,032,126 forested acres and 1,430,188 non-forested acres. Forty two percent of trust land acres in Idaho are classified as forest land. Fifty eight percent of trust land acres consists of grazing, crop, minerals, residential (cottage sites), commercial properties, and bare ground with development potential. Ninety percent of annual gross revenue is from timber - single industry risk. Endowments must be managed as separate trusts. The revenues of small endowments fluctuate and they have trouble covering fixed management expenses and uniform distributions. The return on asset (ROA) metric is a key to assessing asset performance. To accurately set a baseline for value, Lands has contracted a Mass Appraisal of its land assets. This is a large scale project that will take most of 2007. Oregon performed a similar exercise in 2006. Montana is creating a linear programming model based on regional transaction values to get similar numbers that will allow ROA benchmarking in the future.
- Analysis of Portfolio Mix Using Optimization Model. This would address the vision and need expressed by "Endowment Reform Framers" that both the financial assets and land assets be considered together to properly position long-term earnings potential for the beneficiaries. The purpose of this analysis is also to determine what assets are natural

hedges, which optimize volatility and long-term return. The required inputs to the model are: return on asset targets by asset classification; standard deviation by asset classification; correlation among asset classifications.

- Land classification allows: land managers to customize plans and strategies necessary to optimize returns based on specific asset characteristics; ease of benchmarking performance against similar private industry (National Council of Real Estate Investment) and other state trust land managers to demonstrate we are achieving the mission; land managers to make informed decisions regarding portfolio diversification and risk, liquidity risk, and social/political risk. To further focus and define management efforts on the ground, we classify our land according to the highest and best use. Without asset classification, it would be impossible to formulate a predictive model such as the optimization model we just discussed.
- The Western States Land Commissioners Association (WSLCA) includes 23 member states, generally West of the Mississippi, who perform similar land management and regulatory functions.
- Planning by Asset Type - Components of Asset Business Plans. They are as follows: A description of current and future influences on plan implementation and asset performance; analyses of past and present returns on asset performance, current asset value, current asset characteristics, and future expected returns; a market analysis, including identification and assessment of customers and competitors, markets and market trends, and a forecast for the future; recommendations relating to the long-term financial and land management objectives for the asset; identification of opportunities and challenges, and plans for capitalizing on opportunities and dealing with challenges. The draft overarching asset management guidelines outlines the Board's strategic philosophy and overall goals on asset management. Specific strategies must be created by asset type in order to achieve those goals. Concurrent with the development of the master, overarching asset plan, Lands has continued to develop these underlying asset business plans - forest land (final); cropland (draft); minerals (draft) commercial real estate (assigned).
- In putting plans to action, they have many options to help change the mix and diversity of the portfolio. One of the questions they have to ask when they begin to contemplate disposal (sale or exchange) - Is the parcel worth more to someone else than to the beneficiaries?
- Current & Emerging Issues - (1) Threatened and endangered species; (2) Natural resource industry consolidation; (3) Divestiture of "non-strategic" holdings by large industrial landowners; (4) Customer product preferences <14" diameter; (5) Land use planning. Ms. Opp said that threatened and endangered species activity impacts one-half of the endowment timber holdings - revenue disruption possible.
- SUMMARY - The concerns that prompted endowment reform, and its concepts and intent, reflect modern investment practice which must adapt to changing market conditions. Asset management is a never

ending examination of holdings and opportunities, coupled with a framework that empowers timely actions, to endure the long-term viability and optimization of earnings for the beneficiaries. Ms. Opp stated that they have a long way to go before full implementation of endowment reform and comprehensive asset management is achieved. To quote the 1996 Dorn report the process will "...take decades to fulfill".

That concluded Ms. Opp's presentation and the **Chairman** thanked her for the information.

TESTIMONY:

At the request of Ms. Opp, **Ms. Sherrie Feist** talked to the committee about the importance of the Idaho School Trust Fund and gave a brief history. Inserted into the minutes is that information.

A Brief History of the Idaho School Trust Fund

It is important to understand how Idaho received its school trust lands. Many of the states created before 1850 sold their lands and now have no renewable resource. By understanding how Idaho gained school trust lands, it will hopefully give the members of Idaho PTA a greater interest in retaining the land to make money for the school children of Idaho. Always keep in mind that the purpose of school trust lands is to make money for the school children of Idaho.

The idea of granting trust lands for public education can be traced back as early as the Revolutionary War. The General Land Ordinance of 1785 established the system of designating sections 16 in every township for the benefit of schools. The Northwest Ordinance, passed in 1787 set the stage for new territories to enter the Union. Idaho entered the union in 1890. It was granted 2 sections of land, sections 16 and 36 of each township to support public education. This translated into 2,963,698 acres of land for Idaho. One of the reasons Idaho received 2 sections of land was because there are areas that would be unable to generate money for schools. Initially, lands were granted directly to the townships for the use of schools in each township. Later, Congress specified that counties should manage the lands for the schools. Even later, Congress designated the states as managers. Idaho still has approximately 81% of the original land given to it at statehood.

Initially, proceeds from land sales were handed directly to the schools. In 1835, however, Michigan set up a permanent school fund that received sale revenues and gave the interest on fund investments to the schools. This concept was rapidly picked up by other states, even including some states created before Michigan. In 1875, Congress began requiring that new states, starting with Colorado, set up such funds. Idaho has a permanent endowment fund which is managed by the Endowment Fund

Investment Board.

As late as the mid 1960s, state legislatures and state courts routinely allowed the states to dedicate school lands to non-revenue purposes, such as road rights-of-way, without compensation. But in 1966 the U.S. Supreme Court ruled that such actions violated the states' trust obligations. In *Lassen v. Arizona Highway Department*, the court ruled that "The Enabling Act unequivocally demands both that the trust receive the full value of any lands transferred from it and that any funds received be employed only for the purposes for which the lands was given." The Court concluded that the state must "compensate the trust in money for the full appraised value of any material sites or rights of that which it obtains on or over trust lands." In the 1970s, Idaho PTA became involved in a similar issue in Idaho. State school lands were going to be "given" to the state parks without full compensation. Idaho PTA stepped in and helped the school fund receive full compensation of the school trust lands to the tune of millions of dollars.

By understanding Idaho's history with school trust lands, we can now begin to understand our responsibility to protect the school trust lands and the endowment fund. Much of this article is from the papers of Jon A. Souder and Sally K, Fairfax.

Chairman Schroeder thanked Ms. Feist for her involvement with the Idaho PTA and her interest in Idaho's children.

ANNOUNCE- MENT:

He told the committee that Monday's meeting would be held in the Senate Majority Caucus Room due to the conference phone call for Ms. Linda Mitchell, Gubernatorial appointee for the Lake Pend Oreille Basin Commission. She is in Mexico and cannot appear in person for her hearing. He will conduct committee business and when her call comes in, he will interview her, then resume committee business.

ADJOURN:

The meeting was adjourned at 3:05 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 12, 2007

TIME: 1:30 p.m.

PLACE: Senate Majority Caucus Room

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

MEMBERS ABSENT/ EXCUSED: None

MINUTES: **Chairman Schroeder** called the meeting to order at 1:40 p.m. He announced that the purpose of the meeting in this room is to be able to have a telephone conference call with Ms. Linda Mitchell who is in Mexico and unable to appear before the committee in person. The Governor has reappointed her to the Lake Pend Oreille Basin Commission. Her call is expected at 2 p.m., and when it does come thru, the Chairman will stop whatever committee business is transpiring at that moment and take her call.

H 241 The **Chairman** then welcomed Representative Raybould who will present H 241.

Representative Raybould said H 241 came about because of last year's legislation that created the ability for the Idaho Department of Water Resources (IDWR) to start a management plan for the Eastern Snake Plain Aquifer (ESPA) and the waters associated with it. The Director of IDWR is to administer all water rights from water sources hydraulically connected to the ESPA. Two years ago the Attorney General's office made a proposal called the "Strawman Proposal". The proposal was that management of that interconnected resource be managed conjunctively. It is based on the irrigated acres, both underground and surface irrigated acres. This bill provides for the Director and advisory committee to establish criteria for apportionment of the Department's costs between surface water diversion, ground water diversions, and consumptive and non-consumptive uses. The bill also provides for a request by IDWR for an appropriation from the general fund for payment of equitable apportionment of said costs for water users not subject to a water district assessment, including domestic, commercial, municipal, and industrial users (DCMI).

To cover the costs for this year, they are asking for an appropriation from the general fund. Some of the tasks that this cost will cover are updating the Eastern Snake Plain ground water model; develop a data base; return flow measurements; ground water measurements in observation wells; ground water measurements through mass measurements of the whole aquifer; ground water stream measurements; update of the Eastern

Snake Plain water budget after measurements are taken and data secured; improve quantification of the tributary underflow; continuation of the ESPA technical advisory committee and completion of the agreed upon ESPA modeling scenarios; update the surface water accounting model and develop other surface water modeling tools. This will set a pattern for the state for the other aquifers to get the management plans in place.

TESTIMONY: Testifying in favor of H 241 was **Lynn Tominaga, Executive Director of the Idaho Ground Water Appropriators**. He said that Representative Raybould has stated the points that he would have made regarding this bill.

TESTIMONY: **Norm Semanko, legal advisor to the Idaho Water Users Association**, testified in favor of H 241. He stated that the current law is broken and can't work the way it is fashioned and needs to be fixed. His group is concerned about the funding already committed from JFAC, but as far as the long-term fix, they look forward to the interim committee dealing with this and are supportive of that process.

MOTION: **Senator Coiner** made the motion to send H 241 to the floor with a do pass recommendation. **Senator Cameron** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Coiner** will be the **sponsor**.

HCR 28 **Representative Stevenson** said HCR 28 puts into place what was started last year with SCR 136 which provided for the State Water Board to develop a management plan for the Eastern Snake Plain Aquifer. This bill authorizes a continuation of the study and will be funded by a one-time appropriation from the general fund of \$850,000.

TESTIMONY: **Lynn Tominaga, Executive Director of the Idaho Ground Water Appropriators**, said they are supportive of HCR 28. He also stated that **Food Producers of Idaho** have also endorsed this legislation.

TESTIMONY: **Norm Semanko, legal advisor to the Idaho Water Users Association**, said he wanted to bring attention to the handout that he has provided to the committee. It speaks directly to the aquifer management plans and is inserted into the minutes.

RESOLUTION NO. 2007-25
STATE FUNDING FOR AQUIFER MANAGEMENT PLANS

WHEREAS, In 2004 the Idaho Legislature passed House Concurrent Resolution No. 56 which expanded the scope and membership of the Natural Resources Interim Committee; and

WHEREAS, HCR 56 further Identified that aquifers in many areas of Idaho continue long-term declines, threatening economic well-being and creating legal conflicts; and

WHEREAS, The committee was charged to conduct a study

regarding water supply and management Issues in aquifers across Idaho; and

WHEREAS, The committee created several working groups to develop a framework for management of the aquifers in the Moscow/Pullman, Rathdrum Prairie, Treasure Valley, Mountain Home, Bear River, and Eastern Snake River plain areas; and

WHEREAS, Those working groups have held meetings, conducted various studies, and issued reports over the past three years; and

WHEREAS, Proper management and protection of the aquifers of the State is vital to ensure the long-term sustainability of the various water supplies and the water rights and uses that rely upon those supplies; and

WHEREAS, Proper aquifer management requires identification of water supply budgets, goals, and objectives, as well as actions and funding to implement those goals and objectives.

NOW, THEREFORE BE IT RESOLVED, That the Idaho Water Users Association supports immediate legislative funding of aquifer management plans and actions to ensure the long-term sustainability of the aquifers of the State, including, but not limited to, those in the Moscow/Pullman, Rathdrum Prairie, Treasure Valley, Mountain Home, Bear River, and Eastern Snake River plain areas.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports legislation directing the State to dedicate a percentage of the existing sales tax or other existing revenue sources to fund these various aquifer management plans and actions.

**COMMITTEE
AT EASE:**

The **Chairman** announced that the anticipated phone call was coming in, so he said the committee would go at ease.

Via the phone, **Chairman Schroeder** thanked Ms. Mitchell for accommodating his request to call, saying it was a “first” for a gubernatorial appointee. All other appointees have appeared in person. He then asked her to explain why she is in Mexico; tell about herself; and what does she wish to accomplish on the Basin Commission.

Ms. Mitchell said she appreciated being accommodated in this way and it makes things much easier for her.

The reason she and her husband are in Mexico is because they have a home in Luapai and they go there January, February, and March of each

year. This year there was a flood and it did extensive damage to their home.

As far as business, she and her husband own Lake Pend Oreille Cruises. They have been doing that for 11 years. They have a 43 foot boat and they take people out on public cruises and private charters from the end of April until the 1st of November.

She has been involved with the Chamber of Commerce and many other activities. They had vacation rentals for 15 years. She has helped with the festival at Sandpoint, tourism committee, etc. She has lived in Sandpoint for 30 years. Prior to that she lived in Montana and did graduate work in environmental studies. She has a degree in environmental studies from the University of California at Santa Barbara. Before that she traveled all over the country as her father was in the Navy. She is known as a "Navy Brat".

Because she is on the lake every day for six months, she said that she knows Lake Pend Oreille intimately. Also, because of her background in environmental sciences, she is able to understand the more complicated issues that arise out of what the Lake Commission is doing, specifically both lake level issues and lake quality issues. For instance, mill foil issues or the Rock Creek mine issues.

As far as her involvement on the Commission, she loves what she does there and has a great passion for Lake Pend Oreille. Being on the lake so much, she feels that she is able to answer questions from the public and others about certain things that are happening on the lake. She also feels that the Commission is made up of a wide variety of people with different backgrounds and different interests and that's what makes them so exceptional. She feels they work together well as a team.

There were no questions from the committee members to Ms. Mitchell.

Senator Keough (from Sandpoint) addressed the committee and Ms. Mitchell. She said that she wanted to thank Chairman Schroeder for allowing this call to take place in order that Linda could be confirmed. Senator Keough said this Commission is important to their area and the lake and that Linda has been a valuable part of that.

Chairman Schroeder asked Ms. Mitchell about the fish in the lake. She stated that the largest ones caught now are in the 22-24 pound range. When asked about the future of walleyed pike in the lake, she responded that they are not native species, but they do seem to be on the increase. Kokanee is the biggest issue. Lake level is critical to the kokanee spawning. She said that she feels good about what has been accomplished in the last several years regarding the lake level. They

have worked closely with the Department of Lands, the Department of Fisheries, and Fish and Wildlife. Ms. Mitchell said they are confident that they can bring the kokanee back.

The **Chairman** then asked Ms. Mitchell about her thoughts on the water adjudication process. She replied that they have not worked on that particular issue. The Chairman then asked her about the sightings of vultures in that area. Ms. Mitchell replied that she thinks there might be a nest up near the crest of Gold Mountain. When she is on the lake, she frequently sees vultures flying over that area.

Chairman Schroeder thanked Ms. Mitchell for calling and for her interest in Lake Pend Oreille. He also extended best wishes to her and her husband in the repair of their home due to flood damage.

**ANNOUNCE-
MENT:**

The **Chairman** announced that on Wednesday, the committee will meet at his floor desk in the Senate Chamber (upon adjournment of the Senate) to vote on Ms. Mitchell's appointment. He also said that if any of the public wished to be there, they were welcome.

**CONTINUATION
OF HCR 28**

Chairman Schroeder said they would now continue with the hearing of HCR 28.

Senator Coiner inquired about the spending of the \$450,000. The Chairman asked Mr. Tuthill, Director of IDWR, to respond. Mr. Tuthill deferred to **Mr. Hal Anderson, Administrator of Planning and Technical Services, IDWR.**

Mr. Anderson provided a handout titled "ESPA Framework Plan Interim Measure Studies" which is inserted into the minutes. He reviewed the 18 points in this handout for the committee.

COST ESTIMATE SUMMARY FOR TECHNICAL STUDIES

| | |
|-----------------------------|---|
| Private Consultant Services | \$410,000 |
| Private Consultant Services | \$350,000 (IWRB Previously Allocated Funds) |
| IWWRI Services | \$35,000 |
| USBR Hydrology Review | \$10,000 |
| In-House Person-Hours | <u>2,290</u> |
| TOTAL NEW FUNDS | <u>\$455,000</u> |

**ESPA FRAMEWORK PLAN
INTERIM MEASURE STUDIES**

1) **HIGH LIFT EXCHANGE WATER AVAILABILITY** - This would involve acquiring Basin 02 high lift water rights and using the water to exchange with water released by the USBR for salmon flow augmentation.

This could be delivered to either recharge or conversions.

- a. Determine availability (summary statistics) on volume of water released by the USBR annually for salmon flow augmentation (up to 200KAF)
- b. Evaluate volume of available high-lift water and willingness of owners to sell water rights.
- c. Determine willingness of USBR to participate in a long-term or permanent exchange.
- d. calculations by Hydrology and GIS sections of actual volume of flow diverted and applied and consumptively used by candidate high-lift pumper(s).

In-house staff. Estimate of 400 hours.

USBR Review.

2) QUANTIFY EXCESS FLOW PAST MILNER DAM - this would quantify the amount of excess flow going past Mimer Dam. Quantification would be done both constrained by the Mimer Dam hydropower water right, as well as unconstrained by the Mimer Dam hydropower right. This is because currently aquifer recharge is subordinate the Milner hydropower right, but new surface water storage would take priority over the hydropower right.

- a. Determine availability (summary statistics) of excess flows past Mimer Dam available for aquifer recharge (constrained by Milner hydropower).
- b. Determine availability (summary statistics) of excess flows past Mimer Dam available for additional surface water storage (unconstrained by Milner hydropower)

In-house staff. Estimate of 400 hours.

USBR Review.

3) QUANTIFY EXCESS FLOWS IN THE WOOD RIVERS BASIN - this would quantify the amount of excess flow in the Big and Little Wood Rivers available for aquifer recharge.

In-house staff. Estimate of 200 hours.

4) SOFT CONVERSION PROJECTS - this involves acquiring surface water (highlift exchange) and delivering it into canal systems with large numbers of supplemental wells. This would add to the surface water delivered by the canal and offset the use of the supplemental wells.

- a. Evaluate ability of infrastructure to accept additional surface water

- a. Survey canal managers of systems with large amounts of supplemental wells to determine physical capacity and interest in participating.
- b. Map areas that can be served by this method.
- c. Evaluate effect(s) on ground water system using ESPA GW model.
- d. Prioritize soft-conversion areas based on model results and willingness to participate.

4a and 4b by IWWRI. Estimate of \$30,000

4c and 4d by in-house staff. Estimate of 200 hours.

5) **HARD CONVERSION PROJECTS** — this would also involve acquiring a block of surface water as in the soft conversion projects, but this option would involve the construction of new infrastructure to deliver the surface water into areas that have only been served by ground water sources. Areas such as the A&B District, Hazelton Butte, and several smaller tracts along the Milner-Gooding Canal have been identified as possible locations. In some of these areas, the reduction in pumping costs would pay for project construction over a period of 30-40 years.

- a. Identify additional potential hard conversion projects beyond those already identified that could be pursued.
- b. Do preliminary plans and cost estimates for potential hard conversion projects that have been identified. Identify and 'fatal flaws.
- c. Contact water users within potential hard conversion projects and determine their willingness to participate.
- d. Evaluate effect(s) on ground water system using ESPA GW model.
- e. Prioritize hard conversion projects based on model results, willingness to participate, and other factors such as construction lead time.

5a, 5b, and 5c by engineering consultant. Estimate of \$60,000.

5d and 5e by in-house staff. Estimate of 200 hours.

6) **SURFACE WATER STORAGE ALTERNATIVES IN UPPER SNAKE BASIN**

— this could be considered as an alternative to the high-lift exchange, or an alternative to recharge in utilizing excess natural flows. Water would be delivered to either soft conversion projects or hard conversion projects. Unlike recharge, if surface water storage were built the priority of downstream hydropower water rights would not be an issue — new storage would take priority over prior hydropower rights. Could look at both large sites and smaller off-stream sites. Long-term alternative.

- a. Review prior studies of storage projects in the Upper Snake.
- b. Index costs of projects from prior studies and identify and fatal flaws.
- c. Prioritize potential surface water storage projects.

By engineering consultant. Estimate of \$20,000.

7) ADDITIONAL PAYETTE RENTAL POOL USE — evaluate additional use of Payette Rental Pool to offset salmon flow releases from Upper Snake Basin.

By in-house staff. Estimate of 100 hours.
USBR Review

8) SURFACE WATER STORAGE IN SOUTHWEST IDAHO BASINS - this could be an alternative to the high-lift exchange or Upper Snake storage. Conceptually new storage in the Boise, Payette, or Weiser basins could be exchanged for Salmon flow-releases from the Upper Snake, leaving the upper snake water within the basin for delivery to conversion projects. These may also provide in-basin benefits (additional water for Treasure Valley or other local needs). Long-term alternative.

- a. Review prior studies of storage projects in the Boise, Payette, and Weiser Basins.
- b. Index costs of projects from prior studies and identify any fatal flaws.
- c. Prioritize potential surface water storage projects.
- d. Evaluate willingness of USBR to participate in an exchange for Upper Snake salmon flow releases.

Done by in-house staff. Estimate of 200 hours.

9) AQUIFER RECHARGE — evaluate potential for aquifer recharge.

- a. Determine availability of excess flows past Milner Dam available for aquifer recharge (constrained by Mimer hydropower) but constrained by available canal capacity.
- b. Evaluate location and capacity of recharge sites needed to utilize available flows, including new canal facilities, if needed.
- c. Do preliminary engineering and cost estimates for recharge sites needed to utilize available flows.
- d. Evaluate effect(s) on ground water system using ESPA GW model.

9a to be done in house. Estimate of 240 hours.

9b and 9c to be done by combination on in-house staff and consultants. Estimate of 200 hours and use \$350,000 already committed by IWRB for consultant services.

9d to be done in-house. Estimate of 100 hours.

10) THOUSAND SPRINGS WATER MANAGEMENT PROJECTS - a number of alternatives were evaluated in 2004 for the Interim Legislative Committee. These included items such as lining the canals in the Hagerman Valley to improve water supply and re-routing water flows in some locations.

- a. Review prior studies of potential water management projects in the

Thousand Springs.

- b. Index costs of projects and identify any fatal flaws.
- c. Determine amounts of water that could be gained through projects.
- d. Contact water users within potential projects and determine their willingness to participate.
- e. Prioritize Thousand Springs water management projects based on water gains and willingness to participate.

Done by consultant. Estimate of \$30,000.

- f. Feasibility of constructing artesian flowing wells (angled)
Reconnaissance study of available information to review concept and select candidate sites
Drill angled test wells at candidate sites
Evaluate effectiveness of flowing wells

Done by combination of in-house staff and consultants. Estimate of \$100,000 and 100 in-house hours.

11) CREP — the CREP program is already underway but will a part of the total plan.

- a. Evaluate effect(s) of CREP on ground water system using ESPA GW model.

In-house staff. Will be done as part of the delivery call process. No additional hours.

12) Evaluation of crop mix changes and the resulting impact on consumptive use on irrigated lands. Assumption: with the expansion of dairies and other trends in the agricultural markets, there has been an increase in the acreage devoted to corn and alfalfa and a corresponding decrease in the acreage of crops such as grains and soybeans. Strategy: Discuss the merits of this study and contract with IWRRRI to quantify the change in crop patterns and the potential increase in consumptive use. The study could be done on a county basis, either focusing on a select number of counties or evaluating the entire eastern Snake Plain.

13) Evaluation of the timing of runoff over the last few decades to determine the potential impact on natural flow and storage in the eastern Snake River Basin. Assumption: during the recent Climate Impact Subcommittee meeting, it was reported by Greg Clark that the runoff in some of the basins is coming earlier than average. Strategy: With support from the USGS, the IDWR could develop a study to evaluate the timing of the runoff in selected sub-basins that are tributary to the Snake River and determine the statistical difference from the average. The results could be

used to evaluate the impact on water supply and natural flow and storage rights.

Coordinated by in-house staff~ Estimate of 100 hours.

14) EVALUATION OF WEATHER MODIFICATION - Evaluate weather modification (cloud seeding) as a potential part of the plan.

Done by consultant. Estimate \$100,000 for feasibility study.

15) EVALUATION OF WATER RIGHT PURCHASES IN UPPER SNAKE -

evaluate potential costs of acquiring and willingness of parties to sell existing surface and ground water rights in the Upper Snake Basin. These rights would be used to reduce demand from the ESPA.

Done by in-house staff and possibly consultants.

16) GENERATION OF ALTERNATIVES - combine various options into three alternatives based on cost-effectiveness, water budget response, and political acceptance. One alternative weighted toward above-Milner benefits, one weighted toward below-Milner benefits, and one equality benefitting both reaches.

Done by in-house staff in consultation with IWRB and advisory committee. Estimate 50 hours.

17) ECONOMIC ANALYSIS — Essential to the management study of the Eastern Snake River Plain is an integrated hydrologic/economic planning model that can quantify the benefits and costs and hydrologic consequences of water management alternatives. This first phase integrated model is essential in assessing trade-offs in water management alternatives. The second phase will analyze economic impacts (socioeconomic assessment) on a regional or community scale. While the socioeconomic analysis should not be construed to measure the benefits and costs of water management alternatives, an impact assessment is vital information to communities affected by alternative water policies.

18) PREFERRED PLAN — based on economic analysis, advisory committee input, and IWRB input, select preferred plan.

Following this presentation by Mr. Anderson and some committee discussion, Director Tuthill said he feels they have excellent staff, but they can't do as much as they would like, due to losing some staff members. They can support the efforts on this aquifer but will have to hold back on

efforts for other aquifers.

MOTION:

Senator Cameron made the motion to send HCR 28 to the floor with a do pass recommendation. **Senator Pearce** seconded the motion. The motion passed by **unanimous voice vote**. **Senator Cameron** will be the **sponsor**.

The **Chairman** said that in an earlier meeting, the subject of BPA Wildlife Mitigation Settlement came up, so he asked Sharon Kiefer from the Department of Fish and Game to arrange for a presentation. Ms. Kiefer said that **Gregg Servheen, Wildlife Program Coordinator for IDFG** will present the program.

PRESENTATION:

Mr. Servheen said that the Northwest Power Planning and Conservation Act created the NPPC Council. The Council is charged to develop and adopt a program to protect, mitigate, and enhance fish and wildlife...while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. The BPA shall fund to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of the FCRPS...in a manner consistent with the Council's Columbia Basin Fish and Wildlife Program.

- What is mitigation? Compensation for the impacts associated with the construction and inundation of the federal Columbia River hydropower system.
- Federal dams being mitigated for impacts to wildlife: Albeni Falls, Dworshak, Deadwood, Black Canyon, Anderson Ranch, Minidoka, and Palisades.
- Types of mitigation projects: Conservation easements; fee title purchase; and habitat restoration.

Impact Assessment and Mitigation Habitat Evaluation Procedures

- Habitat loss, determine characteristics of the species, equals the currency of litigation, which is called habitat units (HUs).

Wildlife Mitigation Debt By Federal Project

| <u>Project</u> | <u>HU Losses</u> |
|----------------|------------------|
| Albeni Falls | 28,658 |
| Anderson Ranch | 9,619 |
| Black Canyon | 2,236 |
| Deadwood | 7,413 |
| Dworshak | 28,452 |
| Minidoka | 10,503 |
| Palisades | 37,070 |
| TOTAL | 123,953 |

Mitigation Operation and Maintenance Budgets

- Craig Mountain Trust - \$165,000 in annual operating
- Southern Idaho Wildlife Mitigation - \$630,000 in annual operating
- Albeni Falls Wildlife Mitigation - \$500,710 in annual operating

Reducing Remaining Wildlife Mitigation Debt

- Continue under the NWPCC's program
- Conclude wildlife mitigation through a settlement agreement

Previous Settlement Agreements

- Montana
- Idaho's Dworshak Dam

Pros

- BPA relieved of debt
- More flexible
- Reduced overhead
- Partnerships
- Speed

Cons

- Assume debt
- Negotiated multiparty agreement

Dividing the Pie

- Agreement of Tribal partners
- BPA negotiation agreement
- NWPCC support and agreement

Status of Settlement Concept

- Agreement of Tribal partners to proceed
- Research
- Agreement from BPA to participate and provide some funding assistance
- Upcoming meetings with Tribal partners, BPA and NWPCC

That concluded Mr. Servheen's presentation. Questions were asked during his presentation.

Chairman Schroeder said if the ad hoc committee wanted to talk further about this issue, who would they contact? Ms. Kiefer replied that it would be either Tracy Trent or Greg Servheen. They, in turn, talk to Director Cal Groen.

Senator Stennett inquired if the BPA has the ultimate decision making, no matter what is brought to them, a settlement agreement or a project.

John Williams, representative for BPA, said that was correct.

Senator Langhorst inquired where the money is held. He also asked if it required Congressional approval or appropriation. **Mr. Williams** replied

no, in the sense of appropriations. Bonneville (BPA) is a self-financing agency. All of their expenditures comes from the revenue they generate.

The **Chairman** thanked all the participants in today's committee business.

He reminded the committee members about Ms. Mitchell's confirmation vote on Wednesday.

ADJOURN: The meeting was adjourned at 3:15 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 14, 2007

TIME: 12:15 p.m.

PLACE: Senate Chamber

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Stennett, and Langhorst

MEMBERS ABSENT/ EXCUSED: Senator Siddoway

MINUTES: **Chairman Schroeder** called the meeting to order at 12:15 p.m. The purpose of the meeting is for committee consideration of the Gubernatorial appointment of Linda Mitchell to the Lake Pend Oreille Basin Commission.

MOTION: A motion was made by **Vice Chairman Pearce** to accept the appointment of Linda Mitchell to the Lake Pend Oreille Basin Commission and to send it to the floor with a do pass recommendation. The motion was seconded by **Senator Coiner**. The motion passed by unanimous voice vote. **Senator Keough** will be the sponsor.

ADJOURN: **Chairman Schroeder** adjourned the meeting at 12:17 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 21, 2007

TIME: 7:30 a.m.

PLACE: Room 433

MEMBERS PRESENT: Chairman Schroeder, Senators Little, Coiner, Siddoway, and Langhorst

MEMBERS ABSENT/ EXCUSED: Vice Chairman Pearce, Senators Cameron, Andreason, and Stennett

MINUTES: **Chairman Schroeder** called the meeting to order at 7:35 a.m.

He welcomed **Mr. George Bacon** who has been appointed as the **Director for the Department of Lands** and is here this morning for his confirmation hearing. His appointment was effective March 8, 2007. He is replacing Winston Wiggins and Mr. Bacon will serve at the pleasure of the State Board of Land Commissioners.

APPOINTEE: Inserted into the minutes is Mr. Bacon's "bio".

George B. Bacon was named Director of the Idaho Department of Lands by the State Board of Land Commissioners on March 8, 2007. Mr. Bacon is a 29-year veteran of the Department. During that time he has worked in every major program in the agency. He began as a forester managing state endowment land at Priest Lake in 1978. In 1980 he moved to Deary as a Forest Improvement Forester. In 1988 he became a Private Forestry Specialist, inspecting private and industrial logging operations and delivering assistance to landowners in Latah and Clearwater counties. Mr. Bacon served as the State's Timber Sale Supervisor based in Coeur d'Alene from 1991 to 1997. From there he moved to Sandpoint as an Assistant Area Supervisor, overseeing state land management and wild fire protection operations in parts of Boundary, Bonner and Kootenai Counties. In 2001, Mr. Bacon became the Southern Operations Chief responsible for all state land management, fire protection and regulatory duties south of the Clearwater River. He was named Assistant Director of the Lands, Minerals and Range Division in June 2006 and has served as Interim Director of the Department of Lands since September 2006.

Mr. Bacon is a graduate of the University of Idaho (B.S. in Forest Resource Management, 1976). He and his wife, Judy, reside in Boise.

He came to Idaho from New York at the age of 17.

The **Chairman** said he would entertain questions from the committee for Mr. Bacon.

Senator Siddoway inquired if Mr. Bacon was on the grazing fee task force. **Mr. Bacon** responded by saying that former Director Wiggins established a rangeland Task Force to look at all the issues they face with grazing. That mission was accomplished and some rules were brought forth. Last year there was an endowment grazing program and they spent more money administering the program than they brought in. Mr. Bacon said that he has asked the Task Force to look at the state grazing program from a new perspective. He asked them to think in terms “that if Idaho had just become a state today, what would a grazing program look like?” He expects the Task Force to start on his request in the near future.

Senator Siddoway said he has tried for a land exchange with the Department for four years. He was told three years ago that the Department would take care of what needed to be done, but as to date, nothing has been done. **Mr. Bacon** said the process should be faster than that when dealing with a private party. He assured Senator Siddoway that he would look into the matter.

Senator Little inquired about the allocation costs of fire suppression. **Mr. Bacon** said they bear the costs of protection like any landowner would. Every acre they have is identified by primary use and if grazing is the primary use, then allocation costs are charged to that. There could also be a secondary use.

Senator Coiner asked about the difference in management between federal, state, and private lands. **Mr. Bacon** replied that his observation of the federal lands are not managed well. No action is a management option. He stated that you have to operate under the rules and regulations and some laws conflict each other. As a private landowner, you can choose how to manage your land. Hearings are held regarding State lands and public comments are accepted. Mr. Bacon said they listen to the public. Sometimes they need to make a correction and other times only an explanation to the public is needed as to why they do certain things.

There were no more questions from the committee.

**SUSPENSION
OF
PROCEDURE:**

Chairman Schroeder thanked Mr. Bacon for visiting with the committee. After he departed, the Chairman said that, without objection, he would suspend the normal procedure of voting until the next committee meeting. There was no objection.

MOTION:

Senator Little made the motion to send the nomination of Mr. Bacon as the Director of the Department of Lands to the floor with a do pass recommendation. The motion was seconded by **Senator Coiner**. The motion carried by **unanimous voice vote**. **Chairman Schroeder** will be the sponsor.

ADJOURN:

The **Chairman** adjourned the meeting at 7:55 a.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary