

MINUTES
NATURAL RESOURCES INTERIM COMMITTEE
July 14, 2008
9:30 a.m. to 3:30 p.m.
Room 204, Capitol Annex
Boise, Idaho

The meeting was called to order at 9:30 a.m. by **Cochairman Representative Dell Raybould**. Other members present were **Cochairman Senator Gary Schroeder**, Senator Charles Coiner, Senator Clint Stennett, Representative Bert Stevenson, Representative Scott Bedke, Representative Mike Moyle, Representative Donna Pence, and ad hoc members Representative JoAn Wood and Representative Jim Patrick. Absent and excused were Senator Brad Little, Senator Jeff Siddoway, and ad hoc members Senator Steven Bair, Senator Lee Heinrich, Senator Dean Cameron, and Representative Jim Clark. Staff members present were Katharine Gerrity, Ray Houston and Juanita Budell.

Others present included Brenda Tominaga, Idaho Irrigation Pumpers Association, Inc.; Lynn Tominaga, Idaho Ground Water Appropriators; Nate Helm, Helm Associates; Brian Olmstead, Twin Falls Canal Company; Roger Seiber, Capitol West/TPADA; Jerry Deckard, Capitol West/TPADA; Greg Graham, Corps of Engineers; Kent Lauer, Idaho Farm Bureau; John J. Williams, Bonneville Power Administration; Rich Hahn, Idaho Power; Jim Tucker, Idaho Power; Benjamin Davenport, Evans Keane; Randy MacMillan, Clear Springs Foods; Harriet Hensley, Idaho Attorney General's Office; Jim Wrigley, Wells Fargo; Lesa Stark, Bureau of Reclamation; Rich Rigby, U.S. Bureau of Reclamation; Sharon Kiefer, Idaho Department of Fish and Game; John Chatburn, Governor's Office; Josh Towalt, Department of Financial Management; Pat Sullivan, Clear Springs Foods; and Don Wimberly, Boise State Radio.

Following the roll call, **Cochairman Raybould** invited **Cochairman Schroeder** to provide some opening remarks.

Cochairman Schroeder, in commenting on the state of the economy, said that it is a myth that we can get along with just tourism and the service industry. He stated that as the committee deliberates natural resource issues, it must recognize that we need to get back to creating wealth in the country and that starts with our natural resource base. He noted that our challenge is to get our working families working again. **Cochairman Schroeder** commented that in his area, small towns are suffering because tourism is down due to the high prices of fuel and food. He said that in the committee's deliberations, members must ask what decisions need to be made that will allow people to return to work to create some wealth in this country, not only in natural resources but also in energy. He continued that those who are concerned about the environment know that as you look around the world, desperate people often don't care about the environment and that is a challenge. He added that environmental values are something that we can afford when we have a vibrant, good economy.

Cochairman Raybould said that he concurred with Senator Schroeder's remarks. He also gave an example of the economy in his area. He stated that the St. Anthony sand dunes border one of his farms. About 15-20 years ago, the Bureau of Reclamation wanted to put in a parking lot for overnight campers, but because their own ground was environmentally protected, they bought some land from him for that purpose. He said that in past years, the lot was full and overflowing, especially on holiday weekends. However, during the 2008 Fourth of July holiday, over half of the overnight parking places were empty. **Cochairman Raybould** continued that he asked the Ranger on duty where everyone was and the Ranger responded by saying that people aren't coming, probably due to the high cost of fuel. **Chairman Raybould** said that Idaho has to view our natural resources as our wealth and make sure they are utilized.

The Chairman announced that the previous meeting's minutes were emailed to all committee members and asked for approval. **Representative Stevenson** moved that the minutes of October 23, 2007 be accepted as printed. The motion was seconded by **Senator Coiner** and they were unanimously approved by voice vote.

The first speaker was **Director Dave Tuthill**, Idaho Department of Water Resources, who gave a PowerPoint presentation regarding IDWR's storage update. His complete PowerPoint presentation is available at the Legislative Services Office.

Director Tuthill said there is a problem in that the adequacy of Idaho's water supply infrastructure is diminishing:

- The infrastructure from the last century is not going to be adequate for the next century.
- ESA water requirements weren't contemplated when the dams were built.
- There has been increased urbanization during the last two decades.
- Regarding ground water mitigation, we now recognize that legally, technically, and administratively that when the well pumps are affecting the streams somewhere, and that stream flow is being affected, the ground water users need some kind of backup supply when drought conditions exist.
- Climate change appears to be looming as a major challenge.

Director Tuthill offered a hypothesis for consideration. He said that in the 21st century, adequate water will be made available for municipal uses. He used the city of Las Vegas as an example. It is a city of two million and growing, and is located in a very dry area. Municipalities will obtain water, one way or the other. The corollary to that is that conservation and management are important, but will not be sufficient to meet future needs. If adequate water is to be made available for sustainable economies, additional sources must be created. **The Director** said for Idaho and the water infrastructure, the planets are aligned. Environmental concerns are out there, but those groups realize the need to look at alternatives and what alternatives work best for a variety of uses. Growers also need to be involved, as well as engaging all of the branches of government. His proposal is to tap the supply in the state where it is available. The challenge is to find where it would be the most cost-effective to enhance our infrastructure.

Director Tuthill said that what they are seeing in terms of climate change is that the highs are higher and the lows are lower. Another factor has been emerging and it is called the Pacific Decadal Oscillation (PDO). He said that NASA's Jet Propulsion Laboratory announced that the PDO had shifted to its cool phase and this shift is right on schedule.

The Director reminded the committee that statutorily his duties are to conduct surveys, tests, investigations, research, examinations, studies and estimates of cost relating to the availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

Director Tuthill continued that the Water Resource Board has various authorities, as well. The Board can file for and hold water rights to appropriate and store unappropriated water as provided in Section 42-1734(6), Idaho Code, and the Board can acquire, purchase, lease or exchange land water rights etc., for construction operation and maintenance of water projects as provided in subsection (8) of that statutory section. **The Director** noted that the state already has in place statutory opportunity to provide for additional infrastructure. It is the Idaho Water Board's policy that potential reservoir sites be protected from significant land use change. **Director Tuthill** indicated that the Board has been more interested in storage this past year and a subcommittee has been formed at his request.

Director Tuthill said that one storage option is to store water in the aquifer and that option will be part of a study done this year. He added that, in some cases, that option could be the most cost-effective way to store water. However, the **Director** continued, they are also looking at some surface sites.

Director Tuthill said that aquifer study locations are in the following basins - ESPA; Lower Boise/Treasure Valley; Spokane Valley-Rathdrum Prairie; Moscow-Pullman; Big Wood; Mountain Home; Bear; Teton; Big Lost; Portneuf; and Blackfoot.

The Director added that last year, the Legislature passed House Joint Memorial No. 8 which supported the need for additional water storage as well as the studies necessary to implement additional storage and Senate Bill 1511 which provided the funding authorization.

Director Tuthill said that there is active interest in the Minidoka enlargement; Teton Basin; Boise Basin, including Twin Springs; Weiser Basin, including Galloway and Lost Valley; Bear River; and Swan Falls/Guffey. The concept right now, he said, is to look at these specific projects, which have already been the subject of study, particularly Galloway. The proposed Galloway Dam has the potential to hold back 900,000 acre feet. The Minidoka Dam raise could add 50,000 acre feet. The Teton Dam site is also being considered.

In concluding his presentation, **Director Tuthill** stated that some of the current activities the Water Board and the Director are working on are as follows:

- Identify and evaluate storage projects based upon local interest and sponsorship;
- Develop work plans and cooperative agreements with the Bureau of Reclamation and Army Corps of Engineers;
- Develop an ESPA Comprehensive Aquifer Management Plan;
- Update the State Water Plan;
- Implement a Statewide Aquifer Planning and Management Effort.

Representative Bedke asked if there has been a study done of Eagle Rock, which is below American Falls. **Director Tuthill** deferred the question to Hal Anderson. **Mr. Anderson** said there was a power project study done in the 1970's. **Representative Bedke** suggested looking at that study.

The next speaker was **Les Stark**, Planning Manager for the Snake River Area Office, Bureau of Reclamation. She presented a PowerPoint program - "Managing Water in the West." Her complete PowerPoint presentation is available at the Legislative Services Office. The Bureau of Reclamation's Pacific Northwest Region consists of three main areas. They are the Snake River Area, Upper Columbia River Area and the Lower Columbia River Area. Ms. Stark's presentation was limited to the Snake River Area's activities.

Ms. Stark informed the committee about Secretary Kempthorne's \$21.3 million initiative, known as the "Water For America Initiative" which is intended to help state, tribal and local governments better conserve, manage and develop their vital water resources. She said that the Bureau of Reclamation and the USGS is working with state and local water users to begin this initiative.

Ms. Stark indicated that the objectives of the initiative are to:

- Conserve and expand existing water supplies
- Develop new water sources
- Protect endangered species in major river systems
- Conduct a national water census, the first in 30 years
- Modernize stream gages
- Plan for the nation's future water use in partnership with state and local governments

Ms. Stark noted that the Bureau's proposed budget includes an increase of \$13.1 million for the initiative. She said that the increases will fund:

- Basin watershed planning and smaller-scale geographical studies
- Challenge grants to support water conservation and efficiency projects (Water 2025 and field services program)
- Accelerate projects that promote the protection of endangered species in major water river systems

- Examine how climate change information can be considered in Reclamation's water and power operations and planning

Ms. Stark then addressed the Minidoka Dam Raise Feasibility Study. She indicated that the Legislature and the Idaho Water Resources Board are funding the \$1.4 million dollar study. The focus of the study is the feasibility of raising Minidoka Dam by up to five feet, which would result in an additional storage capacity of a maximum of 50,000 acre feet in Lake Walcott.

Ms. Stark then provided the committee with information about the Teton Basin Appraisal Study which is not as far along as the Minidoka study. She said that the Idaho Department of Water Resources and the Bureau will partner on a study for the potential replacement of Teton Dam and that the Bureau is also pursuing a study on just replacing the spillway. She said they want to make a decision by 2010. **Ms. Stark** noted that unrealized benefits of the Teton project include 200,000 acre feet supply of supplemental water, hydroelectric power production (16,000 kilowatts), provisions for recreation, and flood control.

Ms. Stark told the committee that the Bureau is also involved in a storage study at Mann Lake, which is a small lake located near the Lewiston Orchards. Issues include the presence of ESA listed steelhead, a rapidly growing urban community, the lack of flexibility in the system to meet high demand in summer, and reservoir restrictions.

Ms. Stark also addressed the spatial water allocation model. She noted that this is a demand management tool which is used to assess the hydrologic and economic impacts of various water supply and demand management alternatives in the Boise Basin. The model utilizes hydrologic and economic models to evaluate supply and demand management alternates.

Finally, **Ms. Stark** spoke in regard to climate change studies. In that regard, the Bureau is looking at the impact on future water supplies and existing projects and flood control and management. The Bureau has conducted a study in Boise and is also looking at the Upper Snake Basin.

Senator Coiner asked **Ms. Stark** about how the Bureau viewed canal lining. **Ms. Stark** said that in the Lewiston Orchards, for example, they don't have a ground/surface connection and so they don't have the problems with lining like the ESPA does. She said that it is specific to the area and in some areas, it is more beneficial than in other areas.

Representative Bedke said that if climate change is a fact, the flood curve models need to be updated and asked Ms. Stark to elaborate more on the issue. **Ms. Stark** said there are a lot of hydrologic tools that are used, depending on conditions. What they are seeing is that the runoffs are happening earlier and they need new predictive models to help them figure things out.

Chairman Raybould said that the Committee of Nine has been working with the Bureau on this issue, trying to get the flood control curves updated with more flexibility. The Bureau is also

working with the Corps of Engineers. He said that the Committee of Nine has not seen the progress that they would like to see. **The Chairman** also said that many of the reservoirs are multi-purpose reservoirs and flood control does pick up a good part of the cost on both construction and O&M on these reservoirs.

Chairman Raybould said another factor is power production. Power production on the reservoirs picks up a lot of the cost. He reminded the committee that it was a disaster two years ago as far as storage for irrigation was concerned because of the releases of so much water for flood control and power production. **Ms. Stark** said they are addressing those issues.

Next on the agenda was **Greg Graham**, Chief of Planning, Walla Walla District, U.S. Army Corps of Engineers. His complete PowerPoint presentation is available at the Legislative Services Office.

Mr. Graham noted that the Walla Walla District provides navigation, flood risk management, hydroelectric power, environmental stewardship, recreation, engineering, construction, emergency management and other governmental assistance in the Northwestern United States in support of regional and national interests. The District includes parts of six states and covers about 107,000 square miles. The District's annual budget is approximately \$200 million.

Mr. Graham stated that the Corps is changing, in that the era of large federal, single-purpose, water projects is fading fast. He said that the trend today is toward partnerships where new projects are cost-shared.

Mr. Graham indicated that there are essentially six steps to implementing a major water resource project:

- Problem Identification Which is Beyond Local Capability
- Request for Federal Assistance
- Conduct Planning Studies - Reconnaissance Phase and Feasibility Phase
- Feasibility Report Review and Approval
- Congressional Construction Authorization
- Congressional Appropriations

Mr. Graham said that the heavy lifting is to work with localities to get their federal officials to secure funding. He said that the Corps was authorized in 1999 to study flood control on the Boise and that authority was expanded in 2007 to study the ecosystem and the water supply. The Corps is working with IDWR to negotiate a cost-sharing agreement which they are close to finalizing. He said that there are storage opportunities on the Boise with about five on-stream and eleven off-stream. There are also three possibilities for raising existing storage. He said current flood protection on the Boise is low to moderate with no protection for a large flood. He added that there has been significant floodplain development and that we need to start planning for a large flood now.

Mr. Graham said that the Idaho projects the Corps is presently involved in, in addition to the Boise River Study, are:

- Big Wood River Study
- Weiser River Study
- Programmatic Sediment Management Plan
- Columbia River Treaty Study
- Little Wood River Channel Rehabilitation
- Salmon River Restoration
- Paradise Creek Restoration

Senator Schroeder said that some people in Idaho think that water going over a dam is a waste of water. Some people with wind turbines think that they have lost potential if their turbines are not running when the wind blows. Recently, he said there was a situation where the wind was blowing so strongly that we had to spill water over the dams. He asked that as we look into the future with more turbines coming on line and the necessity to store as much of the water so that we don't have to turn on the gas turbines when the wind doesn't blow, what kind of increased storage capacity do we need in the Columbia River Basin so that we don't have to spill the water and take advantage of the wind energy. **Mr. Graham** said that he didn't have that number but would get back to him with that information. **Mr. Graham** also said that the projects on the Lower Snake and the Lower Columbia are considered to be water river projects and that when the flows are high and exceed powerhouse capabilities, they have to spill. He said these are multipurpose projects and they try to balance all the different uses and try to maximize outputs. He noted that there is no way to get perfect forecasting and there will always be situations where you run into a spill condition.

Representative Wood said it seemed to her that we could do the off-river storage if we had sites prepared when water needed to be diverted. She said that it would serve two purposes - allow recharge and provide extra water that might be needed. **Mr. Graham** said that they have identified eleven sites for off-stream storage and there may be others with opportunity to be developed as well. **Representative Wood** also asked if more money could be appropriated by Congress. **Mr. Graham** said that others who have gotten projects and appropriations from Congress have worked hard with their Congressional members.

Representative Moyle asked if there were any nationwide projects going on now and when was the last one approved. **Mr. Graham** said that there are projects going on with the Bureau and other federal agencies. He said that the projects that seem to be getting authorized now are multipurpose projects and he offered to provide a list.

Director Tuthill said that his understanding of spending by the Corps of Engineers this year on military projects is \$26 billion and on civilian projects is \$6 billion.

Chairman Raybould thanked Mr. Graham for his presentation and said there would be a ten-minute break.

The next speaker was **Hal Anderson**, Administrator of Planning and Technical Services for the Idaho Department of Water Resources. He presented a PowerPoint program entitled the “Comprehensive Aquifer Management and Planning Program.” His complete PowerPoint presentation is available at the Legislative Services Office.

Mr. Anderson said that some issues have come up regarding funding and financing. He added that if the advisory committee that is working on the plan comes to an agreement with some mechanism for funding, it would most probably require a statutory change or additional authority for the Water Resource Board.

Mr. Anderson stated that the program was established through legislation during the 2008 session which created the Aquifer Planning and Management Program and established a fund. The statutory provisions are found in Sections 42-1779 and 42-1780, Idaho Code. He went on to say that the purpose of the program is to conduct a statewide comprehensive aquifer planning and management effort over a ten-year period. He said that only the first six years are funded. One goal of the program is to avoid the Eastern Snake Plain conflicts in other areas of the state and develop management plans for selected basins with potential ground-surface water conflicts or other potential conflicts.

Mr. Anderson noted that funding consists of a \$20 million appropriation into a new fund with \$2.76 million appropriated for the first year of the program. Interest will accumulate to the fund and be used for the program.

Mr. Anderson said that anticipated technical studies include the establishment of a monitoring network, the development of a hydrologic framework, water balance and a ground water model. He went on to explain that anticipated planning studies include 50-year water demand projections, and the evaluation of alternatives to meeting projected demands such as water use transfers, weather modification feasibility, aquifer recharge, new storage and inter-basin transfers.

Mr. Anderson told the committee that there are ten priority basins. Those ten basins and their schedules include:

- Lower Boise/Treasure Valley - 2009-2012
- Spokane Valley-Rathdrum Prairie - 2009-2012
- Moscow-Pullman - 2011-2013
- Big Wood - 2011-2013
- Mountain Home - 2013-2015
- Bear River - 2013-2015
- Teton - 2015-2016

- Big Lost - 2015-2016
- Portneuf - 2017-2018
- Blackfoot - 2017-2018

Mr. Anderson indicated that staffing is underway with offers in progress for the senior planner and staff engineer and that interviews will begin for the hydrogeologist. He said that there is coordination between technical and planning groups underway, that development of goals and objectives for the program and the first basins is in progress, and that the Water Board has a meeting scheduled for next week in Coeur d'Alene.

Mr. Anderson stated that currently there are two subcommittees established. The environmental subcommittee includes fish and wildlife, water quality, and hydropower. He said that Idaho Power has been working with IDWR, using some of their modeling expertise, to work through some of the very complicated hydrologic analyses. One of the things they have been struggling with is the reuse factor. He said they have been coupling different models to get a better answer to that question.

Mr. Anderson told the committee that the other major subcommittee is an economic subcommittee. He said they have an economist on board and they are working on an incremental cost assessment and looking at costs relating to such things as infrastructure, capitol investment, possibly leasing or buying water, acquiring land, putting out dry-year leasing, and putting in additional diversion for those lands that are now ground water that could potentially be converted to surface water. **Mr. Anderson** said they will also be looking at other alternatives.

Chairman Raybould asked Mr. Anderson if he had the equipment, personnel, and the ability in his office to make those kinds of water transfers in a short period of time. **Mr. Anderson** said that they do not. **The Chairman** then asked in regard to buying credits from one farmer to another farmer, whether that would take some expansion at IDWR and another system to be able to make those transfers on the spur of the moment, rather than apply for it and maybe get it in two or three years. **Mr. Anderson** said that was correct.

Mr. Anderson said that one of the major issues to be resolved involves funding. If they are going to make these adjustments to the water budget it will take a sizeable investment. To get 300,000 acre feet of water where you need it - it will require 131 million dollars. If looking at 900,000 acre feet it would be closer to 1.7 billion dollars. He said they need to find out what kind of funding mechanisms are needed to facilitate that happening.

Mr. Anderson said the committee has come up with various principles for funding, trying to make it broadly-based for all water users on the Eastern Snake Plain and as equitable as possible. It also needs to be universal, with the financing costs minimized, and with efficient collecting mechanisms. **Mr. Anderson** then introduced **Mr. Jim Wrigley**, who is a financial advisor to the Board, and works for Wells Fargo.

Representative Patrick said that he felt that Mr. Anderson was very optimistic to think that \$131 million will buy 300,000 acre feet of water, in any form, and that he thinks it will cost twice the amount projected.

Mr. Wrigley presented the committee with various funding alternatives. His complete PowerPoint presentation is available at the Legislative Services Office. The alternatives include:

- IWRB Contract - (Taxable)
- Water Management Improvement District - (LID Authority)
- Water Management District - (General Obligation)
- Water Management Franchise Fee - (kwh use-based)

Mr. Wrigley said that one primary issue concerns the IRS. He said they hope to make it easier to do things using tax exempt debt, rather than taxable. He noted that under IRS regulations, most water entities in the state are taxable. They are tax exempt from property tax, but if there is borrowing put into place, those are taxables, as they are deemed to be a private activity. Part of the challenge as they go forward is to structure things in such a way that they take on a public/governmental purpose. He said that irrigation districts, canal companies, ground water districts, etc. are deemed by the IRS to be private entities, even though they have the right of eminent domain. Public entities under the IRS regulations would be limited to governmental entities such as cities and counties.

Chairman Raybould asked if the Water Resource Board would be considered a nontaxable government entity. **Mr. Wrigley** responded in the affirmative. **The Chairman** then asked if the Board borrows the money with bonds, then subsequently loans it to a canal company or irrigation district, how would that loan be classified. **Mr. Wrigley** said the problem comes in the contract that is put into place between the Board and the user. He said they need a vehicle that will allow the user to be a public user. That's where he feels they need to talk about a different type of an entity.

Mr. Wrigley said that one option is a water management improvement district, very much like what a city creates to fund a sidewalk. It is nothing more than a paperwork entity, but keeps the public entity aspect of the borrowing in place for the IRS. The contract would be between the Water Board and a water improvement district, rather than the Water Board and an irrigation district.

Mr. Wrigley said that the Board is looking for a system that is broad-based and that is equitable to all users of the resource. They are also looking for a universal system for all water users and for all uses, so that it can be taken out of one basin and put in another area and have it work equally well. They would like to provide this at a minimum interest expense for the funds that they are borrowing. According to **Mr. Wrigley**, "minimum" is no small measure. A rule of thumb, he said, when you look at the difference between taxable and tax exempt, (interest that is federally taxable) is about two-thirds.

Mr. Wrigley said they are looking for an efficient record collection to be able to accomplish this. It needs to be efficient and easily implemented. The system also needs to be very flexible. In part of the project, some of it could be on a “pay as you go” basis. He said that certain types of funding are pledged to specific debt issues. He stated that they would like, not only the issuance of bonds, but something that would allow the revenue stream to be utilized for a “pay as you go” to pick up some of the smaller activities that come along.

Mr. Wrigley said that a water management district is akin to a general obligation bond. He noted that this would be difficult to implement and would require a 2/3 majority.

Mr. Wrigley then addressed the alternative of a water management franchise fee. **Mr. Wrigley** said they would look at some method where the state, acting through the Legislature, could put a fee on water usage in a way that was equitable and easy. If a fee was placed on electricity, it would be placed on every kilowatt of electricity sold in the state, not kilowatt hours generated in the state. He said the fee could go with sales tax and come in through the general fund and be appropriated out for use. Appropriation from the general fund would keep the tax exemption in place. He stated, as an example, that using the whole state it would cost four-tenths of a penny on kilowatt hours.

Mr. Wrigley then reviewed the funding alternative costs and compared the various interest rates. The water management district and water management franchise fee had the lowest interest rates and average annual debt service as well as lowest average interest rates.

Representative Bedke asked for the list of things that could be bought for \$131 million and also the \$1.7 billion. **Mr. Anderson** said that he has a list of the various projects and it is a mixture of the options that he talked about. He stated that he will provide the information.

Senator Coiner said that he had seen the list and inquired if there has been any effort to have anyone outside of the Department look at the numbers. **Mr. Anderson** said that it has been reviewed by their staff and also the University of Idaho and that the numbers are estimates.

Senator Coiner said his pet peeve is recharge, which he believes is a five percent solution to the problem that we have but gets 80 percent of the press and attention. He said that he is not against recharge, but he doesn't believe an annual recharge of 200,000 acre feet can be done with the numbers he has seen and he questioned why the Department defends those numbers. **Mr. Anderson** said that what is being proposed is to build additional capacity to recharge that amount. **Mr. Anderson** added that they are doing the W Canal Project to get an estimate of the cost. He stated that there will be a sizeable capitol investment to get to that. **Senator Coiner** said that he has never seen a cost benefit ratio and he would like to see that.

Senator Stennett noted that previously there was a comment that the levy could be cut in half by including the tributaries. He asked what cost benefits would the tributaries get out of the recharge program. **Mr. Anderson** responded that it was a comment, not a proposal.

Mr. Anderson continued with another PowerPoint presentation regarding the Eastern Snake Plain Aquifer Management Plan status. His complete PowerPoint presentation is available at the Legislative Services Office.

Mr. Anderson stated that the framework goal for aquifer management is to sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies. He said that objectives for aquifer management are to 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, and reduce withdrawals from the aquifer.

Mr. Anderson reminded committee members that during the 2008 legislative session the Board and committee developed initial recommendations that included a study of Minidoka Dam enlargement, voluntary demand reductions and ESPA recharge. He noted that various management options were evaluated and outlined and management packages were developed that include:

- Small (300 KAF); least expensive and quickest to implement
- Medium (600 KAF); more expensive and takes more time to fully implement
- Large (900 KAF); most expensive and will take several decades to fully implement
- Demand Reduction and Recharge Emphasis

He said that the associated estimated capital costs range from \$131 million to \$1.7 billion.

Mr. Anderson then addressed the subcommittees reiterating information provided during Mr. Wrigley's presentation.

Mr. Anderson concluded his presentation with information relating to the next steps and CAMP. Those next steps are:

- Integration of hydrologic, economic, environmental and hydropower information
- Refinement to Alternative Packages
- CAMP Recommendation: short-term implementation steps and long-term vision
- Recommendation on funding mechanisms
- Develop Implementation Plan
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A draft CAMP is expected in October of 2008.

Chairman Raybould asked if the process that Water Resources has used with the ESPA has laid the ground work for simplification of the planning process of the other aquifers. **Mr. Anderson** said they have basically used the same model to implement the technical studies and the comprehensive plan development simultaneously with the advisory committee. **The Chairman** said that he wanted the committee to have that understanding that the Eastern Snake Plain Aquifer has set up the framework for the other aquifer studies and, as a result, they will be more economical to do.

Senator Schroeder said that he wanted Mr. Anderson to assure him once again that IDWR and the Water Board will have complete control of this and resist the temptation to cave in to local pressures to get people involved that will provide us with less than the technical management expertise that we need to be successful. **Mr. Anderson** said that he could assure Senator Schroeder that the Water Resource Board and the staff will do what they can, because the majority of the \$2.76 million is money to be contracted out for technical studies and professional services associated with putting together the plans. He said that is why they hired three new people, and it will be their responsibility to make sure every contract dollar is administrated correctly and the studies done are the ones needed for that area. He said the final decision will be through the Department and the Water Resource Board. **Senator Schroeder** asked: “ If in fact, some of the money is spent in a fashion that doesn’t allow us to meet our objectives, then IDWR and the Water Board is the place to blame - right?” **Mr. Anderson** agreed.

Chairman Raybould thanked Mr. Anderson for his presentation. He said the report shows the efforts of this committee last year to get this program underway, to secure the funding, and to get the Governor’s Office on board. The Chairman said they are off to a good start and appreciates Mr. Anderson’s efforts getting this work done.

He then announced that the committee would recess for lunch and reconvene at 1:30 p.m.

Chairman Raybould called the meeting to order at 1:30 p.m.

Director Tuthill opened the afternoon’s program by giving a PowerPoint presentation relating to a general status update regarding curtailment, the Northern Idaho Adjudication and an IDWR status update. His complete PowerPoint presentation is available at the Legislative Services Office.

In terms of curtailment status, Director Tuthill reported the following:

- Surface Water Coalition
 - Hearing conducted January 16 through February 5
 - Decision issued April 29
 - Requests for reconsideration filed. Hearing Officer’s decision finalized June 10
 - Fully submitted to IDWR on July 18

- For 2008, no mitigation required
- River to ground water call
- Thousand Springs - Snake River Farm & Blue Lakes
 - Hearing held November 28 through December 13
 - Final Hearing Officer decision filed March 26
 - Fully submitted for review on April 10
 - Final decision issued July 11
 - Springs to ground water call
- A&B Irrigation District
 - Call denied on January 29
 - Request for hearing received February 13
 - Ruling on effect of Ground Water Act filed on May 26
 - Hearing now set for December 8
 - Ground water to ground water call

In regard to the Northern Idaho Adjudication, **Director Tuthill** reminded the committee that claim filing fees were returned to 1987 (SRBA) levels (\$25 for a de minimis claim). He stated that de minimis claims are to be deferrable and that a state/federal stipulation has been signed. He also reminded committee members that Basin 98 was removed from the adjudication. **Director Tuthill** told the committee that a Petition was filed with the NIA Court on July 8. Town meetings will be held July 21-24 and he said that he anticipates a hearing by the NIA Court to be held in late August.

Director Tuthill then updated the Committee on the status of IDWR. He noted that in terms of staffing, 11 FTE were added for NIA in FY07, 3 FTE are being added for the Aquifer Study in FY09 and that the Department lost 3 FTE for salary savings in FY08 and FY09. He said that, other than the 11 FTE added for NIA, Department staffing has been essentially static since 1998. **Director Tuthill** said that they are in year one of the zero base budgeting program. He said they have tried to become as efficient as possible and that they do have to triage work efforts and do what has to be done first. He went on to say that the Department has, as has been the case for at least 33 years, backlogs in some processes such as:

- Transfer processing
- Licensing
- Ownership changes
- Hearings

Director Tuthill then updated the members in regard to the SRBA. He said that preparation of recommendations is completed and that 150,349 recommendations have been made. Ongoing activity involves resolving objections, with more than 3,500 objection subcases remaining. He said they anticipate this to be completed in 2012. Water Districts are being created and they are resolving water delivery problems as well as processing backlogs for water right transactions.

Specific to water right transfers and new water rights, the Director provided the following information:

Water Right Transfers Workload

- In FY08 approved 339 transfers – A RECORD
 - Typical year has been about 200 transfer approvals
- In FY08 received 314 transfer applications
 - Up 15% from FY07
- In FY08 new demand = production
 - Size of backlog remained steady despite production increase
 - Did increased processing capacity create increased demand?

Applications for New Water Rights

- Highest priority
- There is no backlog of applications that can be processed
- Some applications are held without processing because they are:
 - In a Moratorium Area such as the Eastern Snake River Plain
 - In a Ground Water Management Area such as the Bear River Basin
 - In a Critical Ground Water Area such as the Raft River Basin
 - Protested and require a hearing
 - Awaiting additional information from the applicant

Director Tuthill told the Committee that legal issues are increasingly contentious and complex. In summary he said that the IDWR technical and administrative staff are working hard for the citizens of Idaho, legal staff assigned to IDWR by the AG's Office have a huge workload and an outstanding track record, that IDWR is transitioning from SRBA activities to post-SRBA activities, and that IDWR is understaffed but is prioritizing to do its best to meet the needs of the State of Idaho.

Senator Coiner commented in regard to the surface water call and the fact that no mitigation is required. He added that the aquifer continues to be mined. He asked where in the process of administration does the Department look at the condition of the aquifer. **Director Tuthill** said this is the issue that is before the agency and hearing officer. He said that he will be writing a final decision that will come before the District Court.

Representative Moyle inquired as to how far a person has to go to reach a reasonable pumping level. **Director Tuthill** said that is one of the key questions, and that the question for an individual well is based on economics. They did a study in the 1970's and the findings were that it varies. **Representative Moyle** wanted to know how far is too far. **Director Tuthill** said one of the indicators as to how far is too far is when people stop pumping. He said they saw that in the high-lift pumps on the Snake River. **Representative Moyle** asked if the Department is going to develop a criteria for pumping and whether it will be in writing. **Director Tuthill** said his expectation at this point is to look at it on a case-by-case basis.

Representative Patrick said that his concern is the well depth. **Director Tuthill** said that it is a classic challenge in the western states, the balance between the appropriation doctrine - first in time, first in right - and the legislative guidance to go to a reasonable economic level. He said there are many factors and variables and he feels that it can only be done on a case-by-case basis

Senator Coiner said that it appears to him that the senior water user has to chase the water until he is bankrupt and has to stop pumping and then that is where you determine he has reached a reasonable pumping level. He doesn't feel that a senior has to go to the expense of going to that extreme before you can determine that there is injury. He said that he needs help to understand the problem. **Director Tuthill** said they would look at it on a case-by-case basis. **Senator Coiner** stated that the production still isn't there on the wells they have deepened. He asked what do they have to do to determine injury. **Director Tuthill** said hearings will be held and the answers will be coming out of this process.

Representative Bedke asked how would it have changed things if they were exempt from the ground water statutes. He asked, on this case-by-case approach, have there been any other cases or are we looking back at *Baker v. Ore-Ida Foods, Inc.* (95 Idaho 575, 513 P.2d 627 (1973)). **Director Tuthill** said there are very few cases. He also said that if the wells were not subject to the statutes, if a well were put in at only 10 feet and dried up then there would have to be protection for that well. **Representative Bedke** asked whether the Director believes the District Court's decision is consistent with the *Baker* case. **Chairman Tuthill** said that in his view, it is.

The Chairman then welcomed **Randy MacMillan**, Vice President of Clear Springs Foods, Inc. Mr. MacMillan provided a PowerPoint presentation. His complete PowerPoint presentation is available at the Legislative Services Office.

Mr. MacMillan told the Committee that Clear Springs Foods has been involved in various ESPA water negotiations and litigation since about 1998, that it voluntarily gave up water attempting to negotiate a settlement rather than go to court and that it has ongoing disagreements with IDWR. He also told the members that he is a member of both the CAMP advisory committee and the Board of Environmental Quality.

Mr. MacMillan continued by describing the history of Clear Springs Foods, and the fact that it is the largest trout company in the world. **Mr. MacMillan** then described complaints Clear Springs Foods has about the IDWR. Those complaints include issues of timeliness in regard to administration and water delivery to seniors, consistency, compliance with legislatively approved rules and compliance with the Idaho Constitution and judicial decisions regarding the priority doctrine and private property rights. He continued that Clear Springs Foods is asking the Legislature to order an agency performance evaluation of IDWR through OPE. He added that he believes a performance review would provide an evaluation of the Department's conformance with state law, that it would make recommendations that could improve the performance of the agency, and that it would provide legislative and public confidence in the agency.

The next speaker was **Bryan Olmstead**, manager of the Twin Falls Canal Company. He expressed concerns to the committee in regard to the Milner power permit and the fact that a license has not yet been issued. **Mr. Olmstead** also expressed concerns about stabilization of the aquifer given their dependence on it. He also said that he believes that anytime there is additional water, such as this year, instead of pumping water, surface water should be used. He added that he believes conversion offers a better opportunity than recharge. He closed by saying that perhaps a performance evaluation would be good if it could help, for example, to improve timing, and that it could be good for the state, the users, and the Department.

Albert Barker, filling in for Tom Arkoosh, Capitol Law Group, PLLC, then addressed the committee in regard to issues relating to some basins outside of the ESPA. He expressed concerns relating to the issuance of licenses, the processing of transfer applications and administration of water rights, communication with the Department and the Attorney General's Office as well as the additional workload for the Department as the result of the North Idaho Adjudication. He provided the committee with some specific examples of several cases that have been pending before the department that were filed in 2005. **Mr. Barker** suggested that the committee look and make sure the Department has the resources to do all the jobs that it is asked to do.

Cochairman Raybould then suggested another interim committee meeting be scheduled to further address these issues. **Cochairman Schroeder** agreed that it would be beneficial.

Representative Bedke said that there were strong allegations made and inquired if the committee is to sit in judgment on those issues. **Chairman Raybould** said that it is his opinion the committee would hear both sides before making any recommendations. **Senator Coiner** noted that he doesn't look at it as making a judgment. He said that to him, a performance evaluation is a fresh set of eyes looking at the operations, then making recommendations for improvements, if needed. Senator Coiner said that if there is another meeting, he would also like to suggest discussing recharge.

The next speaker was **Sharon Kiefer**, Idaho Department of Fish and Game, who provided an update regarding wolves in Idaho. Her handout to the committee, depicting distribution of wolf packs in Idaho, is available at the Legislative Services Office.

Ms. Kiefer stated that the distribution of wolf packs as indicated on the map are estimates and should be considered as minimum estimates. At the close of 2007, the estimated wolf population was 732 wolves, with 195 pups counted. There are 83 confirmed packs in Idaho, with 45 breeding pair. About 10 packs were added this year. There are 120 monitored radio collared wolves, with 60 packs being monitored. The Department believes that the population is expanding about 20 percent per year. She added that this year expansion has been seen in some high conflict areas.

Ms. Kiefer indicated that the first step in population management was the 2002 Legislative Wolf Management Plan. She said that in March of 2008 the Fish and Game Commission adopted a department rule for population management based on the Legislative Plan. That plan, she said, provides for population management through wolf harvest as one of the tools. The plan has lethal and nonlethal tools. She reminded the committee that on March 28, 2008, wolves were delisted and transferred from federal to state management.

Ms. Kiefer went on to tell the committee that in May, 2008 the Commission adopted a regulatory framework for hunting. To establish mortality limits for the 2008 season, the Commission used the 2005 population level, about 500 wolves. The mortality limits include all forms of mortality - hunting, road kill, controlled actions, etc. The state is divided into twelve zones, with higher mortality limits in the zones that are deemed to be high conflict areas. There will be no controlled hunts and one tag per person for those who apply. **Ms. Kiefer** said they are implementing some new legislation, relative to depredation control, that was passed during this last legislation session.

Senator Schroeder stated that in light of the problems that the Department is having trying to get money from Washington, D.C., he inquired if the Commission is considering having perpetual open season in high conflict areas. **Ms. Kiefer** said the difficulty of getting money hasn't yet occurred, but they are waiting on the Fish and Game Advisory Committee to deliver some recommendations relative to a compensation program.

David Hensley, Office of the Governor, said that he and Steve Strack, Lead Deputy Attorney General, would address any questions on the litigation and provide the committee with a brief update.

Mr. Hensley stated that they were in Montana about two months ago before a federal judge. The issue was whether the states could manage wolves for the duration of the litigation. **Mr. Hensley** said that the judge has not yet ruled and they are awaiting his decision. He said that they anticipate the litigation will continue for about six months, possibly a year. The Governor, the Office of Species Conservation (OSC), and the state are all represented in the action.

Mr. Strack said the primary thing that they are waiting for now is the preliminary injunction. He said that a concern that was raised with regard to Idaho, was whether Section 36-1107, Idaho Code, provides a specific enough standard for when private livestock owners may or may not take wolves. He said that whatever the preliminary injunction turns out to be, they will probably have to live with it for as long as two years.

Senator Schroeder said that the argument is that we don't have enough wolves to ensure the wolf population can sustain itself. He asked as to how the court can consider that a valid argument when they have been increasing by 20 percent a year. **Mr. Strack** said that the latest science calls for a minimum population of 2,000 to 5,000 wolves to be viable. **Senator Schroeder** indicated that he read that the estimated number of wolves is 3,000. **Mr. Strack** said

the actual numbers could be twice the estimated numbers because of the difficulty of locating and monitoring packs.

Nate Fisher, Administrator for the Office of Species Conservation, addressed the committee next and said that he wanted the committee to know that his office is actively involved with the Idaho Congressional delegation in securing money, and they are hopeful to continue to receive that money. He added that OSC was only allowed two Congressional requests, one for wolves and the other for sage grouse issues.

Representative Wood asked for an update regarding sage grouse. **Mr. Fisher** said that issues relating to sage grouse may be larger than issues relating to the spotted owl. Part of the review process is to obtain the most recent information about sage grouse such as population, density, range, and habitat. He said that information has been compiled and submitted to U.S. Fish and Wildlife. **Mr. Fisher** said that they hope to have a determination by the end of the year.

Chairman Raybould said that concludes the presentations for the afternoon. The date for the next meeting has been tentatively set for August 12.

A motion was made by **Representative Bedke** that the meeting be adjourned and it was seconded by **Senator Coiner**. The motion carried by unanimous voice vote. **Chairman Raybould** thanked everyone for being in attendance and for their input and adjourned the meeting at 3:20 p.m.