

Senate Resources & Environment Committee

Minutes
2008



MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 9, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Senator Andreason

NOTE: *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*

MINUTES: **Chairman Schroeder** called the meeting to order at 1:45 p.m. He welcomed the committee members, as well as the audience of approximately 25 people.

ANNOUNCEMENTS: He stated that he wanted to reaffirm his position on obtaining information for the committee members. If anyone needs more information to make judicious decisions prior to voting on any particular bill or issue, please let him know. He feels that is his responsibility as chairman.

Chairman Schroeder said this year during committee meetings, he would like to try to use the Congressional method of questioning speakers (or witnesses). That method is – a committee member, once questioning has started, does not need to go through the Chair for additional questioning of that person. It will allow a continuous dialog, as well as saving time.

Chairman Schroeder said that there will be a series of speakers during this Legislative Session. He encouraged everyone to **listen**, even if they disagree, as both sides of an issue needs to be represented. After hearing both sides, based on facts, then opinions can be formed.

He encouraged the committee to get their RS's in to him in a timely fashion.

The Chairman made the following announcements of future committee meetings:

Friday, the 11th, will be "Wolf Delisting and Management Plan";

Monday, the 14th, will be a presentation on the "Comprehensive Aquifer Study and Planning";

Wednesday, the 16th, will be the annual update by the Department of Fish and Game, with all Commissioners in attendance; and

Friday, the 18th, will be "Observations and Review of Idaho Water Law".

He then turned the meeting to Vice Chairman Pearce, who is Chairman of the Rules Review.

**ASSIGNMENT
OF RULES:**

Chairman Pearce announced the following assignments for the Rules:

PENDING RULES

DEPARTMENT OF FISH AND GAME

Senators Siddoway & Pearce	*Rules Governing Licensing;
Senators Siddoway & Pearce	*Rules Governing the taking of Big Game Animals in the State of Idaho;
Senators Siddoway & Pearce	*Rules Governing the taking of Game Birds in the State of Idaho;
Senator Stennett	*Commercial Fishing in the State of Idaho;
Senator Stennett	*Rules Governing the Use of Bait for taking Big Game Animals.

DEPARTMENT OF LANDS

Senator Langhorst	*Administration of Idaho's Reforestation Law;
Senator Langhorst	*Rules of the Community and Urban Forestry Trust Account;
Senator Langhorst	*Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho;
Senator Langhorst	*Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands.

DEPARTMENT OF PARKS AND RECREATION

Senator Andreason	*Rules Governing the Administration of Park and Recreation Areas and Facilities;
Senator Andreason	*Idaho Safe Boating Rules.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Senator Little	*Rules for Administration of Wastewater Treatment Facility Grants;
Senator Little	*Rules Regulating Underground Storage Tank Systems;
Senator Andreason	*Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended;
Senator Andreason	*Rules for Administration of Drinking Water Loan Program;
Senator Andreason	*Rules for Administration of Planning Grants for Public Drinking Water Facilities.

FEE RULES

DEPARTMENT OF LANDS

Senator Cameron

*Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho;

Senator Cameron

*Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.

DEPARTMENT OF WATER RESOURCES

Senator Coiner

*Adjudication Rules.

Chairman Pearce said he assigned the Rules in an area of expertise and/or interest of each committeeman. If any problems are found with them, he asked that you call him by January 21 and he will request representation from the appropriate agency to come before the committee to address the issues and to answer questions.

He then turned the meeting back to Chairman Schroeder.

INTRODUCTION: **Chairman Schroeder** introduced Mr. Clive Strong, Chief of Natural Resources, who will provide an update of what has happened since the committee last met. Also speaking will be Mr. Dave Tuthill, Director of the Department of Water Resources.

SPEAKER: **Mr. Strong** provided a letter to the committee that was written by Governor Otter to Mr. D. Robert Lohn, Regional Administrator of the Pacific Northwest Region. He then referred his remarks to that letter, which is inserted into the minutes.

Dear Regional Administrator Lohn:

This letter contains the State of Idaho's comments concerning the draft biological opinion dated October 30, 2007, under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1544, and the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884, with respect to the operation of ten United States Bureau of Reclamation (USBR) projects and two related actions. These comments are limited to those aspects of the draft opinion concerned with application of ESA section 7(a)(2), 16 U.S.C. § 1536(a)(2).

Idaho addresses first the jeopardy standard applied by NOAA Fisheries in the draft opinion. It believes that standard is consistent with the summary judgment decision and remand order in *American Rivers v. NOAA Fisheries*, No. 04-0061 -RE (D. Or.) (*American Rivers*), entered, respectively, on May 23 and September 26, 2006. However, it also believes that the jeopardy standard applied exceeds the requirements of section 7(a)(2) in light of the United States Supreme Court's recent decision in *National Association of Home Builders v. Defenders of Wildlife*, 127 S. Ct. 2518 (2007) (*Home*

Builders), and the Ninth Circuit Court of Appeals' decision in *National Wildlife Federation v. NMFS*, 481 F.3d 1224 (9th Cir. 2007) (*NWF*), with respect to the 2004 biological opinion directed to the operation of the Federal Columbia River Power System (FCRPS) and 19 USBR projects in the Columbia Basin.¹ Idaho recommends that the final opinion contain an alternative jeopardy standard discussion that accommodates those decisions.

Idaho next addresses the draft opinion's consistency with the requirements of the Snake River Water Rights Act of 2004 (SRWRA), Pub. L. No. 108-447, Div. J, Tit. X, 118 Stat. 2809, 3431, and the Mediator's Term Sheet ratified in the statute. The proposed action and the draft opinion are fully compliant with both. The proposed action additionally comports with the Idaho legislature's implementing legislation in 2005 Idaho Session Laws chapters 149 and 400 (codified in Idaho Code § 42-1763B). Idaho does recommend, however, that USBR adopt accounting protocols to ensure that adequate reservoir refill will occur for purposes of supplying contracted-for water during periods subsequent to the provision of spring flow augmentation.

Finally, Idaho offers several comments concerning the technical analysis in the draft biological opinion. It fully supports the elimination of flow augmentation during the second half of July and August when temperatures in the Snake River approach or exceed 20°C. Furthermore, Idaho restates its concern regarding the efficacy of flow augmentation using water from the upper Snake River basin.

I. JEOPARDY STANDARD ISSUES

The *American Rivers* court agreed with NOAA Fisheries in the May 2006 decision that consultation over the Upper Snake River Basin projects separate from the FCRPS opinion was appropriate given the action agencies' discretion to treat the operation of those projects independent from the agency action reviewed in the FCRPS consultation. *American Rivers*, Doc. 263 at 18, 22. The court additionally rejected the contention that the projects' effects were the result of interdependent or interrelated actions for purposes of the "effects of the action" definition in 50 C.F.R. § 402.02. *American Rivers*, Doc. 263 at 19-21. Nevertheless, it relied on a regulation issued under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4335, to require a "comprehensive analysis" of the effects of the two actions. *American Rivers*, Doc. 263 at 23 (citing 50 C.F.R. § 1508.25). To achieve the requisite comprehensive analysis, the court directed NOAA Fisheries to "examine whether the effects of the proposed action, together with any cumulative effects, will jeopardize the continued existence of the listed species when added to the environmental baseline." *Id.* "[O]nly if NOAA examines the effects of a federal action on the listed species and any cumulative effects and the environmental baseline *in the aggregate*," the court continued, "can the agency insure that a proposed action will not jeopardize the continued existence of the listed species." *Id.* at 24. Its holding in this respect complemented the decision's earlier conclusion that "NOAA's comparison of the effects of the action to the environmental baseline (reference

operation), rather than *aggregating* those effects, results in a jeopardy analysis that is ‘insufficiently comprehensive to “insure” that any action carried out by a federal agency is “not likely to jeopardize the continued existence” of a listed species.’” *Id.* at 13. The court therefore directed NOAA Fisheries to “consider the combined effects of the proposed action and the existing environmental baseline.” *Id.* The later opinion and order of remand reiterated this direction. *Id.*, Doc. 288 at 8 (requiring the Federal Defendants to “detail specific steps” with respect to preparation of “a comprehensive analysis...which considers the combined effects of the USBR projects and the FCRPS operations on ESA-listed salmon and steelhead”).

Subsequent to the district court’s two opinions, the Ninth Circuit issued its decision in the appeal arising from the 2004 FCRPS biological opinion’s invalidation. Most relevant for present purposes was the court of appeals’ discussion of the “aggregation” issue—i.e., whether section 7(a)(2) requires jeopardy to be determined with reference to the “combined effects” of the proposed action, the environmental baseline and any cumulative effects. The court stated in material part:

Requiring NMFS to consider the proposed FCRPS operations in their actual context does not, as NMFS argues, effectively expand the “agency action” at issue to include all independent or baseline harms to listed species. Nor does it have the effect of preventing any federal action once background conditions place a species in jeopardy. To ‘jeopardize’—the action ESA prohibits—means to “expose to loss or injury” or to “imperil.” Either of these implies causation, and thus some new risk of harm. Likewise, the suffix “-ize” in “jeopardize” indicates some active change of status: an agency may not “cause [a species] to be or to become” in a state of jeopardy or “subject [a species] to” jeopardy. American Heritage Dictionary of the English Language (4th ed.). Agency action can only “jeopardize” a species’ existence if that agency action causes some deterioration in the species’ pre-action condition.

Even under the so-called aggregation approach NMFS challenges, then, an agency only “jeopardize[s]” a species if it causes some new jeopardy. An agency may still take action that removes a species from jeopardy entirely, or that lessens the degree of jeopardy. However, an agency may not take action that will tip a species from a state of precarious survival into a state of likely extinction. Likewise, even where baseline conditions already jeopardize a species, an agency may not take action that *deepens* the jeopardy by causing *additional* harm.

NWF, 481 F.3d at 1235-36 (emphasis supplied). As Idaho understands the decision, NOAA Fisheries need only conclude that the effects of the proposed action do not make a listed species’ condition appreciably *worse* from a survival or recovery perspective for the action to pass scrutiny under section 7(a)(2). Comparison of a species’ condition under continuation of the *status quo*—as embodied in the environmental baseline which includes the effects of USBR projects as currently operated—and its condition when the

environmental baseline is altered by introduction of effects from the proposed action thus satisfies the statute if the likelihood of survival and recovery is not appreciably diminished.

The court of appeals, however, did reject NOAA Fisheries' use of a reference operation approach that distinguished for purposes of determining "effects of the action" between discretionary and nondiscretionary components of the proposed FCRPS operations. *NWF*, 481 F.3d at 1233-35. The court reasoned that it could not approve the agency's "interpretation of [50 C.F.R. § 402.03] as excluding from the agency action under review any portions of admittedly-discretionary actions that the agency deems non-discretionary, since this approach conflicts with ESA's basic mandate" (481 F.3d at 1233) and that "any action actually taken by an agency is discretionary" (*id.* at 1234). This holding had significance with respect to the 2005 Upper Snake biological opinion given its comparable use of a reference operation to capture the discretionary hydro portion of the environmental baseline. *See American Rivers*, Doc. 263 at 13 (citing to the *NWF* summary judgment opinion for the proposition that "NOAA's comparison of the effects of the action to the environmental baseline (reference operation), rather than aggregating those effects, results in a jeopardy analysis that is 'insufficiently comprehensive'" for section 7(a)(2) purposes). In so concluding, the Ninth Circuit panel relied extensively upon *Defenders of Wildlife v. EPA*, 420 F.3d 946 (9th Cir. 2005), *reh'g en banc denied*, 450 F.3d 394 (9th Cir. 2006)—the decision reversed in *Home Builders*. A detailed analysis of *Home Builders*'s effect from Idaho's perspective on the *NWF* holding is set out in the State's rehearing petition, but it is enough to say here that the Supreme Court's opinion deemed NOAA Fisheries and the United States Fish and Wildlife Service's (FWS's) construction of section 7(a)(2) in 50 C.F.R. § 402.03 entitled to acceptance under *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *See Home Builders*, 127 S. Ct. at 2534.

Home Builders and *NWF* establish that jeopardy or adverse modification of critical habitat exists under section 7(a)(2) only when effects from the discretionary aspects of a proposed agency action will worsen appreciably the likelihood of a listed species' survival and recovery. "Aggregation" of those effects with the environmental baseline and any cumulative effects necessarily runs the risk of attributing harm from the latter to the former, thereby blurring the consulting agencies' careful definitional distinction between "effects of the action," "environmental baseline" and "cumulative effects." The jeopardy analysis employed in the draft biological opinion, insofar as it follows the analytical framework set out in the district court's summary judgment and remand opinions, not only engages in just such aggregation but also measures jeopardy against the standard of whether the proposed action, when so aggregated, places population groups within the three salmon evolutionarily significant units (ESUs) and the one steelhead distinct population segment (DPS) originating in the Snake River Basin on a "trend toward recovery." Draft BiOp at 7-2. Simply put, the jeopardy standard applied in the draft opinion requires substantially more than no appreciable reduction to the likelihood of survival and recovery from the proposed action's implementation; it

requires a finding that NOAA Fisheries to conclude through various quantitative measures for four ESUs and two DPSs and qualitative measures for those and the remaining ESUs that a *positive* recovery slope line exists for the various population groups. *Id* at 7-3 -- 7-23.

Idaho understands the reasons behind NOAA Fisheries' applying a jeopardy standard that is at least as stringent as articulated in the district court's summary judgment opinion and thereby minimizes controversy over compliance with the remand order. It nevertheless believes that consideration should be given to including an alternative jeopardy analysis that gives effect to *Home Builders* and section 8 of the 1902 Reclamation Act, 43 U.S.C. § 383.

The Supreme Court left no doubt in *Home Builders* that section 8 serves as an affirmative constraint on USBR's discretion insofar as the storing and release of water is concerned. *Home Builders*, 127 S. Ct. at 2535 (citing *California v. United States*, 438 U.S. 645, 668 n.21 (1978)), as apposite to the principle "that an agency cannot be the legal 'cause' of an action that it has no statutory discretion *not* to take"). The subsequent passage of the ESA, and section 7(a)(2) specifically, did not alter the agency's duty under the 1902 Act to comply with Idaho law both when discharging its contractual duties to deliver water and when using uncontracted storage water. The Idaho legislature, in turn, defined through Idaho Code § 42-1763B the limits on the use of state-licensed water rights for flow augmentation purposes. That legislative mandate leaves no discretion in USBR to expropriate water from a user—given the willing lessor requirement in § 42-1763B(3)(a)—or to use *any* storage water for flow augmentation purposes except as permitted under the statute. The agency's lack of discretion means that USBR cannot be "the legal 'cause'" of any adverse impact on listed anadromous stocks from the contracted-for use of project water. Section 8 thereby precludes inclusion of such impact as an "effect of the action." It simultaneously cabins the agency's power to mitigate for downstream impact on salmon or steelhead from that use. Reclamation's only discretion lies in *how* it implements § 42-1763 B-based authority to provide flow augmentation— *e.g.*, the timing and volume of the augmentation otherwise allowed under the statute.

Given this narrow range of discretion, the issue for section 7(a)(2) consultation purposes, therefore, is whether the provision of flow augmentation—and not the Upper Snake projects' effect on natural stream flows through contracted water deliveries— appreciably diminishes the likelihood of survival and recovery of any listed species or adversely modifies critical habitat. The analysis in Chapter 4 of the biological assessment and Chapter 8 of the draft opinion nonetheless treats impacts from those deliveries as "effects of the action" and, in so doing, eliminates the distinction between discretionary and nondiscretionary activities.² Underlying this analysis is USBR's conclusion that the proposed flow augmentation will benefit the affected Snake River stocks at least in dry years and will have no detrimental impact in other years. To the extent that the discretionary-nondiscretionary distinction is applied in assessing the proposed action, no adverse impact on any listed ESU or DPS exists. Both

approaches should be considered in making the requisite section 7(a)(2) findings in light of *Home Builders'* validation of 50 C.F.R. § 402.03.

II. CONSISTENCY WITH THE SRWRA

The draft biological opinion summarizes the SRWRA at pages 1-11 though 1-14. It correctly states that the proposed action is consistent with the Mediator's Term Sheet with respect to the biological opinion's length—30 years from the agreement's date—and the “Snake River flow component”—*i. e.*, the maximum amount of flow augmentation provided for under the Term Sheet. In this regard, the draft opinion appropriately references Idaho Code § 42-1763B as setting forth that amount and as providing the 30-year duration of flow augmentation authorization which the parties negotiated. The draft opinion further satisfies the requirement that it be separate from any FCRPS biological opinion.

The proposed time shift in the flow augmentation does raise an SRWRA-related issue that merits comment. Spring augmentation likely will reduce reservoir levels below those that would exist otherwise. It also appears likely that in years with normal or above normal seasonal flows spring reservoir depletions for augmentation purposes can be recovered and thereby not prejudice contract rights. In low water years, though, early releases may not be recoverable. It is thus important for USBR to account carefully for the water used as part of the flow augmentation program and to ensure that its use does not deprive senior water users of amounts which they have not leased to the agency and would otherwise be available but for the early releases.

III. TECHNICAL COMMENTS

Idaho offers several comments regarding the technical analysis in the draft BiOp. Idaho concurs with the concept of not releasing upper Snake basin flow augmentation when lower Snake River water temperatures approach or exceed 20°C (when flow augmentation likely does more harm than good). Furthermore, Idaho remains highly skeptical about the efficacy of upper Snake River basin flow augmentation in general, and especially with earlier releases superimposed on high spring freshet flows. The rationale for an earlier upper Snake River basins flow augmentation release is not well supported; plans for quantifying benefits, if any, are absent from the draft biological opinion and supporting documents. Finally, Idaho is concerned that earlier flow augmentation releases will have inconsistent timing from year to year (because of operational constraints) and that attempts to create earlier releases may result in undesirable basin impacts.

The draft biological opinion calls for “salmon flow augmentation by acquiring water through rental pools and leasing or acquiring natural flow rights consistent with the Nez Perce Water Rights Settlement” and “from the rental or acquisition of natural flow rights” (Draft BiOp at 2-2). Anticipated flow augmentation volumes range from 216 kaf in a dry year to 487 kaf in a wet year (Draft BiOp at 11-3). The releases will occur in

April through August (Draft BiOp at Table 11-1). Flow augmentation releases would be coordinated on a year-by-year basis with Reclamation and the Technical Management Team (TMT), Planning Forums, and NOAA Fisheries. Volumes would be determined, in part, by the availability of water through rental pools and/or leasing or acquiring natural flow water rights.

Since 1991 flow augmentation water has typically been released between mid June through August. NOAA Fisheries staff has recommended³ that the priority on these summer releases be relaxed, with flow augmentation water released by July 31. The USBR Biological Assessment for Bureau of Reclamation Operations and Maintenance in the Snake River Basin Above Brownlee Reservoir (BA) dated August 2007 suggests releasing flow augmentation water during the May to early July period, inasmuch as possible (BA at page 18).

Idaho recognizes that water temperatures in the free-flowing reach of the lower Snake River can reach or exceed 20°C beginning in early July (Figure 1). Such elevated water temperatures impose additional risk for juvenile and adult fall Chinook (Giorgi et al., 2002; Muir et al., 2004). The release of elevated-temperature flow augmentation water from the upper Snake counteracts the benefits of cooler-temperature water from Dworshak Reservoir. Idaho therefore supports the USBR efforts to avoid flow augmentation releases from the upper Snake River in July and August when water temperatures are typically elevated.

However, NOAA Fisheries staff and the USBR are suggesting that flow augmentation releases occur prior to July 31. To avoid releases when lower Snake River water temperatures exceed 20°C, releases should not occur after early July (*e.g.*, July 7 in an average year –see Figure 1).

It is not clear that the flow augmentation release season suggested by the USBR (April through early July) or NOAA Fisheries staff (prior to July 31) was adopted in the draft biological opinion (which lists an April through August release season). The final opinion should more clearly specify the anticipated flow augmentation release period.

NOAA Fisheries staff (Graves et al., 2007) notes that the great majority of the Snake River fall Chinook currently migrate in June and early July (rather than July and August) and that five other species of salmon and steelhead migrate during the spring period. The purpose of the proposed earlier flow augmentation releases (as specified in the draft biological opinion) is to increase the downstream survival of these earlier migrants. For example, the draft suggests that flow augmentation “should reduce juvenile travel times” (draft biological opinion at 8.2-4) in the forebays of lower Snake River reservoirs. This is also promoted by NOAA Fisheries biologists⁴referring to relationships between flow and travel time, flow and temperature, and flow and turbidity in the free-flowing Hells Canyon reach of the Snake River as reported by Smith et al. (2003)⁵ based on travel times of PIT-tagged, hatchery-raised, fall Chinook salmon in a

free-flowing reach of the lower Snake River.

The flow augmentation rationale in the draft biological opinion is based, in part, on the NOAA Fisheries staff recommendations (Graves et al., 2007) which list four considerations: (1) a flow/travel time relationship; (2) a recognition that spring migrants evolved to migrate during the typically high flow, high turbidity, low temperature conditions of a spring freshet; (3) an observation (from PIT tag data) that earlier migrating juvenile spring Chinook and steelhead return at greater rates as adults; and (4) a recognition that “normative” river processes affect conditions in the estuary and near-shore ocean environment.

The first “consideration” that of a flow/travel time relationship — has been based largely on observations made using PIT-tagged subyearling fall Chinook salmon. However, there is now general recognition that PIT-tagged subyearling fall Chinook do not appear to be a reliable indicator of channel velocity or augmentation benefits. Several factors (*e.g.*, physiological characteristics, rearing patterns, free-flowing and impounded reach conditions, etc.) confound analyses of velocity and travel times.

The travel times reported by Smith et al. (2003) do not provide a reliable basis for evaluating velocity effects associated with flow augmentation — especially in reservoir forebays. Velocity may only be important once migrants have reached a physiological stage of development at which migration occurs. Greater channel velocities may benefit those fish that are actively migrating, but it is not possible to distinguish actively-migrating fish from non-migrating fish with the PIT-tag data. Few data are available separating effects of velocity on hatchery-raised subyearlings in the free-flowing section of the lower Snake River versus Lower Granite Reservoir. Velocity in free-flowing reaches (as explored by Smith et al., 2003) does not appear to be a critical survival factor (except perhaps in very low flow years).

At issue is whether flow augmentation releases from the upper Snake River basin would provide *any* benefits to migrating juveniles. Time-shifting upper Snake River flow augmentation for earlier releases would have marginal (if any) travel time reductions in most years (depending on the actual time-shifted release period) because flow augmentation would be added to already higher flows. How will the earlier release of upper Snake flow augmentation water (1) improve the high-turbidity, low-temperature conditions of a spring freshet or (2) benefit the earlier migrating juvenile spring Chinook; and steelhead? How will an earlier release of upper Snake River basin flow augmentation water benefit estuary and near-shore ocean environment? Read separately or together, the draft biological opinion, the USBR BA, and the NOAA Fisheries staff memo articulate no scientifically defensible basis for the assumed efficacy of upper Snake River flow augmentation. Thus, Idaho questions whether (and if so, how) marginal increases in flow (from the release of flow augmentation water from the upper Snake River basin) will affect in a biologically positive manner downriver migrant travel time, water temperature, turbidity, predation, and

ultimate survival.

Thus, while Idaho supports eliminating flow augmentation releases during the late July and August time period, Idaho questions the efficacy of moving flow augmentation releases earlier into the year. The draft biological opinion, USBR BA, and the NOAA Fisheries Supplemental Comprehensive Analysis of the Federal Columbia River Power System and Mainstem Effects of the Upper Snake and other Tributary Actions maintain that the effects of earlier flow augmentation releases will be beneficial, but these documents do not adequately describe precisely how and to what extent the earlier flow augmentation releases will benefit specific migrant groups.

NOAA Fisheries hypothesizes flow augmentation benefits based on the four considerations listed above. However, the draft biological opinion (or supporting documents) do not propose (or even suggest) a scientifically sound plan for quantifying and evaluating purported benefits resulting from the upper Snake River flow augmentation. Idaho believes that such an analysis should be conducted if flow augmentation is shifted to an earlier time period.

Finally, Idaho is concerned that variability in flow augmentation release timing from year to year (1) will not provide the uniformity in release rates and flow season that NOAA Fisheries seeks and (2) will result in undesirable upper Snake River basin impacts or missed storage targets. Snake River basin reservoir releases for flow augmentation have generally occurred after reservoirs have filled — generally after mid-June. The USBR proposes several strategies for providing earlier flow augmentation releases. However, operational flexibility is not uniform in Snake River basin facilities. Flood control constraints, potential water quality impacts, and safety issues may limit operational flexibility. Thus, Idaho is concerned that operational constraints may limit earlier flow augmentation releases or (2) result in undesirable basin impacts or missed storage targets.

In summary, Idaho concurs with avoiding flow augmentation with upper Snake River basin water when Snake River water temperatures approach or exceed 20°C. However, Idaho remains skeptical about the efficacy of flow augmentation with upper Snake River water, especially when this water is added to already high spring freshet flows. Finally, Idaho is also concerned that earlier flow augmentation releases will have inconsistent timing from year to year (because of operational constraints) and that attempts to create earlier releases may result in undesirable basin impacts.

Thank you for the opportunity to submit these comments: Idaho is confident that they will be given careful consideration.

¹ Idaho filed a petition for panel rehearing and suggestion for rehearing *en banc* on July 19, 2007, with respect to the Ninth Circuit's decision. The petition

remains pending as of these comments' submission date.

²Idaho recognizes that USBR committed under the Term Sheet to consult over “(1) all BOR actions in the upper Snake River basin, (2) all private depletionary effects in the Snake River basin above the Hells Canyon Complex to the extent they affect listed anadromous fish, and (3) all private depletionary effects above the Hells Canyon Complex to the extent that they are related to the federal action and affect listed resident species.” Mediator’s Term Sheet § III.A. The Term Sheet additionally required the biological opinion to “directly address and evaluate the expected effects of BOR’s proposed operations in the Upper Snake, including any beneficial effects on anadromous fish from the flow augmentation program established in this component.” *Id.* Section 1 l(b)(1) of the SRWRA, however, expressly disclaimed any intent to supersede existing law except for one provision not relevant to this issue. There is thus no basis to argue that the agency’s commitments with respect to preparation of one or more biological opinions concerning the Upper Snake projects’ operation made an otherwise nondiscretionary duty—the delivery of contracted water—discretionary so as to render the diversions’ impact on natural flows an “effect of the action.” The present impact from diversions associated with fulfilling long-standing contractual undertakings instead is part of the environmental baseline; any future changes in those private diversions deemed reasonably certain to occur would constitute cumulative effects. The “private depletionary effects” arising from supplying project water pursuant to contract, in sum, are proper matters to be considered in the jeopardy analysis required under the Term Sheet, but they are not “effects of the action” itself

³ Graves, R., P. Wagner, and R. Domingue (National Marine Fisheries Service). 2007. June 12, 2007 Memorandum to B. Suzumoto and Bob Lohn: Staff recommendation to relax the regional priority on summer flow augmentation for the upcoming FCRPS biological opinion and request NWFSC review of this recommendation.

⁴NMFS (National Marine Fisheries Service). 2007. Staff recommendation to relax the regional priority on summer flow augmentation for the upcoming FCRPS biological opinion and request NWFSC review of this recommendation. Memorandum from R. Graves, P. Wagner, and R. Domingue to B. Suzumoto. June 12, 2007.

⁵Smith, S.G. et al., 2003. Influence of river conditions on survival and travel time of Snake River subyearling fall Chinook salmon. *North American Journal of Fisheries Management*, 23: 939-961.

Another 9th Circuit case that has caused concern is field burning of grass fields. The 9th Circuit decision has basically shut down the burning in the state of Idaho until appropriate rules and regulations are in place. The Department of Agriculture and the Department of Environmental Quality are working with the growers to resolve the issue.

With regards to the Snake River Basin Adjudication, as of January 7th,

150,349 claims have been reviewed and 17,731 claims are pending. Processing of the claims take staff time; however, 95-98 percent of the claims are resolved without litigation.

Mr. Strong said he expects to see a piece of legislation this session regarding the Timber Stabilization Act. The Act was established in 1985.

Time was allowed for questions from the committee.

INTRODUCTION:

Chairman Schroeder then introduced **Mr. Dave Tuthill, Director of the Idaho Department of Water Resources**, who will present an update for his agency.

SPEAKER:

Mr. Tuthill presented a Power Point program regarding IDWR. The topics covered were: Present Status; ESPA Update; Boise River Lawsuit; Brief North Idaho Adjudication Update; Surface Storage Opportunities.

He showed a graph that provided information regarding precipitation and the snow water. This year is looking very good, compared to past years.

In the Thousand Springs area, there were two calls that were addressed by orders that did require curtailment. One was the Snake River Farm and the other was Blue Lakes. A hearing was held Nov. 28 and the hearing officer is close to a decision. The A&B Irrigation District's hearing is forthcoming. In the presentation, a map of curtailment areas was shown which included Blue Lakes Trout Ground Water, Snake River Farm Ground Water, and Surface Water Coalition. If we receive 105 percent of normal snowpack and full reservoirs, there should be no curtailment.

Regarding the Boise River Lawsuit (Lucky Peak Dam), there are two contested issues: (1) The name - decision rendered by Idaho Supreme Court; and (2) Streamflow maintenance storage - presently under consideration. Mr. Tuthill's slide presentation showed the water right license and under "beneficial use", one of the items listed was "streamflow maintenance storage". He said it was a unique term. It defines the water captured in Lucky Peak and is used to maintain the springflow downstream in the Boise River. As to the present legal status, the parties are negotiating potential resolutions. A motion for summary judgment is to be reviewed by the SRBA Court in March and the trial is set for October. Senator Langhorst inquired (and requested) the names of the irrigation districts involved.

The next topic was the North Idaho Adjudication (NIA). IDWR has petitioned the district court to commence adjudications within the terms of the McCarran amendment, 43 U.S.C. section 666, of the

water rights from surface water and ground water sources in northern Idaho through initiation of three proceedings. (The McCarran amendment requires the adjudication of the entire basin, not just a portion.) The statute calls for separate petitions. They are Coeur d'Alene-Spokane River Basin, the Palouse River Basin, and the Kootenai and Clark Fork-Pend Oreille River Basins. The filing of each petition shall be contingent on legislative funding approval.

Mr. Tuthill reviewed the projected fiscal year milestones - FY2007 through FY2015. There were seven issues that were addressed. They are:

- (1) Senate bill 1205 and IDWR funding bill for FR08 Section 5 of the bill states that it is legislative intent that work on the Northern Idaho Adjudication be limited in this fiscal year to the Rathdrum Prairie water rights and to Idaho-Washington cross-border water issues.
- (2) Boundary lines They were redrawn and IDWR basin boundaries were officially revised and published August 16, 2007.
- (3) IDWR seeking a post-SRBA role? No, according to Mr. Tuthill. There is separate funding for NIA; however, IDWR is understaffed for existing and future operations, not including NIA. Funding from fees is one-third of projected NIA cost.
- (4) Should domestics be required to file? In North Idaho, domestic uses constitute a larger share of total water use than in the SRBA. The last two adjudications in North Idaho (Hayden Lake and Twin Lakes) were initiated by domestic conflicts. Last summer numerous domestic conflicts in North Idaho were reported to IDWR.
- (5) Will IDWR require meters on domestics? IDWR has not done this anywhere in the state of Idaho. The cost of reading meters is high compared to the benefit. Tens of thousands of small domestic water rights exist in the state.
- (6) Will annual fees be added to domestics? Collection of fees from domestic users is inefficient. The legislature is moving toward use of the General Fund to provide water management funding where domestic water rights might have impact.
- (7) Is pumping in the Rathdrum Prairie really the problem? One primary driver for adjudication is the flow of the Spokane River. USGS/Washington/Idaho studies now reveal that the Rathdrum Prairie contributes only a portion of the flow of the Spokane River.

That concluded Mr. Tuthill's report. However, he did have information on water storage. Some potential surface storage sites could be Teton Dam (300,000), Minidoka Dam (40,000-50,000), Twin Springs Dam (300,000), Galloway Dam (900,000), and Lost Valley Dam (30,000). A request was made for Mr. Tuthill to find the cost for 1,000 acre feet of water for projects. It was also mentioned that there is an active mercury mine site adjacent to Galloway Dam and steps need to be taken to protect the water. Also, there is legislation in Washington D. C. that is favoring hydro electric power generation. The question

posed to Mr. Tuthill was would it have an impact. Mr. Tuthill replied that it would be an “added value”.

ADJOURN:

Chairman Schroeder thanked Mr. Strong and Mr. Tuthill for their presentations. With no further business to come before the committee, he adjourned the meeting at 3:15 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 11, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Andreason
- NOTE:** *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He said a lot has been going on in the state with respect to wolves in the last year, so he asked the Office of Species Conservation and the Department of Fish and Game to brief the committee and to provide the status of delisting.
- INTRODUCTION:** He introduced **Cal Groen, Director of the Department of Fish & Game.**
- SPEAKER:** **Director Groen** provided the following Idaho Wolf Statistics:
The 2007 tentative population estimate is 750-800 wolves; 195 pups counted; 83 confirmed packs in Idaho; 44 breeding pair. The population growth rate is 20 percent per year. There are 112 monitored radio collared wolves and eight G.P.S. collars. Sixty packs are monitored (72%).

Regarding confirmed livestock depredations for 2007, 52 cattle killed, 5 cattle injured; 170 sheep killed, 41 sheep injured; 6 dogs killed, 4 dogs injured.

Wolf mortality for 2007 is as follows: Wildlife Services killed 43 wolves; 7 were killed by ranchers under the 10(j) rule; and 26 died by other causes (natural, legal, illegal, or undetermined causes), for a total of 76.

Fifty one percent of depredations occurred on private land, with 34 packs in trouble this past year. In Montana and Wyoming, outside Yellowstone Park, all the packs get in trouble.
- DISCUSSION:** There were questions and a discussion regarding some of the figures in Mr. Groen's report. Mr. Groen said his figures are confirmed; however, there are missing elements and that is where the differences are. Wolves are causing more depredation on cattle than bears and lions.

One issue that Mr. Groen said he would follow-up on is regarding stray cattle on Forest Service land after the 10(j) rule has been lifted. The cattle were accused of trespassing. It was suggested that perhaps Fish and Game could work with the Forest Service and rewrite the language in permits that would say if a rancher had to remove cattle early, and leave strays behind, they could have an extension to protect their cattle.

Another question regarded the population growth. Mr. Groen said it is growing 30-40 percent a year. This past year, 10 percent was removed, leaving a 20 percent growth.

INTRODUCTION: **Chairman Schroeder** introduced **Jeff Allen with the Office of Species Conservation**.

SPEAKER: **Mr. Allen** said there were two issues he would address.

The federal government, at the end of this month, will be publishing a new 10(j) rule. These rules govern the wolf population south of I 90 and will be the third 10(j) rule. It will apply only to wolves south of I 90 and for states with valid wolf management plans. The provisions only apply if a state has 200% of the minimum federal recovery standards. (Only 20 breeding pair are needed to qualify.)

Two important changes in the new 10(j) rule are: (1) It will give sportsmen and citizens the flexibility to protect stock animals and dogs, no matter where they are, and (2) It applies to removing wolves in response to ungulate herd population status. The rule will be published at the end of January and take effect in 30 days.

The other major development is the delisting rule. It will be published on February 28 and take effect 30 days later. Mr. Allen said there would probably be lawsuits. He was asked if the state had sufficient data to address the lawsuits and he replied that they felt they did.

Director Groen was asked to talk about the Wolf Conservation Management Plan.

He distributed a draft of that plan which has an Executive Summary, addresses two critical issues (Issues and Management Direction) and other pertinent information.

The elk are managed with 29 elk zones and wolves have 14 zones (Data Analysis Units [DAU]). Because wolves in Idaho prey primarily on elk and secondarily on deer, it is appropriate to use Elk Zones and group them into DAUs for wolf management objectives. Montana only has three zones for wolves.

The comment period for wolf management closed December 31 and the Department received 1,089 comments. He feels they received some very thoughtful comments. In a previous comment period regarding wolves in the Clearwater Region, they received over 40,000 comments. Wolf hunting regulations will be presented at the March 5 meeting, with public comments in April. The final Rules will be available in May.

The lion season is from August 30 to March 31.

Mr. Jim Unsworth, Wildlife Bureau Chief, also addressed some of the issues regarding wolves. He feels they will get more clever and harder to harvest. However, like lion hunters, some folks will become very good wolf hunters. A question was asked as to how effective hunting from helicopters is, similar to that in Alaska. Mr. Unsworth replied that it could be effective in open country, but not 100 percent.

A question was asked regarding the handling of the department's budget in securing the needed data. **Mr. Groen** said they have been receiving federal money, but when the wolves are delisted, money for depredation will become a problem. He hopes they will be able to continue to obtain federal funds. Aerial surveys are paid with Sportsmen's money and monitoring (McCall through the Clearwater) is provided by the Nez Perce Tribe.

Vice Chairman Pearce said that he sees the frustration of hunters and hears their complaints and said that he hopes the Department of Fish and Game continue to work on their public relations with the hunters. **Mr. Groen** said they are trying to be as responsive as they can. He hopes that as they manage the wolves, like other species, most of the frustration will go away, as well as some of the animosity.

Chairman Schroeder inquired about some density dependent things that kill wolves - such as parvo virus, mange, internal parasites, etc. He asked **Mr. Unsworth** as to what density population does it take for these to become a problem. Mr. Unsworth's reply was that they had found some mange. In Yellowstone, it has been quite severe and mange has been found on Montana wolves. In higher densities, it is more prevalent.

Chairman Schroeder asked Mr. Unsworth to review, for the committee, the social structure of wolves. **Mr. Unsworth** said that as the breeding pair builds, usually the alpha pair are the only ones that breed within a pack. Factors that cause a pack to split are (1) there are too many in the pack for the given habitat and (2) the opportunity to immigrate and form another pack and branch off. It was asked if a pair could produce more than one litter a year, and the reply was that no evidence has been documented.

Senator Stennett asked Mr. Unsworth for clarification regarding sportsmen protecting their dogs. **Mr. Unsworth** said that is one of the changes in the new 10(j) rule that sportsmen are allowed that protection.

Senator Langhorst said that he wanted to acknowledge the work of the Office of Species Confirmation and the Department of Fish and Game in something they didn't ask for, but in his perspective, it will be viewed as a success.

ADJOURN:

With no further questions or business to come before the committee,
Chairman Schroeder adjourned the meeting at 2:40 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 14, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: None

NOTE: *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*

MINUTES: **Chairman Schroeder** called the meeting to order at 1:35 p.m. He had two skulls on display - a wolf and a coyote. He wanted the committee members to see the vast difference in the sizes of them.

ANNOUNCEMENT: The Chairman announced the agenda for the week – Wednesday, the Fish and Game Commissioners will be here and Friday, Professor Barbara Cousins from the UI Law School will talk about the water law.

INTRODUCTION: **Chairman Schroeder** asked **Ms. Sharon Kiefer, Legislative Liaison for the Department of Fish and Game**, to present the six RS's the Department is sponsoring. He welcomed her to the meeting.

RS 17310 Creates a penalty for illegal killing, illegal possession, illegal waste of grizzly bears.

RS 17311 Revises terminology relating to special permits authorizing use of a crossbow by physically disabled persons.

RS 17312C1 Clarifies law of F&G to specify wolves are included for depredation control and amends reference of reporting requirement of depredation control of mountain lions and wolves.

RS 17314 Amends law of F&G nonresident small game hunting license to correct terminology and clarify huntable species.

RS 17315 Amends law of F&G to strike reference to regional wildlife councils providing a list of appointees for winter feeding advisory committees.

RS 17316C1 Amends law of F&G youth hunting licenses to clarify huntable species by removing pygmy rabbit and adding huntable furbearers.

Ms. Kiefer reviewed each of the RS's. During the discussion, some of the pertinent questions asked were:

- Grizzly bear killings. How many killed and why.
- Definition of molesting. Difference between molesting and attacking. Federal reasoning requested.
- 48 hour reporting period. Could time frame be extended. Rewrite the RS.
- Where are the locations of the Regional Wildlife Councils.
- Could RS 17312C1 be rewritten/modified.

MOTION:

Senator Little made the motion that RS 17310, 17311, 17312C1, 17314, 17315, 17316C1 be sent to print. **Senator Stennett** seconded the motion. **Senator Cameron** suggested that RS 17312C1 be reworded and modified.

Senator Little changed his motion, with the approval of Senator Stennett, to print all RS's except RS 17312C1. The **motion passed** by unanimous voice vote.

Senator Little made the motion that RS 17312C1 be sent to print, but asked that the sponsoring agency consider the concerns of the committee and submit a revised version (C2) also. **Senator Andreason** seconded the motion. The **motion passed** by a majority voice vote (8-1). Senator Cameron voted no and asked to be recorded as such.

SPEAKER:

Chairman Schroeder said that the Governor has \$20 million dollars in his budget for a water study and he has invited **Mr. Hal Anderson, Division Administrator of Idaho Department of Water Resources**, to explain how they will spend the money. The title of Mr. Anderson's presentation is "Comprehensive Aquifer Study and Planning".

Mr. Anderson provided three documents which he referred to in his presentation. Document #1 provided fiscal information from 2008 through 2018 for the 10 basins; Document #2 listed the Decision Unit that is submitted with the budget; Document #3 is a fact sheet that provides background, issues, tasks/costs, and planning studies for each of the 10 basins.

The department was given the task of developing a framework for a comprehensive management plan for the Eastern Snake River Plain Aquifer (ESPA). That plan was submitted recommending a two-year effort to complete a Comprehensive Management Plan that was approved by the legislature. There are many basins that have documented problems and need technical studies and a comprehensive plan to minimize the potential for future water crisis like the one being experienced on the ESPA. The proposed program will complete ESPA Model upgrades and Comprehensive Aquifer Management Plans and associated technical studies within the next 10 years. The following basins, in order of priority, are as follows: Lower Boise/Treasure Valley; Rathdrum Prairie; Big Wood; Moscow-Pullman; Mountain Home; Bear River; Teton; Big Lost; Portneuf and Blackfoot.

Mr. Anderson explained how the department arrived at the \$20 million

figure. The initial request was for \$18,400,000 for IDWR Revolving Development Fund for technical studies, facilitation services, hydrologic monitoring, measurement and Comprehensive Plan development. Also included was \$1,600,000 from the General Fund for the Water Administration Fund for Personnel costs, Operating Expenses and Capital Outlay for three new staff members required to support this effort. The initial funding will be used to complete ESPA Model upgrades and the first six aquifer basin plans expected to be completed in six years. A future \$10 million request will be needed to complete the remaining four aquifer basins and for monitoring and measurement for some years following.

Mr. Anderson then reviewed the fact sheets for the ten basins and he pointed out to the committee that not every basin is exactly the same, as they have different requirements and different issues. He said this is their best estimate at this time.

That completed Mr. Anderson's formal presentation.

The Chairman said that he wished to explain the evolution of this process. At one time some people thought that the people who used water should be assessed a fee to pay for the development of the models. It was determined that charging well owners a fee was not a good idea. Chairman Schroeder said it was first thought that money could be obtained on an annual basis, but money was made available on a one-time basis due to funds being available. Water management models will be developed, like the one for ESPA, on a staggered basis. Efforts from the Governor's Office, the Interim Committee, and IDWR made this all possible.

A question was asked regarding conservation. Mr. Anderson said those issues will be brought out in the comprehensive basin plan and process by the Board later.

An inquiry was made as to the financing of this project. To have \$20 million set aside for this is unheard of. The question was raised if there are any other projects in state government that are done this way and what protection is there that the money will be used as designated. Mr. Anderson replied that accounts have been developed and are tracked separately and reports are made.

ADJOURN:

Chairman Schroeder thanked Mr. Anderson for his presentation and then adjourned the meeting at 2:35 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 16, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Andreason
- NOTE:** *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- ANNOUNCEMENTS:** He announced that Professor Barbara Cozens will be speaking Friday on Idaho's water law. Next Monday, Jay O'Laughlin will be presenting a program on "Fire, Smoke and Forest Fuel Management". At 7 a.m. on Wednesday, the Board members of Parks and Recreation will be in attendance at an informal meeting.
- INTRODUCTIONS:** **Chairman Schroeder** welcomed **Cal Groen, Director of the Department of Fish and Game** and the **Board members of Fish and Game**. Mr. Groen introduced the members and they are as follows:
Tony McDermott – Panhandle Region
Fred Trevey – Clearwater Region
Bob Barowsky – Southwest Region
Dr. Wayne Wright – Magic Valley Region
Cameron Wheeler – Upper Snake Region
Gary Power – Salmon Region
Randall Budge – Southeast Region (was unable to attend.)
- The Chairman asked the Board members - for those that want to - to tell the committee (1) What hunting is to each of them; (2) Is the department a managing or policy agency; (3) Should it be involved in research and (4) How you feel about the International and National organizations that might dictate to our state about what we do here? He then asked the committee members if they had questions for the Board.
- Senator Cameron** said one of the dilemmas the department has is that we are in a changing arena and there are many more demands now. Some of those demands that we are asking the department to pay for with Sportsmen's dollars really have a more statewide impact, such as management of wolves and the Rex Rammell situation. He said he would

also be interested in hearing the Board's vision as to how (the committee) needs to handle the finances in order to meet the demands made on the department. Another area he has concerns with is that other states have done some things to address 'Access'. Idaho has the 'Access Yes' program, but he wondered if there was a way to move the discussion along in order to maintain and/or improve access to the public on state and federal lands.

The **Chairman** then turned the meeting to **Director Groen**. The Director said the Board members take their job seriously and provide the policy for Fish and Game. With regards to the 'Access Yes' program, they have opened up about one-half million acres and wished they had more. In Northern Idaho, a survey indicated that about half of the users do not have hunting or fishing licenses. On a trail head of Fish and Game land (locally), a sensor indicated that 14,000 hikers were using it, and very few had hunting or fishing licenses. This is one of the things that the department is struggling with and needs help and support. Director Groen said they are working on some options. He then said that he wished to recognize Ms. Sharon Kiefer, Legislative Liaison, and Virgil Moore, Deputy Director, who are in the audience.

He then introduced Cameron Wheeler who will talk about the Ad Hoc Committee.

Commissioner Wheeler said he was appreciative to serve on the Ad Hoc Committee. He said they are hopeful and very optimistic about situations with the department. One of the things he said that he felt strongly about was land access and what it takes for land legacy. They realize it takes money and they are working on that issue. He also feels the Commission does not have any desire in joining any national organizations, as the department has enough problems.

A question was asked regarding a land exchange with the state. Mr. Wheeler said the exchange he was familiar with was the exchange with Craig Mountain. The exchange was based on the way they grazed and there was equal value; a trade of convenience for management purposes only.

Another question was concerning the Big Horn sheep versus domestic sheep in Hells Canyon. Mr. Wheeler said he doesn't have an answer to that specific question, but they are putting together a plan for the long term, and asking for guidance from the Governor's Office. This issue is being treated as a high priority.

Commissioner Wright reported on the Murphy Complex fire and fire rehabilitation. He said the fire had a huge economic impact on a lot of ranchers. One sheep rancher will be decreasing the number of sheep he puts on the range by two to three bands. Another rancher lost 12 quarter horses that burned to death. The Commission feels honored that the Director, at the request of the Governor, lead the efforts for rehab on the Murphy Complex fire. He also wanted to publically commend and thank all the volunteers for assisting in gathering 3,500 pounds of sage brush seed. As a result, re-seeding has already begun. They plan to seed

300,000 acres. The remaining 650,000 acres that were burned will be seeded with wildlife grasses, which include five different grasses. He feels the effort is going well, but there is much work left to do. They are looking at ways to prevent this from happening again. As Commissioners, Mr. Wheeler feels they are supposed to be managers. As far as science and research might interlace with that - good management depends on good science and good research.

Senator Little inquired about the kind of seed planted - soil type, elevation, aspect, etc. He also was concerned about sage brush seed not being genetically inclined to survive on the site where it was planted. Senator Little expressed concern about hasty seeding after a fire and inquired about research that the department has done. Dr. Wright said he feels the Committee would have been impressed if they had been at the Lucky Peak Nursery this morning with the Board members. All of the sage brush seed is segregated, is regional specific, and will be replanted in those areas where it came from.

Speaking next was **Commissioner McDermott**. Referring back to the discussion of sage brush seed, he said there are two million seeds in a one pound packet. The topic he was given for review was the Farragut Shooting Range and what has occurred there during the past year. There is a group called CARE (Citizens Against Range Expansion) living along the northern boundary of the range road. They filed a lawsuit in 2006 to stop Fish and Game's plan to improve and expand the range. The Judge made a decision in 2007 and imposed severe restrictions. (1) No rounds would leave the range; (2) The noise decibel level cannot exceed 55 decibels; and (3) Restricted 'users days' to 500 days per year. A 'user day' is one shooter, one day, one round. The Department purchased the land in 1950 and it consisted of 3,850 acres. In 1964, 2,500 acres was transferred to the federal government and through negotiations by the Department of Parks and Recreation, they now own it. There are two portions - Farragut Wildlife Management Area and the Farragut State Park. The shooting range is on the north side and is co-managed by Parks and Rec. User groups of the range include individual citizens, Boy Scout troops, hunter education, agency clinics, law enforcement officers, as well as some military training. Mr. McDermott said in the past, 'user days' averaged about 2,000 'user days' per year. The Commission would like to increase it to 3,000 and they plan to petition the Judge.

Commissioner Trevey, who is yet to be confirmed, said he lives in Idaho by choice and his background is in natural resource management. His interest is in the future of natural resources, mainly because of his dedication to his grandchildren. He gave a synopsis of the elk situation in the Clearwater Region. He said most of the land is in the national forest. 1996-97 were tough winters and with previous fires, the habitat has been assessed and they are trying to re-energize the habitat issue. He said the good news is they have a good forecast for spring chinook. It is an important economic activity for that area and they are looking forward to it. As to his thoughts about what hunting means to him, Mr. Trevey said that as a youngster, it was more about keeping score. However, his mother depended on him to provide meat for their home. Through the

years, he said he has enjoyed hunting, but now he is eager to teach his grandson to learn to appreciate the outdoors and to match wits with a "critter".

Commissioner Barowsky reported on ATVs (all terrain vehicles). He said officers are spending about one-third of their time searching for ATVs who go off-road. They create problems by getting off designated trails, tear up hillsides, and do damage, including watershed. These areas are problematic and on state lands, they have to be enforced. He said they are working with Parks and Rec, as a joint effort, to put together designated trails for the use of these vehicles. There are over 100,000 ATVs in the state and the trails should include scenic routes and other points of interest, not just a secondary route. Mr. Barowsky said they will have a joint proposal to bring before the Legislature at a future date. **Senator Stennett** inquired about the ATV trail at Challis. Mr. Barowsky said he didn't know anything about that trail. Chairman Schroeder suggested that an inquiry be made to the Parks Department, as they are the lead agency for that trail.

The last Commissioner to speak was **Commissioner Gary Power**. He said his assignment was to talk about wolves, but that subject had been covered last week. He said in answer to the Chairman's question as to what hunting meant to him, he said that he started following his dad when he was 10 years old and it was primarily a meat proposition. He spent most of his time outside, enjoying natural experiences, and hopes to pass that on. The latest survey shows that most Idahoans want to hunt every year and they would like to get bigger bucks. He feels that we are blessed now. With regards to management and research, there has been a shift within the department, and research should be geared toward management. **Chairman Schroeder** asked Mr. Power where are they (the Commission) going to find the money to manage wolves. Mr. Power said the management plan is over a five year period and there would also be money from tag sales. The Advisory committee is also working on issues regarding depredation.

That concluded the reports from the Commissioners. Chairman Schroeder then allowed time for the committee to ask questions of any Commissioner.

ADJOURN:

Chairman Schroeder thanked Director Groen and the Commissioners for their presentation. He then adjourned the meeting at 2:55 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 18, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Senator Andreason

NOTE: *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*

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

ANNOUNCEMENTS: He noted there were some handouts for the committee: The annual report from the Idaho Forest Products Commission, which they are required to do by Statute; and a biography of today's speaker, **Professor Barbara Cosens. She teaches Water, Environmental and Property Law at the University of Idaho.** He also reviewed next week's agenda.

The Chairman then welcomed Professor Cosens who will give a presentation on "Observations and Review of Idaho Water Law".

SPEAKER: Inserted into the minutes is the presentation by Professor Cosens.

Introduction

Chairman Schroeder, members of the committee, my name is Barbara Cosens and I am an Associate Professor at the University of Idaho College of Law, specializing in water law. Senator Schroeder asked that I testify to recommend changes that should be made to Idaho water law to modernize it. Since that is a fairly tall order, I am going to focus on a specific theme — that being: changes that will assist the state in adapting to the variability and uncertainties of climate and of population growth. In the face of that variability, the changes I will suggest go to: (1) keeping more stringent tabs on water use, while at the same time; (2) introducing greater flexibility to water management and allocation. Out of necessity, the statutes I focus on will be driven by the research I am involved in on the Palouse basin through the Water of the West Initiative. If there are other areas of water law you would like more detailed investigation of, I would be happy to return at some time in the future. I will try as I go to point to areas in which my students are hoping to do research.

The changes I will suggest in the category of “keeping more stringent tabs on water use” will include: the exempt well category, the definition of “mining” for purposes of groundwater use; follow-up on adjudication; and enforcement of reasonable use. The changes I will suggest in the category of “flexibility” will include: integration of water supply into land use planning; and easing the burden on water transfers. In some of these areas, change is recommended. In some, merely a greater effort at implementation is needed. Idaho, for the most part, has excellent laws on the books, but lacks the funding and political will in some cases to enforce them.

Keeping More Stringent Tabs on Water Use

Exempt wells

Current law:

42-227. DRILLING AND USE OF WELLS FOR DOMESTIC PURPOSES EXCEPTED.

*The excavation and opening of wells and the withdrawal of water therefrom **for domestic purposes shall not be subject to the permit requirement** under section 42-229, Idaho Code; providing such wells and withdrawal devices are subject to inspection by the department of water resources and the department of environmental quality and providing further that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code. Rights to ground water for such domestic purposes may be acquired by withdrawal and use.*

*42-238 (11) Well driller’s report. In order to enable a comprehensive survey of the extent and occurrence of the state’s ground water resource, every well driller is hereby required to keep available for inspection at the well site a daily well log and pertinent data concerning each well, and its construction or abandonment, that is constructed or abandoned under the driller’s direction in Idaho, **including wells excepted under sections 42-227 and 42-228, Idaho Code**, and complete a report on forms furnished by the director. These reports shall be properly prepared and signed by the driller and deposited with the director within thirty (30) days following the completion of the well. When the driller signs the report, the driller shall attest that all information on the report is accurate to the best of the driller’s knowledge and that the driller has met all minimum well construction standards, low temperature geothermal resource well construction standards, geothermal resource well construction standards and area of drilling concern standards as adopted by the water resource board. The reports shall become a permanent record in the office of the director for hydrologic and geologic analysis and research, and shall be available for public use. The report shall include such data as the director*

deems necessary to provide the information that will be valuable for future reference and study.

42-111. *DOMESTIC PURPOSES DEFINED. (1) For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase “domestic purposes” or “domestic uses” means:*

*(a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of **up to one-half (½) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or***

(b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

(2) For purposes of the sections listed in subsection (1) of this section, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in subsection (1)(b) of this section.

(3) Multiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section. The purpose of this limitation is to prohibit the diversion and use of water, under a combination of domestic purposes or domestic uses as defined in this section, to provide a supply of water for a use that does not meet the exemption of section 42-22 7, Idaho Code, and is required to comply with the mandatory application and permit process for developing a right to the use of water pursuant to chapter 2, title 42, Idaho Code.

Problem Associated with Current Law

The exemption from the permit process for domestic wells of this size is a holdover from an era in which homesteads were few and far between and domestic water use included subsistence food production and livestock watering. On today's modern "ranchette" it is appropriate to compare this level of use — 13,000 gallons per day to the average per capita use in Idaho's municipalities or roughly 190 gallons per day. At this rate, the exempt well could serve 70 people. Another, less tasteful, form of comparison would be that the exempt well could serve 2000 flushes of a non-low flow toilet per day, of 8000 for an ultra low flow toilet.

Nevertheless, the exemption reflects not only an accommodation of a certain subsistence lifestyle, but a presumption that this level of use is deminimus. Yet, in many parts of the state, the cumulative impact of this type of water development can no longer be considered deminimus. This

has already been acknowledged in, for example, Judge Wood's ruling on conjunctive management noting that the cumulative impact of domestic wells may have a material impact on surface water flow in the ESRP; and IDWR's decision to include domestic wells in adjudication in the Rathdrum Prairie and the Palouse Basin. Minutes of past meetings by the Interim Natural Resources Committee also indicates awareness of the problem by the committee and IDWR, while acknowledging the budgetary and personnel problem presented by the volume of applications that would result. Unfortunately, the more this type of use grows and thus potentially impacts the future of the state's water supply, the greater the problem identified by IDWR. Cost, although always an important consideration, cannot be the basis for failure to account for and manage this growing source of water development. The following recommendations are aimed at achieving the goal of accounting for these uses while minimizing the administrative burden;

Proposed Change

First, it is recommended that the volume of use allowed in the exemption be reduced. 13,000 gallons per day is overly generous. For example, our neighboring state of Washington, which we share the Palouse and Rathdrum aquifers with, uses 5000 gallons per day maximum for its exempt well category. At the very least, achieving the lower amount used by a state with shared aquifers would demonstrate in any lawsuit between the states that Idaho is managing its domestic use as carefully as Washington.

Second, because rapid population growth in Idaho is focused on certain regions, it is not necessary to approach the problem of accounting and management with a one-size-fits-all solution. Currently, Idaho law requires filing of a well report on all wells. A simple additional form with that filing that registers the well with IDWR and authority and funding for IDWR to keep track of numbers of wells and water source, would allow accounting of development in the various basins in the state. Actual permit requirement could be applied only in basins which either reach a certain cumulative level of development considered by IDWR to represent the threshold level for material injury to surface water or mining of the groundwater, or which have a certain rate of growth considered by IDWR to lead to potential cumulative impact.

Third, incorporation of planning for water availability into local land use planning, discussed below, provides a third method of managing the impact of this type of development on the water resource and assuring that population growth does not exceed water development capacity in any basin.

Groundwater mining

Current law:

42-237a: g. To supervise and control the exercise and administration of all rights to the use of ground waters and in the exercise of this discretionary power he may initiate administrative proceedings to prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available. To assist the director of the department of water resources in the administration and enforcement of this act, and in making determinations upon which said orders shall be based, he may establish a ground water pumping level or levels in an area or areas having a common ground water supply as determined by him as hereinafter provided. Water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by such right would affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge. However, the director may allow withdrawal at a rate exceeding the reasonably anticipated rate of future natural recharge if the director finds it is in the public interest and if it satisfies the following criteria:

- 1. A program exists or likely will exist which will increase recharge or decrease withdrawals within a time period acceptable to the director to bring withdrawals into balance with recharge.*
- 2. Holders of senior rights to use ground water will not be caused thereby to pump water from below the established reasonable pumping level or levels.*

Problem Associated with Current Law

Existing law creates two problems:

First, the current definition of mining does not guarantee that the groundwater will not be depleted. Consider a simple bathtub model: let's assume that the tub is full and water is coming in at the faucet at the same rate it is going out the drain. The faucet represents recharge. The drain represents discharge. Under these conditions, water level will remain constant. Now assume we put a hose in the tub and begin extracting water at a rate equal to or less than the rate of water coming in — i.e. recharge. This hose represents groundwater pumping. Under the Idaho definition, we are not “mining” the aquifer. Nevertheless, at some point the bathtub will be empty. Furthermore, an aquifer is not a bathtub. In this example you might say you can still capture the recharge, there will just be no discharge. But an aquifer is more complex. Recharge and discharge generally do not occur at single points. Designing the perfect capture system is not possible even if you only use water at obvious discharge

points -- i.e. springs.

Second, because recharge and discharge do not generally occur in a single place, it is often impossible to precisely quantify them. A water balance that looks at what comes into the system and what is used can make a rough approximation, but you cannot accurately apportion the uncertainty between the two variables: discharge or recharge. Given that uncertainty, in most aquifers it is difficult or impossible to determine if a declining water table is caused by pumping in excess of recharge or if it is caused by continued discharge along with pumping that does not exceed recharge. Inability to quantify discharge and recharge and thus determine the cause of a declining water table is one of the reasons given by IDWR to decline a petition for designation of a critical groundwater area for the drilling test wells, discharge and recharge cannot be precisely determined in that basin. Thus, the current definition of “mining” is difficult or impossible to prove in some aquifers, and allows for aquifer depletion.

It may help if I describe a bit of the geology of that particular basin. The aquifers are composed of layered basalts and sediments. They pinch off against granite to the east — i.e. in Idaho, and are open to the Snake River in the west — i.e. Washington. Basic understanding of geology would cause you to look first to the contact between the granite and the basalt for recharge and the banks of the Snake River for discharge. Yet scientific studies to date have not shown this to be the case. Recharge along the contact zone appears to be limited. Springs along the Snake River do not have the same chemical signature as that of the Grande Rhonde aquifer, and age dating of the water in that aquifer indicates that it is quite old and thus experiences little, if any, recharge. Yet water balance suggests that there must be some recharge.

Proposed Change

To address this problem, the definition of mining should be changed to equate to change in storage as evidenced by a declining water table, or, where the water table intersects with surface flow as in the Spokane Valley — Rathdrum Prairie Aquifer, by an impact on surface water flow. The difficulty is that, once this definition is changed, use of aquifers such as the Grande Ronde in the Palouse Basin will meet the definition of mining. Yet, depending on what the storativity of the Grande Ronde is, it may provide a sufficient water supply for a considerable time period if we allow storage to deplete.

To address low recharge aquifers like the Grande Ronde, you should also consider legislation that will allow managed development of this type of aquifer. Other states that have addressed development of limited recharge aquifers have not done so in a manner I could recommend. In the case of the Ogallala Aquifer, states like New Mexico have allowed pumping at a

rate that will lower the water table below currently economic pump levels in the timeframe of payback on a loan for water development. Thus, once the farmer has paid back the cost of the well and the center pivot, the well will run dry. This may be a viable approach for the bank, but not for the community relying on the aquifer. Instead, what a declining aquifer could trigger is a Groundwater Management Area. For basins where investigation indicates a problem, a requirement that allows pumping pursuant to a plan developed by IDWR in consultation with the local communities and water districts that provides for both a 100-year supply from the aquifer (the time framed used by Arizona in its assured supply laws, discussed below) and a plan and funding mechanism for development of an alternative supply once the limit is reached.

Follow-up on adjudication

The SRBA is drawing to a close while the northern Idaho adjudications loom on the horizons. I am sure many will heave a sigh of relief when the SRBA chapter ends. It has been a massive and expensive undertaking and is a huge accomplishment. But it is not the final word on water rights in the Snake River basin. Unless funding is provided to IDWR to modify the database that comes out of the SRBA by tracking changes in use, transfers and forfeiture, it will quickly become outdated. This is more than just assuring that change applications processed by IDWR get recorded in the database. As I noted in the beginning, response to change in climate and population requires both stricter tracking of water use and greater flexibility in its management. The days in which the only check on failure to comply with state law requirements on a change application, forfeiture, or (as will be discussed below) reasonable use occurs either in an adjudication or if a neighbor complains are over. Periodic surveys by IDWR, possibly every 10 years, to note changes that have not followed the state process, forfeiture, and, as will be discussed below, reasonable use, will be necessary for the results of the SRBA to remain relevant over time.

Enforcement of reasonable use

Current law: no waster/reasonable use

GLENN DALE RANCHES, INC. v. SHAUB

Supreme Court of Idaho, 94 Idaho 585, 494 P.2d 1029 (1972)

*This Court has declared that “it is against the public policy of the state ***for a water user to take from an irrigation canal more water, of that to which he is entitled, than is necessary for the irrigation of his land ***• “[Coulson v. Aberdeen-Springfield Canal Co., 39 Idaho 320, 323-324, 227 P. 29, 30(1924).]*

42-202. APPLICATION TO APPROPRIATE WATER -- CONTENTS --

FILING FEES --DISPOSITION OF FEES -- RECORD OF RECEIPTS.

*(6) In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of the land proposed to be irrigated, with the total acreage to be reclaimed as near as may be; provided, that **no one shall be authorized to divert for irrigation purposes more than one (1) cubic foot of water per second of the normal flow for each fifty (50) acres of land to be so irrigated, or more than five (5) acre feet of stored water per annum for each acre of land to be so irrigated, unless it can be shown to the satisfaction of the department of water resources that a greater amount is necessary.** Provided further, that the plan of irrigation submitted shall provide for the distribution of water to within not more than one (1) mile of each legal subdivision of the land proposed to be reclaimed by the use of such water; provided also, that in the case of all ditches designed to have a capacity often (10) cubic feet per second or less, such map showing the location of such ditch, and the place of use of such water, or the location of the lands to be irrigated, may be upon blanks furnished by the department of water resources.*

This maximum duty is also found in IDWR rules for examination in an adjudication:

IDAPA 37 TITLE 03 CHAPTER 02

37.03.02 - BENEFICIAL USE EXAMINATION RULES

035. EXAMINATION FOR BENEFICIAL USE (RULE 35).

03. General. (7-1-93) *a. For irrigation purposes, the duty of water shall not exceed five (5) acre feet of stored water for each acre of land to be irrigated or more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated unless it can be shown to the satisfaction of the director that a greater amount is necessary. (7-1-93) b. For irrigated acreage of five (5) acres or less, a rate of diversion not in excess of three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the director. (7-1-93) c. Conveyance losses of water from the point of diversion to the place of use which are determined by actual measurement may be allowed by the director (1 the loss is determined by the director to be reasonable.(7-1-93) d. The duty of water described in Rule 035.03.a. may be exceeded if the department has authorized a greater diversion rate when the permit was issued and good cause acceptable to the director has been demonstrated. (7-1-93) e. For irrigation systems which cover more than twenty-five thousand (25,000) acres, the field report does not need to describe the irrigated land by legal subdivision, but may be described generally as the lands under the project works if the total irrigated acres has been accurately determined and is shown on the field report. The amount of water beneficially used under such projects must be shown on the field report. (7-1-93)*

Problem Associated with Current Law:

The concept of “reasonable use,” or as stated by the Idaho Supreme Court, use of no more water “than is necessary” is incorporated in western water law in most states, including Idaho, in the concept of beneficial use. Not only does the type of use have to be considered by the state to be a beneficial use, but the amount of water for that use must be reasonable at any point in time. The lawyers among you know that the term “reasonable” depends on the circumstances. What is reasonable in terms of technology for water use in 2008, may no longer be reasonable in 2050. As we spread our resources more and more thinly over a growing population, it becomes reasonable to track soil moisture, upgrade irrigation techniques, use xeriscaping, or re-use waste water. Yet not only does Idaho law give the impression to water users of locking into place what is “reasonable” in the context of irrigation both by establishing a water duty by statute and incorporating that duty in decrees, it provides no authority or mechanism for follow-up if the amount of water originally decreed did become unreasonable under new circumstances except in the context of a call for water or change in use application. The law makes it clear that a greater water duty may be decreed if shown to be necessary under the particular circumstances. It does not specifically articulate the concept from *Glenn Dale Ranches*, that the incorporation of reasonable use in the concept of beneficial use also means that a lesser amount may be awarded if reasonable under the circumstances. Nor does it articulate that the amount may change with changing circumstances. Several problems arise from this disconnect between the law as articulated by the Idaho Supreme Court and as implied by statute and administrative rule:

First, as can be seen by some of the challenges to the Conjunctive Management Rules, it has given irrigators the false impression that their water right is a fixed amount for all time. Thus, when the Director applies the concept of reasonableness to what they can take or what must be mitigated at any given time under the concept of reasonableness, they raise the objection that the Director is re-adjudicating their right. Although given the law, I am relatively confident the Director will prevail, I am also sympathetic to the non-lawyer irrigator who believes they have something they do not.

Second, the misperception of the irrigator is compounded by the fact that the concept of reasonableness generally only comes up in the event of a call or an application for change in use. Not only does this catch the water user by surprise at a crucial moment in their operations, it does not provide for tight control of water allocation. With this in mind, any effort to enforce reasonable use must be balanced against the need of those invested in water use for certainty.

Proposed Change

First, consider changing 42-202 to indicate that a lesser amount maybe permitted if reasonable.

Second, provide in the adjudication statutes that (1) a lesser amount may be decreed if reasonable; and (2) the amount decreed is not a fixed amount in time but will be revisited in the event of a call or change in use for a determination of reasonableness.

Third, as water supply becomes short, change applications and calls cannot be the only time reasonableness is re-visited. The reasonableness of competing water uses from a source must also be considered when a new application for water from that source is filed with IDWR. This can be done by requiring the applicant to show water is available and allowing them to do so by showing that any of the decreed and/or permitted rights from the source are in excess of what is reasonable. The down side to encouraging this type of effort is it may bit larger entities seeking new water against small. Weighing that concern is a policy matter for you to balance, but it may be possible to look at what others have done to address this concern.

Flexibility

Integration of water use and land use planning:

Current law:

Title 67, Chapter 65: Land Use Planning

67-6508. PLANNING DUTIES. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded..

*(f) Natural Resources --**An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and shorelines.***

67-653 7. USE OF SURFACE AND GROUND WATER. (1) The intent of this section is to encourage the use of surface water for irrigation....

*(4) When considering amending, repealing or adopting a comprehensive plan, the local governing board shall **consider the effect the proposed***

amendment, repeal or adoption of the comprehensive plan would have on the source, quantity and quality of ground water in the area.

67-6513: SUBDIVISION ORDINANCE: . . . Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision.

Title 50, Chapter 13: Subdivision Laws

50-1301. DEFINITIONS

15. *Subdivision: A tract of land divided into **five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bonafide division or partition of agricultural land for agricultural purposes shall mean the division of and into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. **Cities or counties may adopt their own definition of subdivision in lieu of the above definition;*****

Problem Associated with Current Law

Idaho has growing pains in certain regions — primarily the Treasure Valley, Teton County, and the Panhandle. The disconnect between planning for that growth, delegated to local government, and planning for how to assure an adequate water supply, placed at the state level by the Idaho Constitution, is a recipe for disaster. Despite the fact that we generally embrace growth for economic reasons, there will at some point be resource limits on its continuance. In the western United States, that limiting factor is likely to be water. Unless planning for land use and water availability are tied together, we risk at the very least missed opportunity to maximize our economic potential, and at the very worst, increasing shortage and conflict and ultimately ghost towns.

Having said that, the current law actually provides sufficient latitude for local government to integrate water use into land use planning without infringing on state level allocation. The problem really lies in the reluctance of local government to do so. Compounding that reluctance is the recent district court ruling striking down Latah County's attempt to protect groundwater recharge areas. The district court held that the Idaho Constitution requires that water allocation be done at the state level, not by local government. The Latah County ordinance was arguably a well-intentioned attempt to utilize the authorities of the Land Use Planning Act with an in-artful title that led to its revocation by the court. As such it has

had a chilling effect on the will of local government to use existing authority. In addition, local government may lack the resources and expertise to evaluate the need for ties between land use planning and water supply, and to implement it in a fair manner. State guidance is needed on how and when local government should incorporate water use into land use planning without implicating state level planning and allocation or takings.

Furthermore, the decision to allow water availability to limit or control growth also implicates other areas such as affordable housing. Thankfully those policy decisions are yours to make, however they can be put off by keeping stringent tabs on water use through the areas discussed above. In addition, these types of issues emphasize the need to have some state level guidance or control over how far local government can go in placing water-related restrictions or conditions on growth.

Proposed Change

Clarification within Idaho's Land Use Planning and Subdivision statutes as to when it is appropriate for local units of government to address protection of groundwater resources, not groundwater allocation, is needed. First, consider adding a new section to 67-65 et seq that authorizes local units of government to establish groundwater protection overlay zones that regulate land use, not allocation, after consultation with IDWR to determine the necessity for such a zoning designation. We would be happy to propose a project through UI's new water resources program to work on a model approach.

Second, consider guidance on integration of land use planning and water supply and IDWR designation of basins in which it is needed. Numerous states are experimenting with how to do this within similar structures that place water allocation at the state level. Idaho can learn from their mistakes and benefit from those successes that appear appropriate for Idaho.

Examples of efforts in other states: [Research currently underway through the Water of the West Initiative at UI will be looking at this issue specifically for the Palouse Basin. It is intended that what our students analysis for that basin will be transferable elsewhere. That work is not completed. We would be happy to provide it to you in oral or written form when it is. In the meantime, the source of my examples comes from an article by Dan Tarlock, a water law expert and professor at Chicago—Kent College of Law, in a recent issue of *The Water Report*]

(1) Land Use decisions that impact recharge: Paving a recharge area eliminates recharge. There are technological fixes and land use design that can avoid this problem and still allow growth. This is clearly an area in which action by local government does not implicate state level water

allocation and planning, yet one in which local government surely needs assistance on identifying appropriate technology and ordinance design.

(2) Growth caps: Courts have rarely upheld absolute limits on growth due to water limitations. However, where the limit of water supply is clearly reached, courts in Florida and Massachusetts have upheld the ordinance against takings challenges. More often communities will provide for phased growth or temporary moratoriums to correspond with efforts to provide infrastructure or need for planning. These should be acceptable under recent U.S. Supreme Court takings rulings, and have been upheld against the duty of local government to provide public utilities.

(3) Assured Supply: Arizona was one of the first to experiment with a state level requirement that new subdivisions demonstrate an adequate supply of water as a condition for approval. Initial efforts to meet this requirement led to purchase and retirement of agricultural land with some of the collateral impacts discussed below under water transfers, thus local communities should carefully consider the secondary implications of how they write this type of ordinance. For example, in a basin like the Palouse where irrigation is limited, a proposed subdivision could meet this requirement by paying for conservation measures, xeriscaping and leak detection and repair on existing development. The city of Santa Fe now requires new developments to offset their water needs by retrofitting existing development.

California has taken the concept of assured supply to another level by passing state legislation requiring a municipality to have a firm supply of water before a new development can be approved.

(4) Pricing: Tiered pricing is being attempted in many localities including Moscow, Idaho. Basically, the lowest price applies to a level of use that constitutes household use, whereas additional water for uses such as landscaping and swimming pools comes at a higher cost. This is thought to provide an incentive for conservation. Moscow's pricing has not been in place long enough to determine the impact.

(5) Conservation requirements on new subdivisions: Cities from Santa Fe to Las Vegas have experimented with this. It includes requirements such as low flow devices, xeriscaping, leak detection equipment, metering, and double piping to allow use of waste water on landscaping.

(6) Planning: Most comprehensive plans treat water planning as an issue of infrastructure planning and not the design and pace of development as related to water supply. In Idaho, water planning is done at the state level. It would not be inconsistent with the state level approach to have local government, consistent with the State Plan, incorporate planning for water

supply limitations in their comprehensive plans. Florida now requires a 10-year water supply facilities work plan in the local comprehensive plan that must include identification of water and funding sources to meet projected needs. Finally, some sort of uniformity on requirement associated with water supply for local governments sharing the same source will be necessary to avoid the type of situation around many municipalities where city restrictions lead to increased county development and sprawl. Regardless of how you feel about sprawl, if the county and city users are tapping into the same source, restrictions will be meaningless in the long run if they are not uniform.

(7) Re-use facilities: At some point population growth can only be served by reclamation and re-use of waste water. This is not thought to be socially acceptable by most. But if you take water from a river downstream from another city's wastewater treatment plants, as is the case in much of the U.S., you are essentially doing just that. Assisting communities in developing the technology in an economic manner and determining how to overcome the public "yuck" factor will be important in the future.

Water Transfers

Current Law:

*42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water. . . , who shall desire to **change the point of diversion, place of use, period of use or nature of use** of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the*

director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof which action of the watermaster shall be received and considered as other evidence. For applications proposing to change only the point of diversion or place of use of a water right in a manner that will not change the effect on the source for the right and any other hydraulically-connected sources from the effect resulting under the right as previously approved, and that will not affect the rights of other water users, the director of the department of water resources shall give only such notice to other users as he deems appropriate.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

*The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, **provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates**, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director*

shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth. Provided however, minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

(3) Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof to such waters for a period of not to exceed five (5) additional years.

(4) Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; provided that water rights protected from forfeiture under the provisions of section 42-223, Idaho Code, are exempt from this requirement.

(a) Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, to the director of the department of water resources within ten (10) days of the last date of publication.

(b) Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided.

(c) The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use.

(d) In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section.

(e) In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(5) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1 701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1 701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1 701A(4), Idaho Code.

Problem Associated with Current Law

Academics have long held forth the view that as long as water transfers are possible, our municipalities will always be able to purchase water through retirement of irrigated agriculture and that the sheer enormity of agricultural water use relative to all other water use guarantees a supply for a long time.

The need for food aside, there are several barriers to realization of this view. These barriers appear to me to be conscious policy choices on your part, thus it may be a waste of time for me to point them out. However, I thought it appropriate, given the time between their passage and the tenure of most of you on this committee, and the fact that we have learned something in the meantime by the efforts to accomplish water transfers in communities in more water short states than Idaho.

The barriers to transfer that others have encountered include: (1) injury to other water users, particularly those who share conveyance infrastructure or rely on return flow; (2) secondary economic loss due to reduction in farm acreage; (3) loss of taxes to counties; and (4) environmental impacts including dust related to fallowing, invasive weeds, loss of recharge to groundwater, and loss of wetland habitat.

The following specifically describes each of these barriers to water transfer:

(1) No Injury: The first of these barriers, the no injury rule is really part and parcel of western water law. Where injuries become particularly apparent is with shared delivery systems where one person's water helps carry another's through the system, or where downstream users rely on return flow. But in recent years more unusual problems have arisen that might sound familiar to those of you tuned into the Eastern Snake River Plain. They arise because it turns out surface and ground water are connected. In efforts to transfer water from the Imperial Irrigation District to Los Angeles by implementing conservation to basically "create" transferable water, farmers in the Mexicali Valley have raised the prospect of injury to their groundwater due to loss of leakage once canals are lined.

(2) In most states, concerns with the economic impact on communities from loss of farm acreage are raised as a political issue when government attempts to facilitate or subsidize a transfer. The impact on the community is felt by farm service providers and the infrastructure that serves the agricultural community. In Idaho, the requirement for no adverse affect on the local economy is part of the change in use statute:

42-222. . . the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates

(3) Loss of taxes: similar to secondary economic affects, loss of taxes to a county can be considered a secondary impact. Irrigated land is taxed at a higher rater than non-irrigated land. Counties are already stretched thin on funding. Loss of irrigated land can be a major blow.

(4) Environmental impacts: Retirement of irrigated land to serve

municipalities in places like Arizona and the Owens Valley of California has led to substantial dust issues. In addition, unless land is maintained in the way, for example, CRP land is, invasive weeds become a problem that can threaten neighboring farmland. Again, in a more unusual situation the IID — LA transfer ran into concerns that loss of return flow to the Salton Sea would have environmental impacts. Even where a major water body like the Salton Sea is not implicated, as you will see if you read Mark Fiege's book *Irrigated Eden: The Making of an Irrigated Landscape in the American West*, about the Snake River plain, much of what we now call habitat on the plain exists due to irrigation, raising concerns with loss of that water source.

Proposed Change

Although many argue for it, I'm not convinced you could eliminate the no injury rule in a manner that is constitutional. However, similar to the efforts of IDWR on conjunctive management, you can provide avenues for mitigation of injury that can allow transfer to go forward. As water becomes more and more valuable, the cost of mitigation will become economically feasible.

The other three categories fall in areas where I cannot recommend a quick fix. The tradeoff between the values of an agricultural economy and landscape and urban economic growth or man-made habitat is a policy decision — thankfully yours to make. I can say that the more closely you keep tabs on water use and enforce such legal concepts as reasonable use, the longer you can put off the hard decision. I cannot point to any state that has accomplished greater flexibility in this area on any more than a temporary drought related transfer basis. It is an area in which additional policy and technical work is needed.

ADJOURN:

Chairman Schroeder thanked Professor Cosens for her presentation. He then adjourned the meeting at 2:45 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 21, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Senator Andreason

NOTE: *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*

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

He said the committee had been provided with two handouts. One is a memo from Ms. Sharon Kiefer, Idaho Department of Fish and Game, with information requested by Senator Siddoway regarding "Hypothetical implementation of outfitter deer and elk tag allocation (Rule Docket No. 13-0104-0701, pages 8-9). The other handout provides the results of a fur sale in Twin Falls, sponsored by the Idaho Trappers Association.

RS17666 The Chairman then asked Senator Stennett to explain RS 17666.

Senator Stennett said it would amend Section 8 Article IX of the Constitution of the State of Idaho by adding to the duties of the State Board of Land Commissioners. It would ensure public access to state lands. It would further amend the constitution to ensure that no more than 10 sections of land are sold in any one year.

Senator Little said that generally constitutional amendments go through the State Affairs Committee. **Chairman Schroeder** responded by saying this is an introduction.

There was some discussion about lands that are acceptable/not acceptable for hunting. Chairman Schroeder said it would be consistent with the purpose for which the lands were granted. **Senator Little** said the land that is granted is to generate money for public schools. Another question was what would happen in the Courts if there would be change and use from which the lands were originally intended. Senator Stennett said he did not know. **Senator Langhorst** said this RS would give latitude to the Board to manage land. **Senator Little** said the lands were all granted to the state specifically for the benefit of the endowed

institutions and this RS would make a huge change as to how these lands would be administered. **Chairman Schroeder** said they are searching for a mechanism to provide for access into the future on state lands in those areas in which it is safe to do so - access for the public for hunting, fishing and hiking.

MOTION: **Senator Langhorst** made the motion to print RS 17666. **Senator Stennett** seconded the motion. A roll call vote was taken. Voting aye were Senators Langhorst, Stennett, and Schroeder. Voting nay were Senators Siddoway, Coiner, Little, Cameron, and Pearce. Senator Andreason was absent. The **motion failed** (3-5).

SPEAKER: **Chairman Schroeder** welcomed **Jay O’Laughlin, Director of the Policy Analysis Group at the University of Idaho.**

Mr. O’Laughlin presented a program on “Fire, Smoke and Forest Fuel Management”. He first showed an 11 minute television program (from Sixty Minutes) called “The Age of Megafires”. He said the three main points of the program are: climate change; fire suppression; and super-hot mega fires (so hot the forest won’t grow trees).

Following the video, Mr. O’Laughlin presented a Power Point program. He also provided a handout - Trends in U.S. Wildfires and Idaho Forest Fuel Loading Fact Sheet #3 which he referred to.

Some of the statistics are as follows:

Number of Fires in U.S.:
77,000 annual average since 1985

Extent of Fires in U.S.:
3 million acres/year 1970-1999
6 million acres/year 2000-2004
9 million acres/year 2005-2007

Idaho Forest Fuel Loading:
Forest density increase 30% since 1953
Annual increment 750 million cubic feet
Annual mortality at 50 year high

National Forest System Lands
72% of Idaho timberlands
85% of annual mortality
10% of Idaho timber harvest removals

Mr. O’Laughlin said what is so different now is the extent of fires. He said the options are (1) let them burn; (2) suppress them; or (3) do prescribed burning, management ignited fires. He said we presently are doing all of those things. The fourth option is to change the combustibility of the

landscape, rearrange the fuels so that the fires don't get so big and impossible to fight. Fire needs three things in order to burn - heat, oxygen, and fuel. He stated that the fire behavior triangle is the weather, topography, and fuels. There is a link between the fire triangle and the fire behavior triangle and that is through fuels. He said that we can't do much about topography or the climate, but we can manage the fuels.

In a report from GAO, the most serious problems with our national forests in the interior west is an over accumulation of vegetation. That report was written almost 10 years ago and yet the fires keep getting worse. The National Fire Plan was hatched in 2000, following a big fire year, a \$2 billion dollar fire suppression year. (2006 and 2007 were also \$2 billion dollar years.) One of the key points in the Plan is to reduce hazardous fuels. In Idaho, there has been a 30 percent increase of fuels since 1953. We are adding 750 million cubic feet per year to our forests, each and every year. This is the equivalent to three football fields, each stacked one mile high with wood every year.

Mr. O'Laughlin said the wood increment that is being added every year can be a boom or a liability. When we have excessive fuels, it increases the peril of insects, disease, and fire. One of his professor colleagues has testified before Congress that he believes our forests in the West are a liability, rather than an asset. A former director of Fire and Aviation for the Forest Service said that we need to treat fuels on a much larger scale than what we are doing today. In Idaho, there are 12 million acres that could benefit by fuel treatments. Those that are at a high risk - more than three million acres and moderate risk - about eight million acres. The Forest Service has treated about 150,000 acres per year (in the last few years). Just using the high risk lands, that is a 25 year work program and by that time all the vegetation will have grown back.

If fuel reduction is implemented on a scale that many people would like to see, it will generate large volumes of bio mass and will require more people working out in the woods and in processing facilities. That information is from a Forest Service report. In Oregon, they are taking action on this. In dealing with the fuels in the forest, it not only restores forest health, increases fire resiliency, and continues the wildlife habitat, but it also provides renewable energy alternatives and revitalizes the rural economies.

Mr. O'Laughlin then discussed what lies ahead. Science magazine projected increases in wild fire burn areas between 74 and 118 percent in the next century. He predicts double that number. Two forestry professors in the West have written a paper together and they said the unsustainable high accumulation of fuels means that we need major programs to restore fuel loads to their characteristic levels. We need to do this active management in perpetuity, using prescribed burning and periodic removal of fuels.

Climate change points to some urgency about fuels management to reduce the wild fire hazards to human communities and ecological

communities. Things that can be done would be to create a demand for bio mass and establish markets for it. It is time for natural resource professionals to bring coherent objective facts to the public. Mr. O'Laughlin has a mandate to provide facts and data, but not to make recommendations. The Society of American Foresters, of which he is a member, is working on a draft position statement about wildland fire management.

Smoke from fires in Montana and Idaho track across the United States by the prevailing Westerlies and get delivered to Chicago and cities further east of there. It is not just a local problem. Most of the pollution in smoke is the fine particulate matter, carbon in little tiny pieces. It takes 20 of those pieces to equal the width of a human hair. We breathe these in deeply and they cause all kinds of health problems. The EPA regulates three sources of this particulate matter - transportation, fuel combustion, and industrial processes. The latest data indicates that wildfire emissions are greater than all three regulated sources put together. This particulate matter is a significant human health problem, including premature death. The new standards that the agency put into place in the Fall of 2006 will result in 2,500 to 5,700 fewer premature deaths per year. These new standards focus additional attention on the trade off between prescribed fires and wild fires in the air quality by potentially reducing opportunities to use prescribed fire. By managing fires through prescribed fires, you don't get as much smoke, so you reduce the fire next time by removing some of the fuels.

There are all kinds of ways to sequester carbon. Forests have some role in that, at least temporarily. The best thing that can be done to sequester carbon is to keep the fires from being so big. A GAO report said that we are faced with a "pay me now" or "pay me later" situation. Pay me now is likely the more cost effective alternative. In the fire realm, that means do the prescribed fires. The implementation of the National Fire Plan is done through collaborative process and is overseen by the Western Governors Association. Idaho has established a collaborative framework, working through groups at state and county levels to take the resources that the National Fire Plan makes available.

The most recent forest policy change at the national level was a healthy forest restoration act and there is a feature in that, that might be useful if it were spread across forest policy a little bit more broadly. Before a court can issue an injunction on a fuel treatment project that's done under the stipulations of this federal law, the courts must compare short and long term effects of action and no action before it can issue that injunction.

That concluded Mr. O'Laughlin's presentation. Time was allowed for questions.

ADJOURN:

Chairman Schroeder adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 23, 2008

TIME: 7 a.m.

PLACE: Room 204

SENATE MEMBERS PRESENT: Chairman Schroeder, Senators Little, Coiner, and Siddoway

HOUSE MEMBERS PRESENT: Chairman Stevenson, Vice Chairman Wood (35), Representatives Saylor, Chavez, King, and Andrus

MINUTES: **Chairman Schroeder** welcomed the **Board members of the Department of Parks and Recreation** and the **Division Administrator of Operations, Dean Sangrey**.

The Chairman stated that the meeting would be informal and attendance of the committee members was not required. However, he thanked the ones that were in attendance, as well as the House members and House Resources and Conservation Committee Chairman Stevenson.

INTRODUCTIONS: Mr. Sangrey was asked to introduce the Board members. They are: **Steve Klatt, Randal Rice, Ernest Lombard, Latham Williams, Jean McDevitt, and Douglas Hancey**. He also introduced **Steve Frost, Outdoor Recreation Program Supervisor and Garth Taylor, Eastern Region Manager**.

Chairman Schroeder asked **Chairman Stevenson** to speak. Chairman Stevenson said that they appreciated the opportunity to meet with the Board and thanked Chairman Schroeder for the invitation given to his committee to attend.

REMARKS FROM THE BOARD: Chairman Schroeder asked the Board to tell the committee what their number one issue is that they would like the committee to help with.

Mr. Lombard said ATVs and off-road users are assessed a \$10 sticker fee and the Parks Department administers those funds. He said the users asked for the sticker fee 30 some years ago and the charge has remained the same over the years. Mr. Lombard said because of the number of ATVs and off-road users, everyone looks to them as a revenue source.

Chairman Schroeder inquired if the Board knew of the \$10 initiative. He said there is a proposal to put \$10 on the income tax return form, similar to the permanent building fund, which would go into a resource account to deal with natural resource issues. It would include issues with Parks, State Lands, Fish and Game, Access - no buildings or administration. One of the places Parks can help is where some of that money ought to

go to set up programs like ATV trails for the future.

Mr. Klatt said there is an area where collaboration between agencies could benefit. He stated that the Lands Department has not historically been recreationally oriented. If there is an area where all agencies could address, it is bringing recreational awareness to the public, and working collaboratively and effectively together. When asked about the Constitutional mandates to make as much money as possible for the endowments, Mr. Klatt replied that a dedicated fund that goes to State Lands for recreational improvements that does not constitutionally interfere with IDL's mandate.

Chairman Schroeder said that of last year, the public has done about one million dollars worth of damage to the Department's land a year. The idea is, to give money to Lands, like Utah does, to guarantee access for recreational purposes. That is one of the things he would like to see the funds designated for.

Mr. Lombard said one of the things they have tried to accomplish is to educate the users. Education is an important component and they could use money in that area. Hikers and horsemen use the trails, but don't pay fees, and it would be more equitable if everyone paid. **The Chairman** said that the Governor has said that those who benefit should pay. However, there are non-resident boaters who have 60 days of free use of Idaho's rivers and lakes. **Mr. Klatt** said they would like for the boaters to pay, but that goes crosswise with federal funding that comes through the Coast Guard that demands reciprocity. He feels Idaho is lagging behind in assessing fees in proportion to use, and needs to collect from the non-residents who are benefitting. Another area that is a "sticky wicket", is that Idahoans don't like to have excessive rules and regulations. He said that you cannot legislate safe operations, no matter what it is, i.e. horses, bicycles, ATV's or motorcycles. He feels one approach to the motor sports is to educate and to have effective rules of the road. There will be more and more land shut out to motor sports access because they do more damage than they do good.

Representative Saylor asked if the Board had given the Department the go ahead to start looking at the Rules and developing some. **Mr. Klatt** said they look at Rules and discuss them. He said one of the things they are faced with is that they need the Rules to come with input and support of the user groups out on the ground, whether it's fee increases or rules. **Senator Schroeder** said that is what Boards are for - a buffer between the Legislature and the public.

Mr. Rice commented that the goal of the Board over the past two years is to look at their ability to self-generate fees. He said there is a huge philosophical issue there about how much users should pay. He feels they have to do a better job of maximizing their ability to increase the fees. At their Board meeting later today, they will be discussing the concept of developing what they call "premium rates for camping". Presently, all camping fees are basically the same, based on the facilities. Some camp sites and cabins are truly quality, and users should pay more for those facilities. Mr. Rice said these are some of the kinds of things

they are looking at in terms of doing a better job of generating revenues from within, which is a very significant issue. **Chairman Stevenson** said one of the things, as you discuss that concept, is that he hears that Parks and Rec is only for the wealthy. The mind-set that “this is my land and I can use it for free” needs to be changed. Also, the Parks personnel need to be more receptive to the public and perhaps some training would be in order. **Mr. Williams** commented that it is a fee analysis study, not just talking about raising prices on premium sites, that they will undertake. He also suggested that perhaps they should be lowering prices in the off season or offer some discounts. That might make it more affordable for families to come at times other than at peak times. **Representative Chavez** said her area has not seen the economic growth that the northern and southern have seen. She feels that Mr. Williams’ ideas would be welcomed and would help everyone to better understand that there are some costs, but yet would be affordable for families.

Rep. Sayler said that when they were discussing the \$10 initiative, he recalled there was an idea that the Parks and Rec would waive the \$4 entry fee as a trade-off. Is that still being considered? **Mr. Klatt** said they would have to look at it to see if it is an even trade of revenues. The daily fees are a significant piece of the Park’s revenue.

Ms. McDevitt said when she came on the Board 10 years ago, she was told that it was a mandate from the Legislature for the Department to be self sufficient, except for salaries which comes from the General Fund. If the Legislature is thinking with a different philosophy, that makes a difference with the view the Board would take. She stated that one of the things they really need is a full-time person in the resource area to help protect timber, endangered species, grasses, etc. She said if they need to move people away from certain areas to protect the resources, they need an expert to help them. **Chairman Schroeder** said that McCroskey State Park makes money from the timber and he inquired if they had the natural resource expertise on staff to adequately utilize the production of resources that exist on state parks, using McCroskey as an example. **Mr. Sangrey** said the department uses the same staff between Heyburn State Park and McCroskey State Park. Ron Hise is the manager of Heyburn and has been in the role for 11 or 12 years in managing the resource, identify appropriate management practices for harvest. It has been a cooperative venture between a seasonal staff person with IDL and the Parks staff. **The Chairman** inquired if they were losing income because they didn’t have a resource person to manage the resources. **Mr. Sangrey** said he didn’t think they were losing resources as far as the timber harvest is concerned, but they are missing the opportunity to more effectively manage the natural resources. **Mr. Klatt** said they had an exemplary staff person, who they shared with IDL, who was a forester and resource manager for McCroskey. IDL has now hired this person for a full-time position and it is a shame that Parks could not retain her.

Senator Siddoway said in his area there are great sand dunes that are used virtually year round. The County does law enforcement, litter

control, etc. He inquired if the Board sees the dunes as an opportunity to help facilitate the use and see it as a way to also collect some fees. If so, how? And would you share that with the County? **Mr. Hancey** said the land is owned by the BLM and the Department has no basis for fees because they have no control over the land. They have given the County a very expensive grant for a search and rescue vehicle. They have never been directly approached by anyone to do a fee. He said they gave the BLM a grant over \$100,000 to help develop a RV park site. Because of the number of injuries and liabilities, Mr. Hancey said they have been reluctant to try to take over and manage that area. He did agree that the dunes are a great asset.

Mr. Hancey said he thought the idea of the \$10 initiative is a great idea. It would provide a steady stream of revenue coming in and they could plan ahead. He said the Governor has been very generous to help with maintenance, which they have a tremendous backlog. There are parks that need new roofs, water systems, and sewer systems to keep the environment in an adequate and safe condition.

Chairman Schroeder then asked the Board to look down the road 10 to 20 years, then tell the committee, what the Legislature can do to help them to get where they would like to be.

Ms. McDevitt - a park in Eastern Idaho;

Mr. Rice - develop enhanced funding, to rely on year-to-year;

Mr. Williams - world class non motorized trail system with camping opportunities;

Mr. Klatt - in house staff park planning and curator for artifacts/history with traveling exhibit;

Mr. Lombard - make state park system #1, better marketing, and access to trails, etc.;

Mr. Hancey - steady revenue, reduce price to parks, access, and real support to manage land,

ADJOURN:

Chairman Schroeder thanked the Board for their attendance and sharing of ideas with the committee members. He then adjourned the meeting at 7:55 a.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 23, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Vice Chairman Pearce and Senator Stennett

NOTE: *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*

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

ANNOUNCEMENTS: He announced there would be no meeting on Friday, February 1.

Handouts in the folders include an article from Betsy Russell, staff writer for the Spokesman Review regarding "Idaho, Washington Reach Water Management Accord"; and a letter from Susan Drumheller, Idaho Conservation League

Chairman Schroeder asked **Dave Tuthill, Director of the Department of Water Resources**, to address the article regarding water management.

Mr. Tuthill said they have been working jointly with USGS and the state of Washington to develop a study on how the two states will continue to work on coordinating the water supply issues. One of the outcomes of the study was to build a model. It has been built and on May 8, 2007 in Spokane about 200 people were at the technical meeting and the next day, policy was discussed. Some money was left over and with the \$20 million Governor Otter has proposed for aquifer study, the Rathdrum Prairie-Spokane Valley aquifer was identified to be studied. The aquifer is mostly in Idaho, but is the drinking water source for Spokane and the region. Half a million people in both states depend on it for their drinking water.

Mr. Tuthill left copies for the committee of a Memorandum of Agreement for Maintenance and Utilization of the Numerical Model of the Spokane Valley-Rathdrum Prairie Aquifer, between Idaho Department of Water Resources and Washington Department of Ecology.

The Chairman thanked Mr. Tuthill for the briefing. He then announced that the Rules for the Department of Parks and Recreation would be

heard on Monday, January 28.

WELCOME:

Chairman Schroeder welcomed the **Idaho Water Resource Board members**. He posed a question to the Board. "What do you see down the road in 10 to 20 years, and what issues, if any, that we in the Legislature can help you resolve, if you should need our help."

Members of the Board are Jerry Rigby, Chairman; Terry Uhling, Vice-Chairman; Robert Graham, Secretary; Leonard Beck; Gary Chamberlain; Charles Cuddy; Lawrence Armacost; and Claude Storer.

Mr. Rigby was the first to speak. He said these are interesting times and they are times that will set the slate for the future. Working together is the only answer. He feels that if they can be facilitators and can be there for the stakeholders, that is the best hope.

Mr. Graham said that he has studied the North Idaho Adjudication (as much as he has had time for). The support up North is going to be questionable unless Senator Keough can get the three northern Basins out of any immediate adjudication. Because of the expertise of the Department of Water Resources, and the Board for Water Resources, and the Attorney General's Office (particularly Clive Strong), the timing is now for Idaho to do adjudication. The Governor sounds in support of it and Rathdrum is certainly in need of it. Most of the people in that area are convinced to proceed to keep Idaho's water in Idaho. Spokane sits right off the border and is a major draw. Mr. Graham said, "If I lived in Kootenai County and had water rights, I would be very concerned. I would do every thing I could to make sure the rights were locked in. If somehow we could draw the basin for Rathdrum and still exclude the three northern basins without fouling up the McClaran Amendment on Rathdrum, hopefully that would be the solution. The other legislation is not as critical as that particular one. There is fear in Boundary County that they will lose some of their water rights". He said in his assessment, he hopes that the Rathdrum unit can be redrawn so that the McClaran Amendment is not lost, but relieve the rest of Bonner and Boundary County, particularly the side drainage into Lake Pend Oreille.

Senator Schroeder announced that on February 6 there will be hearings on the bills that have been introduced relating to the North Idaho Adjudication.

Mr. Armacost said his professional career was that as a planner for Water Resources. When he got to the Board, he was disappointed in the inactivity in planning. He said it seems to have come together this year. The economy of the state is going to gain substantially if they get support for the planning effort. The other thing that appears is the NEPA Act (National Environmental Protection Agency). It seems like it is going to be extremely difficult to have very much federal participation. He stated that they were going to get a federal loan to help with the recharge project and because of the limitations put on that by a NMF (National Marine Fisheries) biologist, they couldn't put recharge water out that flows in the Snake River below a certain point. He said if they are going to have

projects, they need to think about where the finances are going to come from. Private development should not be ruled out.

Mr. Chamberlain said there are so many things as you look forward to the future, it's mind-boggling. He said they try to watch the budget as best they can. The Board is currently working on the state water plan and some of the things they have decided to do different is to involve the public in meetings. Attendance has been good from Rivers United and the Ground Water Users. Some of the things they are trying to do is to initiate implementation strategies into the policies. To go forward, they need to know how they are going to accomplish it, can they accomplish it, and where is the money coming from. It is imperative that everyone works together to create new water storage, new ways of doing things, and not sit back. He said one of the questions he asked, not too long ago, was if they started today to build a new dam, how long would it take. He was told a minimum of 25 years. He said they can't wait 25 years. If Mother Nature continues to do what she has been doing, he is really happy. But as they look at global warming, and all the facts that are ahead of them, it is not going to continue. He said they need to tighten their belts, look at drought conditions, and figure out what they are going to do about it. He stated that when they try to put a new dam in place in 25 years, they cannot afford to wait. Something needs to be done now and embracing ways to finance it. That is one of his biggest concerns as he looks at the Snake River Plain. As far as the Salmon River is concerned, it will take care of the Wild and Scenic Rivers problem with the federal government.

Senator Andreason asked Mr. Chamberlain what he suggested they do if they can't wait for 25 years to build a dam. **Mr. Chamberlain** replied that they need to look at the best site, such as Teton, Minidoka, and Galloway. He said they need to move forward with a site. **Chairman Schroeder** said that there is some planning money available, but the state has to match it. **Senator Langhorst** inquired about aquifer storage. **Mr. Chamberlain** said he thought they would have aquifer recharge up and running within the next five years. **Senator Coiner** asked what they anticipated using for a water source. The reply was use the water supply that is first in time. Senator Coiner then asked how often they anticipated that water supply to be in priority. **Mr. Chamberlain** said they would have to look at Mother Nature.

Next to speak was **Mr. Uhling**. He said as they look at other states, Idaho has a great group of folks that can sit down and resolve issues. He said he has confidence the Eastern Snake Plain aquifer will get resolved. Idaho's water is a precious resource and innovative ways must be figured out - whether it is for aquifer storage recovery, multi-purpose utilization for storage facilities, or conservation projects. They must maintain the ability to deal with growth and to protect the agricultural community. Mr. Uhling

said they need sufficient funding to deal with these issues; however, the Board needs to be creative and figure out ways to make things work.

Mr. Cuddy said that as he looks down the road, one of the critical issues is to make sure that Idaho's water gets used by Idahoans first. He sees both the Coeur d' Alene River Basin and the Palouse River Basin as being an area where they need to quantify what Idaho is going to need before it leaves our state. Every year, when the water from the floods go down the river, we lose a lot of water that could have been stored, whether in the aquifer or as surface water. He feels that we need to keep all that we can.

Senator Langhorst inquired as to how Mr. Cuddy would spend the \$20 million dollars that has been made available and was he part of the planning process. **Mr. Cuddy** said they spend a lot of time talking about planning and he stated that Director Tuthill has done an excellent job of saving money and has the department headed in the right direction.

The Chairman asked Mr. Tuthill to provide the history how the \$20 million came about. **Mr. Tuthill** said this past summer the Interim Committee asked for a survey of how they were with aquifers around the state. He and Hal Anderson provided information on the status of various aquifers around the state. Following the briefing, the Committee voted unanimously to request the two co-chairs (Senator Schroeder and Representative Raybould) to work with the Department of Water Resource Board to develop a proposal that could be staffed with the Governor's Office, that could be part of the Department of Water Resources budget. The proposal was prepared, reviewed, and submitted. The \$20 million dollars will be funding for the first six years of a ten year effort. In regards to the Eastern Snake Plain aquifer, they have created a technical committee that is comprised of representatives from surface water users and ground water users from the community to assist the Department in prioritizing expenditure of dollars. Some of the work is contracted and they do as much in-house work as possible to maximize the use of the dollars that are provided.

Senator Langhorst said that calling them aquifer studies connotes that the focus is only on ground water or spring uses. He asked if surface water issues and conservation issues are being considered or is all the money going into aquifers. **Mr. Tuthill** said the aquifer study is one portion of the over-all study. They worked on surface water opportunities in the Fall, after the budget had been submitted. He stated that all the opportunities are important. **Mr. Rigby** said the most revealing thing that has occurred is that the state has recognized that the water issues are no longer just agriculture.

Mr. Storer addressed the issue of recharge. He said it comes down to two things and they are economics or water. All the entities that are involved now are capable of coming to conclusions. Economics are yet to be solved. He said that if they are going to spend money to help displaced farmers, why not spend money to try to store water? He is for above storage and that will also help recharge. Mr. Storer is also concerned about where the water will come from for recharge. He suggested developing a funding process to help displaced farmers who are curtailed. As to where he sees the future, one is technology and that may be in the crop producing area; and the other is education. Whether it

is in the use of water or employment. Both will need funding.

Senator Siddoway looks at recharge as a high priority. He said some way, some how, there needs to be leadership in the state to address the storage possibilities. Judge Schroeder said we should consider the economic outcomes of the decisions we make. The Senator said he feels Director Tuthill has done a great job to mitigate everyone, so that no one got seriously injured. To shut down 20,000 acres of farmland because we are short one cfs on the trout farm, that is not logical. If the Legislature needs to do one thing, maybe that should be defining - what is a futile call? He would also like to know about the Teton Dam and who would take the lead. The answer was the Water Board.

Chairman Schroeder directed his remarks to Mr. Rigby and said that for discussion's sake, the Water Board had identified themselves as the lead in exploring more storage capacity. As the chairman of that Board, could you put together a road map as to how they might proceed? **Mr. Rigby** said that he thought they could, but the funding for the Board is limited and it has no employees. He feels the funding for the Department is inadequate.

The Chairman said what he would appreciate knowing on the storage capacity is - are they viable options or just dreams? **Mr. Rigby** said he thought they were viable. **Chairman Schroeder** said then they should quit talking and get on with it.

Senator Cameron said he would like for Mr. Rigby to show him what requests have been denied. Also, if he was real courageous, where would he have taken the money and what tax would he have raised. Senator Cameron said he feels that he and his co-chair have done their best to take care of the Department. Chairman Schroeder said he appreciated Senator Cameron's help working through some emergencies and able to come up with some funding for some difficult times.

Senator Little said right now we have been sealing the leak in the water problem with cash from the state. He asked the Board that when they run out of sympathetic chairmen of the Finance Committee, farmers, and the Legislature - what happens then? Senator Little said they could not keep plugging the hole with cash from the General Fund. He stated that he is with the Governor on user fees.

Mr. Cuddy said he would like to elaborate on the watershed. He feels the government owes Idaho a substantial amount of money for the way they have let the watershed deteriorate through non-management. This is causing our run-off to occur more rapidly in the spring, it's causing fishery problems, and various other things. He feels they should be full-fledged partners in what they are trying to do to reduce some of the problems that their non-management has created.

Senator Coiner said for 120 years in the surface water world, they have had curtailment. Growers have been curtailed, Juniors have been curtailed to give water to the Seniors. No lawyers, no press releases, no soft landings, nothing. Ground water users have been working 50 years

with no administration. He asked - where is the balance? He said it was something to think about in the give and take of administration in surface and ground water.

Chairman Schroeder said the issues are complex and everyone has a responsibility to work together to work through these issues. As we move forward, for the sake of the people that we represent, it is our job to continue to resolve them. He told the Board to feel free to contact the Committee at any time. He thanked the Board for their participation.

ADJOURN: He then adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 25, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Vice Chairman Pearce and Senator Siddoway

NOTE: *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*

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

The Chairman called on **Mr. Jack Lyman, Executive Director of the Idaho Mining Association**, to explain RS 17656C2.

RS 17656C2 **Mr. Lyman** said that this RS would amend Section 42-223 of the Code which provides for exceptions or forfeitures of water rights. This bill exempts such water rights from forfeiture as long as the water right owner has maintained the property and the mineral rights for potential future mineral development. At times mining operations have not continued to put their water rights to beneficial use because mining activities have been reduced or discontinued due to low mineral prices. This has been seen in Northern Idaho. In the bill, there are provisions that they have to maintain those mineral rights, and they also have to maintain the property for mineral development. Mr. Lyman said if the RS is sent to print, at the hearing he will provide the number of water rights that will be involved and the volume of water that might be affected.

MOTION: After some discussion, **Senator Andreason** made the motion to print RS 17656C2. The motion was seconded by **Senator Coiner**. After a little more discussion, the **motion passed** by unanimous voice vote.

ANNOUNCEMENT: **Chairman Schroeder** announced that the **new 10(j) rule** from the U.S. Fish and Wildlife Service is in the committee's folders. The revision allows states and tribes with approved wolf management plans more flexibility to manage these wolves to ensure the health of wild populations and herds of elk and other ungulates, as well as to protect private property.

SPEAKER: The Chairman said the presentation today is by **Michael Jennings**, who has done research on vegetation and he **works for the Nature**

Conservancy. He is a scientist, is doing research, and will share what he has learned. Chairman Schroeder said Mr. Jennings will tell the committee about **vegetation as it relates to climate change.**

Mr. Jennings program was a Power Point presentation and he said what he had to share with the committee is a summary of the science.

The Nature Conservancy Operating Principles

A science-based approach

- non-confrontational, pragmatic solutions
- partner with businesses, governments, other non-profits, and individual people

Climate Disruption and Future Habitats

Premises:

1. Regional climates that we are familiar with are being disrupted by changes in atmospheric chemistry.
2. Climate disruptions are causing shifts in habitats.

This Presentation:

Focus on current predictions of changes in species and habitat ranges:

Worldwide
Western U.S., Idaho

Observed Climate-Induced Shifts of Forests and Woodlands

1. Northward expansion of shrubs into tundra, Alaska
(Sturm et al. 2005, BioScience)
2. Southward shift of the Sahara in Africa
(Gonzalez 2001, Climate Research)
3. Mountain conifer species invasion of alpine meadows, Sierra Nevada, California
(Miller et al. 2004, USDA Forest Service)
4. Pinon-juniper woodland shift to Ponderosa pine forest, New Mexico
(Allen and Breshears 1998, Proc. Natl. Acad. Sci.)

Mr. Jennings reviewed CO₂ Emissions Scenario, Variation In Predictions From Different General Circulation Models, Shifts in General Vegetation Types Expected by 2100 Due to Climate Change, and Magnitude of Shifts Expected in General Vegetation Types Such As: Forests, Shrublands, Grasslands.

Higher Resolution Estimates

- Predicts changes in vegetation due to climate change at a ground resolution of 1 km²
- Uses 35 bioclimatic variables
- Statistically robust

Limitations:

1. Model assumes a straight 1% per year increase in greenhouse gases

since 1990.

2. Only as good as the GCMs (downscaling issue).
3. Cannot predict vegetation of climates that do not exist in the Western U.S. today.

Changes in Vegetation Types

- Rocky Mountain Montane
- Subalpine-Alpine
- Great Plains Grasslands
- Great Basin Desert Scrub
- Great Basin Shrub-Grass
- Coastal Forests
- Mojave
- Cascade-Sierran Montane
- Great Basin Woodlands
- Sonoran

Mr. Jennings showed charts of vegetation types for the following years:
2000, 2030, 2060, 2090, and 2000-2090

Changes in Tree Species Distributions

- Western Larch
- Lodgepole Pine
- Subalpine Fir
- Douglas Fir
- Ponderosa Pine

Climates That Do Not Exist In The Western US Today

These are predicted types of climates that are outside the present-day climate envelopes of species and plant communities described by Rehfeldt and others (2006).

Williams and others (2007) estimated that 12-39% of the world's land could experience novel climates by year 2100 under an As Scenario.

10–48% of the world's land could experience disappearing climates.

Summary

The accuracy of the predicted changes in habitats shown here depends on:

1. The assumptions made about greenhouse gas emissions, and
2. The precision of the general circulation models of atmospheric chemistry and physics.

These estimates do not include factors such as disturbances such as fire, disease, or species interactions such as competition.

Summary

Habitats of the Western U.S. are in the early stages of rapid change.

By the end of the century about 55% of the landscape is likely to have climates that are incompatible with the vegetation occurring there today.

Forty seven percent of western lands is projected to have climates with no contemporary analogs among the plant communities of today.

ADJOURN:

The Chairman thanked Mr. Jennings 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 28, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He said there are some minutes to be approved.
- MOTION:** **Senator Coiner** said he had reviewed the minutes for January 16 and January 18 and found them to be correct. He made the **motion** for their approval. **Senator Siddoway seconded** the motion. The motion passed by unanimous voice vote.
- MOTION:** **Senator Pearce** said he had reviewed the minutes for January 9, January 11, and January 14 and found them to be correct. He made the **motion** for their approval. **Senator Coiner seconded** the motion. The motion passed by unanimous voice vote.
- ANNOUNCEMENT:** **Chairman Schroeder** said RS 17581 will not be heard today as some issues need to be addressed. He then asked **Senator Keough** to present her two RSs.
- RS 17660 and RS 17661:** **Senator Keough** said she appreciated the opportunity to come before the committee to present her RSs.
- RS 17660** would restore the funding levels for fees for filing notice of claims for water adjudication to the point they were at prior to the passing of the North Idaho Adjudication (NIA). The fees have doubled for the Northerners, compared to the fees paid by the Southerners during the Snake River adjudication. This legislation would also cap the filing fee for power generation projects at a maximum of \$250,000 each.
- There was some concern regarding the North Idaho Adjudication that people who have domestic wells would be forced to place meters on them and be charged money for the use of water from these wells. **RS 17661** would make it clear that there is no intention on the part of the Idaho State

Legislature to place meters on domestic wells.

MOTION:

After a short discussion, **Senator Andreason** made the motion to print RS 17660 and RS 17661. **Senator Langhorst** seconded the motion. The motion **passed** by unanimous voice vote.

Chairman Schroeder then asked Senator Broadsword to talk about the RS she is sponsoring.

RS 17723

Senator Broadsword said Senate Bill 1277 was printed making it voluntary for domestic users to participate in NIA. The Attorney General's Office contacted her and let her know there was some complication with the wording. This RS is a result of that and clarifies that the domestic water users' participation will be deferred, similar to that for the Eastern Snake Plain aquifer.

MOTION:

Senator Cameron made the **motion** to print RS 17723. It was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.

RULES REVIEW:

Chairman Schroeder said the procedure for the Rules in this committee is that they are assigned to subcommittees. The subcommittee chairmen then bring the Rules that need to be heard by the full committee to Vice Chairman Pearce, who then schedules a hearing. He then turned the meeting to **Vice Chairman Pearce** who is **Chair** of the **Rules Review**.

Chairman Pearce said they would be reviewing the Rules for the Department of Parks and Recreation. The rules are 26-0120-0701, Rules Governing the Administration of Park and Recreation Areas and Facilities and 26-0130-0701, Idaho Safe Boating Rules.

26-0120-0701

Mr. Dean Sangrey, Division Administrator of Operations for the Department of Parks and Recreation, first reviewed the rule governing areas and facilities. He said the primary interest and effort of the department in the regulations, changes or additions, is to improve and clarify the guidance that is provided in the rule primarily to their staff. Mr. Sangrey said there is one change in the rule and that is found in 03.a which may limit the number of motorcycles in a camping area. The intent is for personnel to do an effective job of protecting the resources.

Senator Cameron inquired about how well the rules were publicized. Mr. Sangrey said they had been appropriately advertized, as well as public hearings were held in Boise and Idaho Falls. Senator Cameron said he had strong reservations about this rule, limiting the number of motorcycles in campsites and leaving it to the discretion of campsite staff.

MOTION:

Senator Coiner made a motion to accept Rule 26-0120-0701. The motion was seconded by **Senator Andreason**.

Senator Schroeder asked Mr. Sangrey what the problem is that brought about the need for this rule change. Mr. Sangrey said it is to provide clarity into the rule for staff so that they can more readily address the issue. A good example would be the motorcycle groups that descend on Niagra Springs each year. It is a huge influx and they over impact the resources. This rule would help to effectively manage those kinds of

situations.

Senator Cameron said he felt the way the rule was written would preclude some families from being able to stay in a state campground. He said he had trouble with the wording. Mr. Sangrey said the rules were reviewed by his office and the Office of Administrative Rules.

**SUBSTITUTE
MOTION:**

Senator Schroeder made a substitute **motion** to hold this rule until the next meeting (Wednesday), giving Mr. Sangrey time to talk to Senator Cameron. The substitute motion was **seconded** by **Senator Siddoway**. After more discussion, the substitute motion **passed** by unanimous voice vote.

26-0130-0701

Mr. Sangrey said the changes made in this rule are found in .04 (unsafe seating while underway) and .05 (unsafe operation - person in vicinity of vessel). This particular docket was rejected by the House Subcommittee and they made several recommendations. The Department had also received concerns from the public.

MOTION:

Senator Schroeder made the **motion** to reject Docket 26-0130-0701. The motion was **seconded** by **Senator Stennett**. The motion **passed** by unanimous voice vote.

Chairman Pearce said that concluded the hearing for today's rules. He then turned the meeting back to Senator Schroeder.

Chairman Schroeder then asked **Sharon Kiefer, Legislative Liaison for the Fish and Game Department**, to talk about the four bills brought to the committee by IDFG.

S 1265

The **testimony of Ms. Kiefer** was inserted into the minutes.

Chairman Schroeder and Committee:

This bill removes the word "handicapped" in the title of 36-409A, and replaces the word with "disabled". This statute authorizes disabled archery provisions, allowing qualified individuals to hunt with a crossbow. There are no changes to the statute other than this change in terminology.

The Department recommends this change to achieve consistent terminology. This action is consistent with previous statutory change in terminology in 36-1 101(b)1 for the permit to hunt from motorized vehicles.

MOTION:

Senator Langhorst made the **motion** to send S 1265 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Langhorst** will be the sponsor of the bill.

**S 1267 and
S 1269**

The **testimony of Ms. Kiefer** was inserted into the minutes.

Chairman Schroeder and Committee:

The Department recommends these bills to clean up provisions of the nonresident small game license and several youth licenses.

Senate Bill 1267 amends 36-407(e) to remove the “two day” reference of the nonresident small game hunting license. The term of this license is currently a calendar year. This bill also amends the huntable species authorized for this license. The Department recommends removing pygmy rabbits as a huntable species because there has not been a season for this species for a long time, and one is not anticipated in the near future. However, consistent with the small game intent of this license, the Department desires to add huntable furbearers as well as unprotected and predatory birds and animals as additional species that can be hunted with this license. The species refinement will clarify customer understanding and expectation of what the license allows them to hunt when there is an open season.

Senate Bill 1269 makes similar modification regarding huntable species for several classes of licenses in 36-404, 36-406, and 36-407. The affected licenses are the youth small game license, the nonresident junior mentored hunting license, the nonresident youth small game license, and the youth hunter education graduate license. Pygmy rabbits were removed from all of these licenses. Huntable furbearers were added to these licenses where they were not already authorized.

MOTION: **Senator Siddoway** made the **motion** to send S 1267 and S 1269 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. **Senator Siddoway** will be the **sponsor** of both bills.

S 1268 The **testimony of Ms. Kiefer** was inserted into the minutes.

Chairman Schroeder and Committee:

Regional Winter Feeding Advisory Committees assist the Department with implementation of the IDFG Commission’s Emergency Big Game Feeding Policy. The Committees act as an independent resource in each region to provide advice and recommendations about the implementation of the winter feeding program and they serve as a liaison between the Commission, Department, and interested public for this issue.

Currently, Idaho Code 36-123 establishes the Winter Feeding Advisory Committees. Committees can potentially range across the state as they are established for each district where winter feeding of antelope, deer, or elk normally occurs. Although the Commission appoints the members, the current statute specifies that “regional wildlife councils will provide a list of appointees”.

There are no longer functioning regional wildlife councils in all areas where there is a need for winter feeding advisory committees. Currently, there are five winter feeding advisory committees: Southwest, Magic Valley, Southeast, Upper Snake and Salmon. There is a functional

regional wildlife council remaining in the upper Snake region. In the absence of functional councils, IDFG Regional Supervisors have been submitting names for consideration by the Commission, which is inconsistent with the statute.

This bill would delete the specific reference to the regional wildlife councils. This would allow more latitude for choosing appointees for the winter feeding advisory committees to include, but not only to come from, regional wildlife councils.

MOTION: **Senator Coiner** made the **motion** to send S 1268 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Andreason**. The motion **passed** by unanimous voice vote. **Senator Coiner** will be the **sponsor** of the bill.

ANNOUNCEMENTS: **The Chairman** made several announcements. On Wednesday, there would be a video presentation by Jim and Jamie Dutcher about "Living With Wolves". There will also be a Power Point presentation on the "Elmore-Ada Water Project" by Bob Taunton, Project Manager. There will be no meeting on Friday. He has asked Nate Fisher from OSC to review the 10(j) rule relating to wolves next Monday.

ADJOURN: He then adjourned the meeting at 2:35 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 30, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Thorson (Stennett), and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- He welcomed Dean Sangrey from the Department of Parks and Recreation and asked him to provide the committee with an update of Director Meinen's progress.
- Mr. Sangrey** said Director Meinen had open heart surgery the first day of the legislative session. He is home and is progressing very well and may start working again on a part-time basis in the near future.
- ANNOUNCEMENT:** **The Chairman** announced that the presentation regarding wolves will not be seen today because of the weather and road conditions. It will be rescheduled at a later date.
- Chairman Schroeder** then turned the meeting to Vice Chairman Pearce who will conduct the Rules Review.
- 26-0120-0701** **Chairman Pearce** said that Senator Cameron had concerns about the rule and it was suggested that Mr. Sangrey meet with Senator Cameron to explain more thoroughly the Department's position and to answer any questions that he might have.
- Mr. Sangrey** said that they met Tuesday and talked at length about the wording in the proposed rule. He said they reached a consensus that the Department would move forward with the language proposed.
- Chairman Pearce** turned the meeting back to **Chairman Schroeder**.
- INTRODUCTION:** **Chairman Schroeder** welcomed and introduced Mr. Jon Thorson who is sitting in for Senator Stennett.
- REQUEST:** **Senator Langhorst** said that he would like to request that the committee

hear Docket 20-0304-0701, Department of Lands Pending Fee Rule, "Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho". The Chairman instructed Vice Chairman Pearce to arrange a date for it to be heard.

SPEAKER:

The Chairman said next would be the Power Point presentation of the **Elmore-Ada Water Project (EAWP)**.

Bob Taunton is the Project Manager for EAWP. He introduced **Dr. Christian Petrich**, SPF Water Engineering Principal and **Scott Peyron** with Scott Peyron & Associates.

Mr. Taunton started his program by explaining who EAWP is. He said it is a liability company, established this past summer, and is a wholly owned subsidiary of SPF Water. It is funded by 13 private entities and the city of Mountain Home.

The purpose of this presentation is part of their informational outreach and to explain their innovative public/private approach. Mr. Taunton said they have no pending legislation, so it is an opportunity to present their concept and obtain feedback.

Following are the slides that were presented that Mr. Taunton directed his remarks to:

Public Affairs Strategy

- Outreach to elected officials:
 - Governor and senior staff
 - State Agencies, including:
 - Water Resources
 - Fish and Game
 - DEQ
 - Applicable state legislators
 - Idaho's U.S. Congressional delegation
 - Mayors and city councils from Ada and Elmore counties
 - Ada and Elmore County Commissions
 - Chambers of commerce in relevant communities
- Dialogue with other influentials

Why Are We Undertaking This Project?

- Area between Southeast Boise and Mountain Home has experienced water resource challenges historically...limiting communities, agricultural and economic development
- Limited natural aquifer recharge resulted in declining water levels from pumping
- IDWR designations
 - Cinder Cone Butte Critical Ground Water
 - Mountain Home Ground Water Management Area

What is Our Vision?

- To bring a sustainable water supply to specific areas of Elmore

- and Ada counties
- To enable the State of Idaho to keep its water resources in the state for the benefit of Idahoans
- To identify water resources before growth is initiated
- To plan responsibly for future water resource needs

Where Will the Water Come From?

- Local ground water (short term)
- New appropriations from Snake River
- Purchase senior Snake River water rights (irrigation season)
- Potential exchange of Snake River water for Boise River water
- Aquifer storage and recovery for seasonal storage and meeting peak demand

Mr. Taunton reviewed several charts. Chart One showed the ground water resources. The locations are Kuna Mora, Orchard, Cinder Cone, Northern Area, and Mountain Home. Chart Two showed the average and minimum Snake River flows at Murphy. The historical volume, minimum flow, is 560,000 acre feet. The average flow is 3,300,000 acre feet. Chart Three showed the average and minimum Snake River flows at Weiser. The historical volume, minimum flow is 2,000,000 acre feet. The average flow is 7,800,000 acre feet.

Surface Water Availability

- Water rights are administered based on minimum flows
 - Swan Falls
 - 3,900 cfs summer
 - 5,600 cfs winter
 - Weiser
 - 4,750 cfs
- Other minimum flows
 - Johnson Bar
 - 5,000 cfs (95% of time)
 - Lime Point
 - 13,000 cfs (95% of time)

Lime Point May Represent Partial Constraint

- Last Idaho minimum flow point
- Minimum flow is not met when others are met
- Related to Hells Canyon Dam operations
- Not used for water-rights administration

Mr. Taunton then reviewed the aquifer storage/recovery systems and the Elmore-Ada Regional Water Supply Concept.

He said other regional projects in the West are:

- Phoenix (Central Arizona Project)
- Las Vegas (Southern Nevada Water Authority)
- East Bay Area of Northern California (EBMUD)
- Northern Colorado Water Conservancy District
- Central Utah Water Conservancy District
- MWD Southern California

- San Diego County Water Authority
- San Antonio Regional Water Supply
- West Texas (Laredo /Regional Water Supply)
- Irvine Ranch Water District

Project Phases

- Phase I: Conduct feasibility study for ground and surface water supply (completed by end of 2008)
- Phase II: Regional master plan & environmental impact statement
- Phase III: Design water transmission and treatment facilities, acquire water rights, acquire land
- Phase IV: Project financing, construction & facility startup
- Phase V: Deliver surface water

In closing, Mr. Taunton thanked the committee for allowing them to present their program.

ADJOURN: **Chairman Schroeder** adjourned the meeting at 2:25 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 4, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Senator Siddoway

NOTE: *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in Legislative Services Library.*

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

ANNOUNCEMENTS: He said there are several handouts in the committee's folders.

- 1) E-mail from Dave Tuthill, IDWR, an order issued 1/29 for the A&B Irrigation District.
- 2) US Fish and Wildlife Service information regarding the 10(j) rule.
- 3) 10(j) Rule printed in full from the Internet.
- 4) Gubernatorial appointments - personal information
 - Cameron Wheeler - Fish and Game Commission
 - Fred Trevey - Fish and Game Commission
 - Jim Yost - Northwest Power & Conservation Council
 - Latham Williams - Park and Recreation Board

The Chairman also announced that if anyone is from Northern Idaho and would like to be involved in a phone conference with city officials regarding adjudication, there will be a meeting in room 211 at 5 p.m. At 7 a.m. Tuesday morning, there will be a breakfast meeting with county commissioners on the same subject. These meetings are for the Northern people to ask questions regarding the adjudication. Chairman Schroeder extended the invitation to the committee members.

Starting Wednesday, all the North Idaho adjudication bills will be on the docket. Senator Keough and Senator Broadsword will present the bills and testimony will be taken. If testimony and voting on the bills is not completed by Friday, it will continue next week and that schedule will be moved ahead.

A rule submitted by the Department of Lands (20-0304-0701) has become controversial, so it will be heard at Wednesday's meeting, prior to the water bills.

Chairman Schroeder said the next order of business was to interview the **Gubernatorial appointees**. He called on Mr. Cameron Wheeler.

**CAMERON
WHEELER:**

Mr. Wheeler was reappointed to the **Idaho Fish and Game Commission** to serve a term commencing June 30, 2007 and expiring June 30, 2011.

He has lived in Idaho for over 60 years and has farmed in eastern Bonneville County for 40 years. Some of his civic activities include serving on the Ririe School Board for 12 years, six years in the Idaho Legislature (two years as Chair of the House Resource Committee), four years on the Fish and Game Commission, and is currently serving his third year as Chairman of the Commission.

He feels that serving on the Commission is an opportunity to make a difference, as he has been involved in hunting and fishing most of his life. Mr. Wheeler would like to see a culmination to the wolf issue in Idaho. He has worked on it for ten years and would like to be a part of that. Other issues have been placed in motion within the Department that are good, and he would like to be a part of that also.

When asked if there were any other options regarding the wolf issue, Mr. Wheeler said he thought the option they had was a good one.

FRED TREVEY:

Speaking next was **Mr. Trevey**. He was appointed to the **Idaho Fish and Game Commission** to serve a term commencing August 15, 2007 and expiring June 30, 2011. Mr. Trevey submitted the following biographical brief.

Born in 1942 and raised in the rural Blue Ridge Mountains of Virginia
BS Degree in Forestry and Wildlife from Virginia Polytechnic Institute (VP!),
class of 1965.

Retired after 32 years with the USDA Forest Service

- Experience in line and staff positions in the field, Regional and National levels in Colorado, Wyoming, South Dakota, Montana, Idaho, Arizona and Washington DC

- Extensive experience providing leadership for large organizations as Forest Supervisor of the Clearwater National Forest in Idaho, the Coconino National Forest in Arizona and Deputy Forest Supervisor of the Idaho Panhandle National Forests—in depth experience coordinating and collaborating with local, State, Tribal and National elected officials and agencies, including reconciling controversial and emotionally charged issues

- Recognized for outstanding leadership and skill integrating community and agency goals

- Extensive experience developing strategic direction and policy at the Regional and National levels including liaison with the Department of Agriculture, OMB and Congressional Budget Committees

- Often described by colleagues as a visionary and strategic thinker and was called upon to assist in resolving difficult issues throughout the

western US.

Since retirement—formed Fred Trevey Consulting where I specialize in helping clients find results through strategic thinking, innovative problem solving and understanding community interest and relationships—consulted with private and government entities throughout the western US and Alaska. Currently retained by the Lewiston based Resource Organizations on Timber Supply (ROOTS) to monitor the Forest Plan Revision process on the Clearwater and Nez Perce National Forests and to help the local timber industry identify and develop strategic direction with the objective of maintaining and improving timber supply opportunities on the National Forests.

Served on the North Central Idaho Resource Advisory Committee (RAC) created by the Secure Rural Schools and Community Self-Determination Act from inception to end of authorization as the Citizen-At-Large.

Formerly served on the Board of Directors of the Kelly Creek Flycasters and on the Board of the Cougar Ridge Water and Sewer District.

Forte is helping others find results through strategic thinking and innovative problem solving.

Interests include hunting, fishing, aviation and fine woodworking.

Mr. Trevey said he lives in Lewiston and has been a natural resource professional for 42 years. When the opportunity presented itself to be a part of the Fish and Game Commission, Mr. Trevey said he wanted to “give it a whirl”. He also thought about his seven grandchildren who deserve an equal chance to enjoy the woods and the rivers, as he has been able to do. He is looking forward to working with the other Commissioner’s to preserve, protect, and perpetuate the wildlife resources of the state.

Senator Coiner asked Mr. Trevey about the locations of his employment during his career. Mr. Trevey said they included Colorado in four different locations, South Dakota, Wyoming, Washington D.C., Montana, Idaho (Coeur d’Alene and Orofino) , and Arizona. He retired there in 1998 and they had fond memories of the Clearwater Basin. They moved to Lewiston in 2000 and plan to stay there.

JIM YOST:

Mr. Yost was appointed to the **Northwest Power & Conservation Council** to serve a term commencing October 16, 2007 and expiring January 15, 2009.

The following information was contained in the biographical brief that he submitted.

Born in Rupert, Idaho and raised in the Magic Valley of Southern Idaho where he learned and applied knowledge of water, agriculture and natural resources.

Graduated from the College of Southern Idaho in 1968 with an Associate of Arts Degree and then Boise State in 1971 with a Bachelor of Arts degree in education.

Elected in 1972 to the Idaho State Senate at age 24, the youngest Idaho Senator/Legislator ever elected and served two terms.

Owned and operated a dairy distributorship for a number of years in Wendell, Idaho and worked for the Union Pacific Railroad for 10 years. In 1988 he was named Assistant Public Affairs Director for the Idaho Farm Bureau and in 1991 was promoted to Public Affairs Director. In 1995 he worked for a time for the Northwest Power and Planning Council.

Governor Batt appointed Jim as his Natural Resources Senior Policy Advisor. He was retained by Governor Kempthorne from 1999 - 2006. He was retained by Governor Risch for his term. In 2007 Governor Otter retained Jim until the appointment to the Northwest Power and Conservation Council in October.

Mr. Yost said he would like to share with the Committee a little about the Council. It was formed by the Power Act in 1980. The three major functions of the Power and Conservation Council is to (1) do a review of the power and energy supplies required in the region, focusing on the Northwest. (2) The Council was requested to look at the conservation of the fish and wildlife. Their portion of what the Council does is directed at regional solutions and approaches to salmon and steelhead recovery. (3) The third component is to provide planning and public input processes in making decisions and to share it with the decision-makers in the region.

When asked about alternative power for supplying electricity, Mr. Yost said they need to look at renewables, particularly wind, and find a way to integrate wind resources. On geothermal, as technology advances, they will continue to add to the electricity phase. Mr. Yost was asked to give his thoughts on nuclear power. He said it is a proven energy source. If there is an increase in renewables, there has to be a transitional source of energy to get us from where we are today. Natural gas will probably be the transitional source.

Senator Andreason asked Mr. Yost what his thoughts were on the recovery of the salmon run. **Mr. Yost** said they could be recovered, but the harvest issue is the key on salmon recovery. It depends on how many salmon the people want to harvest and that is built into the hatchery program.

Senator Langhorst asked Mr. Yost what his advice would be in regards to Judge Redden's possible ruling regarding breaching or bypassing the four lower Snake dams and the need to be considered further or something more affirmative. **Mr. Yost** said breaching would be made by Congress, not by a judge. It is probably not economical and may cause some serious degradations on water quality concerns. He stated the Governor, as well as himself, are not supportive of breaching. **Senator Langhorst** asked about the state's strategy regarding some water concerns and wildlife concerns. If there should be legal action, how would you advise the Governor? **Mr. Yost** said right now, his advice to the Governor would be to join in a lawsuit in opposition against breaching.

Senator Cameron had several questions for Mr. Yost. The first was what year was he elected to the Senate and two, where were you when the Swan Falls Agreement was put in place? The reply from **Mr. Yost** was that he was elected in 1972 and served two terms. During that time, and into the 80's, there were discussions occurring about the Swan Falls Agreement. He said he was not working, was not elected, and was not serving the Government at the time the Swan Falls Agreement was actually signed. Mr. Yost said he was involved in some negotiations as an advisor, but was not engaged in government at that time. The next question was if Mr. Yost was employed by Farm Bureau at the time the Agreement was being drafted. Mr. Yost said he was employed by Union Pacific Railroad at the time. After the Agreement was reached, then he was employed by Farm Bureau. **Senator Cameron** then asked Mr. Yost what his take (feelings) was on the Swan Falls Agreement. **Mr. Yost** said that the state and Idaho Power Company entered into the Swan Falls Agreement to resolve a legal challenge filed in District Court and once they reached an agreement, the agreement was ratified by the Legislature. That is what they have been operating under since that time. When asked if he supported the Agreement, Mr. Yost replied in the affirmative.

Senator Cameron said that the background of the Northwest Power and Conservation Council that it calls for a 20 year power plan. Senator Cameron asked where the Council is at in the development of that plan. **Mr. Yost** said he has only been with the Council about three months and has attended three Council meetings. The Power and Conservation Council is preparing a power plan and expect to have it completed by the end of the year, but not officially adopted until the early part of 2009. The issues in the plan include capacity, transmission, integration, renewable resource portfolio, and all the issues that will affect the regional power supply and the constant power supply in the Northwest and Idaho. **Senator Cameron** asked if the power plan includes the concept of expanding the hydro resources, either raising Minidoka Dam or considering replacing the Teton Dam. He asked Mr. Yost what his position was on that. **Mr. Yost** said that he supports the Governor's position in looking at additional hydro, whether it's to replace Teton or

extend the height of some of the present reservoirs. Another option is off-stream storage. The first constraint on the use of water will be the biological opinion of how Judge Redden decides how we are going to operate the system. That will be the first priority of the federal power system. After that, there are several issues that need to be addressed with the additional flexibility of the hydro system, whether it's the renewable resource portfolio implementation reducing the carbon footprint or use the hydro system to provide backup or stability to wind generation.

Senator Cameron inquired about the third task of the Council, which is to educate and involve the public in the Council's decision-making process.

Mr. Yost said in going through the fish and wildlife's plan, which is on-going now, they will schedule several meetings in Idaho, as they will with the development of the Power Plan. In addition, other than the information being available on the web page of the Northwest Conservation Council, he has instructed his staff to develop a list of all of the interested parties and distribute that information directly from his office to those parties, both in energy and fish and wildlife programs. He feels this gives him direct contact, plus public meetings.

Senator Cameron told Mr. Yost that he has been placed in a premier position - a tough, but very important position. As part of the position, the Council has a conflict of interest section, including impartiality in performing official duties - financial issues, etc. He asked Mr. Yost if he is able to perform all of the duties with an impartial hand and there is no potential of financial conflict of interest. **Mr. Yost** said he has mutual funds, no individual stocks in any companies that would be engaged in energy or fish and wildlife. Financially, he has no ties that would constitute a conflict of interest. On another subject, other than taking specific guidance from the Governor, Mr. Yost said he understands river operations; the importance of water in Idaho; the uses that need to be made of that water; the options of operations that could benefit additional storage that we need, in addition to generating additional power. He also helped to write the biological opinion and the position that they have now is to protect that information of language that is included in the biological opinion that is being finalized.

Chairman Schroeder said that as wind power becomes an increasing part of the power grid and we are required to have natural gas combustion backup because the wind doesn't blow all the time, who should pay for the gas generated power turbines - the wind companies or the rate-payer?

Mr. Yost said that decision will be made by the Public Utilities Commission and right now, the issue that is being settled is the integration costs that the wind generators will be providing to incorporate the wind energy into the power system. If they resolve that, that will resolve a lot of the conflict; however, there still remains a huge issue with the transmission and their share of the transmission costs that are unresolved.

**LATHAM
WILLIAMS:**

Mr. Williams has been reappointed to the **Park and Recreation Board** to serve a term commencing July 26, 2007 and expiring June 30, 2013. He provided the following biographical brief.

Latham Williams has been nominated by Governor Otter to serve a second term on the Board of the Idaho Department of Parks and Recreation.

Mr. Williams currently serves as Board Chairman of IDPR, a position he was elected to in May 2007. He was originally appointed to the Board by then-Governor Dirk Kempthorne in 2002.

Mr. Williams is an active recreationalist. Together with another family, he owns a cabin in the Sawtooth National Recreation Area along with 4 snowmobiles and a boat. Mr. Williams also owns 3 motorcycles and a camper van, as well as hiking boots, snowshoes, skis, golf clubs, and fishing gear. He does not own a horse but enjoys riding one.

Mr. Williams has been a resident of Idaho for 15 years. He served on the Sun Valley City Council from 2000 to 2004 and as Council President from 2002 to 2004. He was elected Vice-Chairman of the Idaho Republican Party from 2002 to 2004 and was President of the Ketchum / Sun Valley Rotary Club from 2003 to 2004. He has a Bachelors Degree in Civil Engineering from UC Berkeley and a Masters Degree from M.I.T. He and his wife Suzanne have been married for 21 years and have 2 children.

Mr. Williams said this is his second term and is currently serving as chairman of the Board. He said he would like to give a brief summary of where they are, as a department, and where they are going. There are three things they are working on. 1) They are putting a lot of money back into the parks and recreation system with regards to the deferred maintenance projects and improving the parks. 2) Expanding the parks and recreation opportunities for the growing population of Idaho and 3) Increasing visitation. Things they still need to do is to increase the parks and recreational opportunities in Eastern Idaho; address the loss of public access; and develop some world class facilities, especially for the non-motorized users. Mr. Williams said the motorized users do a good job of taxing themselves, but the non-motorized users do not.

Chairman Schroeder said he had asked Mr. Sangrey for a map of non-motorized trail systems in the state. The Chairman is looking for inter-connectivity with the trail system. Two of the Board members have already mentioned the non-motorized trail system demands.

Senator Langhorst inquired if Mr. Williams was suggesting a tax for

hikers. **Mr. Williams** said they are not proposing a tax. He said his point was that they have revenue sources coming in from motorized users that they can put back into the trail system. They do not have any revenue sources coming in from the non-motorized users of the trail system.

Senator Coiner inquired as to how long Mr. Williams had lived in the Sun Valley-Ketchum area. The reply was 15 years. Senator Coiner has spent 30 years in the area and he said back then, cross-country skiing was hardly talked about. But now, there are trails from Galena to Ketchum and Galena to other areas. He asked if this was an example of what he was referring to as to no revenue source. **Mr. Williams** said in that area there is the Sun Valley Company and the North Valley Trail System, (which is independent of the Sun Valley Company). He said he is more interested in a hiking system. There are world class hiking opportunities in Europe and our mountains could offer the same opportunity. If hikers could hike from hut-to-hut and not have to carry back packs, he feels people would come from all around for the experience.

That concluded the remarks from the appointees. **Chairman Schroeder** said the committee would vote on the appointments Wednesday.

The Chairman then asked **Ms. Sharon Kiefer, Legislative Liaison for the Fish and Game Department**, to present RS 17642.

RS 17642

Ms. Kiefer said she is presenting this RS on behalf of the Sportsmen's Advisory Committee.

This bill would amend 36-1109 to include grizzly bears in the program of compensation for depredation damage, using the same process currently used for black bears and mountain lions. Grizzly bear delisting in the Greater Yellowstone Area has transferred management responsibility to the Idaho Department of Fish and Game. The Idaho Fish and Game Advisory Committee recommends that the grizzly bear be included in the department's depredation program and be covered in the same manner as black bear depredation. This bill implements the Advisory Committee's recommendation. This modification only covers grizzly bears that are not listed under the Endangered Species Act.

Ms. Kiefer said, as a reminder, the Idaho Fish and Game Advisory Committee is actually statutorily mandated (Section 36-122) and is a committee chosen by both directors of Fish and Game and Agriculture. This committee was charged in August, by the joint directors, to assist the Idaho Department of Fish and Game with recommendations for how to incorporate both delisted grizzly bears, the Yellowstone eco system bears, as well as upcoming delisted wolves into the Department's depredation program. Ms. Kiefer said the bill you have before you is the outcome of the first of what they expect to be a series of

recommendations to the Department on dealing with the formerly federally listed species.

MOTION: **Senator Little** made the **motion** to send RS 17642 to print. **Senator Pearce seconded** the motion. The motion **passed** by unanimous voice vote.

RS 17751 **Ms. Kiefer** presented this RS also. She said this RS reconstitutes a bill that was previously printed. There were some significant and legitimate concerns about the provisions. The sponsors took those concerns to heart and those primary concerns were dealing with a reporting period of a depredation kill of wolves. In the original bill, it was 48 hours. There was a concern of backcountry users that it was an unreasonable request. There was also a concern about the presentation of a wolf carcass. Ms. Kiefer said the time for reporting is now 72 hours. They remain the property of the state and should only be turned over to the director upon request.

During the discussion, the question was asked as to the penalty if a person refused to turn a wolf carcass over to authorities. Ms. Kiefer said it is a misdemeanor, if the director made such a request and it was denied. Another question asked was with whom does the burden of proof lie when wolves are killed? Ms. Kiefer said usually ranchers notify the agency that their stock is being threatened.

The question arose as to the definition of "agent" (line 29 on page 2). Ms. Kiefer indicated an agent generally is a person currently taking care of someone's livestock. **Senator Pearce** asked that Ms. Kiefer research the definition, as he felt it was important.

MOTION: **Senator Andreason** made the **motion** to send RS 17751 to print. **Senator Little seconded** the motion. The motion **passed** by unanimous voice vote.

Chairman Schroeder welcomed **Mr. Nate Fisher, Director of the Office of Species Conservation**, who will report on the revised 10(j) rule.

SPEAKER: **Mr. Fisher** said he is prepared to update the committee on the revised 10 (j) rules with regard to wolves. They will take effect on February 27 and it will give them more discretion and flexibility. It also enables individuals on private or public land to lethally take a wolf that is in the act of attacking their stock animals or dogs, under certain circumstances.

Senator Little asked if this final rule will get litigated. **Mr. Fisher** replied "absolutely". **Chairman Schroeder** inquired if litigation would postpone delisting. **Mr. Fisher** said this is a separate component from the delisting process.

ADJOURN: **Chairman Schroeder** thanked Mr. Fisher for the update, then adjourned the meeting at 2:50 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 6, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: **Chairman Schroeder** called the meeting to order at 1:30 p.m. He said the first order of business would be to approve some minutes.

MOTION: **Senator Siddoway** said he had reviewed the minutes of January 21 and the minutes of the morning meeting of January 23 and found them to be in order. He made the motion for their approval. The motion was **seconded** by **Senator Little**. The motion **passed** by unanimous voice vote.

MOTION: **Senator Andreason** said he had reviewed the minutes of the afternoon meeting of January 23 and the minutes of January 25 and found them to be in order. He made the motion for their approval. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

MOTION: **Senator Pearce** said he had reviewed the minutes of January 28 and the minutes of January 30 and found them to be in order. He made the motion for their approval. The motion was **seconded** by **Senator Little**. The motion **passed** by unanimous voice vote.

CONFIRMATIONS: **Chairman Schroeder** said the committee would now vote on the four Gubernatorial appointees that appeared before them on Monday.

MOTION: **Senator Little** made the **motion** to approve the appointment of Cameron Wheeler to the Idaho Fish and Game Commission. **Senator Siddoway** **seconded** the motion. The motion **passed** by unanimous voice vote.

WHEELER **Pro Tem Geddes** will be the **sponsor** of the candidate.

MOTION: **Senator Siddoway** made the **motion** to approve the appointment of Fred Trevey to the Idaho Fish and Game Commission. **Senator Pearce** **seconded** the motion. The motion **passed** by unanimous voice vote.

TREVEY **Senator Stegner** will be the **sponsor** of the candidate.

MOTION: **Senator Andreason** made the **motion** to approve the appointment of Jim Yost to the Northwest Power & Conservation Council. **Senator Coiner** **seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Little** will be the **sponsor** of the candidate.

MOTION: **Senator Coiner** made the **motion** to approve the appointment of Latham Williams to the Park and Recreation Board. **Senator Andreason** **seconded** the motion. The motion passed by unanimous voice vote. **Senator Coiner and Senator Andreason** will be **co-sponsors** of the candidate.

Chairman Schroeder then turned the meeting over to **Vice Chairman Pearce**, who is Chair of the Rules Review.

20-0304-0701 **Vice Chairman Pearce** said this rule, from the **Department of Lands**, has met with some controversy. The summary of the rule is as follows: This rule will implement changes in *Section 58-1307, Idaho Code* that increased application fees. The increase in fees is intended to cover the department's program costs. It also eliminates conflicts with *Idaho Code Sections 58-1301* and the rules are reorganized to make them more understandable. These changes will also reduce the amount of time and money the department spends on the program. Encroachment standards are centralized in the new rules and expanded to address the issues that are currently facing the department.

The changes made are largely in response to comments received from the public. The definition of "commercial navigational encroachment" was modified to make it more general. A new definition of "commercial marina" was added. The term "commercial navigational encroachment" was placed in the standards for encroachment lengths and in the application section. The standards for community docks and commercial marinas were modified and reorganized to clarify the distinctions between public and private moorage and remove some potential conflicts between paragraphs. Locked gates will be allowed on public moorage to address security concerns. Commercial marinas that convert to community docks must meet all the community dock standards. Parking requirements were modified to apply to all moorage at commercial marinas.

Vice Chairman Pearce asked **Mr. George Bacon**, the **Director**, to review the rule and tell the committee what it accomplishes.

Mr. Bacon said these rules affect the management of state lands that constitute the beds of lakes and the permitting of working out and hovering the water space and air space over those lake beds. Endowment lands are held for a totally different purpose than these lands. These lands are held not to make money, but to protect private property rights, fish and wildlife habitat, aquatic life, recreation, and those sorts of things.

Through the negotiations, they arrived at two major issues. The first one was the fee structure. Fees had not been increased since 1974. There was very little controversy regarding the fees. The program is paid out of the general fund and all fees collected go back to the general fund and it

is a net loss to the general fund by \$100,000 to \$200,000 each year. IDL's intent is to stabilize the funding. The second and largest issue was the private versus the public activity. Right now, under the current law, if you are not a lakefront owner, you cannot put a dock in somewhere. Mr. Bacon said they are seeing commercial marinas that provide public access to the lakes being converted to private ventures. He said there seems to be pressure on people as uplands change ownership. People who have had businesses for 20-30 years as a marina find themselves land rich and cash poor (maybe) and ready to retire. Whoever buys the property has to make the decision to retain the marina or do something else with the property. Unfortunately, the other alternative seems to be more lucrative. Under the current rules, a landowner had to make a choice as to all commercial activity or all private activity. The new rules would allow commercial marinas to have up to 50 percent just for private use. This provides for more flexibility for the landowner and for the general public and will provide more public access.

Mr. Bacon introduced **Eric Wilson, Program Manager for the Idaho Department of Lands**, who will describe what they did on negotiations.

Mr. Wilson said they did an extensive rule-making effort last year, with notifications going to over 200 individuals who had an interest in the lakes. Notifications were listed on the web site, which was updated all summer long with the rules revisions, as they came through the negotiation process. They held five open houses throughout the state and the purpose was two-fold. One was to gauge the interest in each region of the state and the other was to generate notification lists so that they could keep everyone who was interested updated through the summer. The only people who expressed an interest were the people in Coeur d'Alene, so the negotiations were consolidated there. Six negotiation sessions were held there throughout June and July. There was good participation with marina owners, boat home owners, Fish and Game, marine contractors, and several interested members from the public. At the conclusion of the negotiations, IDL felt they had the consent of those who participated as to what the rules were going to look like.

Mr. Wilson said if someone has a community dock, it is limited in size under the current rules. That size limitation is seven square feet per front foot of property. Commercial marinas are not limited in size because they have public access and benefits to the general public. That is why folks who have private docks may be interested in having some mixture of public and private use because then they would be allowed to expand beyond the 7:1 ratio. For existing public-available commercial marinas, there is no size limit. Since 1992, four marinas have converted from public to private use, and that was before the restrictions were in place. Property values have increased significantly. Lake front property sells between \$20,000 to \$30,000 per front foot. Mr. Wilson said that given the circumstances, they feel this is the best way to approach making public access to lakes available.

Senator Siddoway asked for an explanation regarding the line of navigability. **Mr. Wilson** said that if someone wanted to shorten their dock, that line would not be affected; however, a dock may not be

lengthened as that line has been established by existing docks on the lake. **Mr. Bacon** said the line of navigability is defined in Code and they saw no reason to spell it out in the Rules.

Senator Cameron inquired as to what harm would be done to the state, or to the public, if these rules are not approved. **Mr. Wilson** said if the rules are not approved, they would still be operating in the deficit to the general fund to the tune of \$100,000 to \$200,000 each year and increasing every year. He stated that they are trying to run a program on a 1974 income with 2008 costs. It will continue to be a drain on the general fund. It was asked if there were other options. **Mr. Wilson** said in the rule rewrite, they addressed fees, made consistencies between statutes and rules, and are now attacking the expense side of their program. They would like to get rid of the reconsideration hearings that they feel are redundant. If someone doesn't like their hearing process, they can then go through a judicial review. **Senator Cameron** asked what would happen if IDL was allowed to move forward with an amended rule, with just the fee and not the other issues. **Mr. Wilson** replied there were several other issues they addressed (consolidation, reorganization) and it makes it easier for an applicant to get a dock permit. They would be able to go to one section and get that information.

Senator Langhorst said he had received two letters, one pro and one con on this issue, but both asked for a one year delay. He inquired what would be the affect on the public, in terms of access, if they were to wait another year. **Mr. Bacon** said it is not fully answerable. There is one marina in Bayview that is trying to privatize itself and if they accomplish that, then that marina will be lost for any public access. Right now, the choice is either all commercial or all private. Under the rules, private moorage does come with some protection. They buy a piece of the whole property, not just a slip. There are a large number of marinas that are publically available, but their rents are extremely high. **Senator Broadsword** said she just wanted to know that discussions will continue with the marina owners in the North, as she has been contacted by some of them with concerns. She said as long as negotiations are going forward and the differences are ironed out, then she will feel comfortable.

TESTIMONY: Written testimony was submitted by **Bret Bowers, Executive Director for the Coeur d'Alene Lakeshore Property Owners**, and it has been inserted into the minutes.

TO: Idaho Senate Resources & Environment Committee
RE: Proposed Amendments to IDAPA —
Idaho Navigable Waters Program

Dear Chairmen and Members of the Committee,

The rulemaking process for changes to Idaho Navigable Waters Program — and the proposed amendments have sparked serious debate and inquiry on the part of the Board of Directors for the Coeur d'Alene Lakeshore Property Owner's Association and several other private and commercial stakeholders.

In short, we respectfully ask that you delay passage and

implementation of the new amendments.

The changes would have statewide impacts, yet during public meetings in southern Idaho last summer, nobody attended.

Here in the north, hearings and workshops were well attended, but failed to create stakeholder support,

CLPOA and other individuals and groups who took part in the public workshops and hearings last year understand the Idaho Dept. of Lands is looking to raise additional “user” fees to help balance the budget and demands on the IDL.

We are well aware of the budget shortfall and the increasing demand for more docks and encroachments on lakes and waterways throughout the great state of Idaho.

Still, we have our concerns, including:

- Line of Navigability not well defined;
- Language defining “Public” vs. “Private” association moorage or commercial marina docks is ambiguous
- Proposed amendments lack stakeholder support as groups are not fully aware of the rulemaking impacts;

For these and other reasons, we believe both committees should return the amendment to IDL and have them conduct further public sessions in North Idaho this summer.

We respectfully ask that you concur — so we and others in the fastest growing part of the state — with the majority of float homes and other waterway encroachments can help create programs and a fee structure that produces results we can all live with.

We stand ready to work with the IDL and its Navigable Waters Program managers.

Please do not hesitate to contact us immediately (208) 663-2277. Thank you.

MOTION:

Chairman Schroeder made the **motion** to approve Docket 20-0304-0701 with the understanding that Director Bacon, Idaho Department of Lands, continues to work with the people affected as Senator Broadsword suggested to resolve the differences. The motion was **seconded** by **Senator Coiner**. **Senator Langhorst** said he would like any action delayed so that he might learn more about this. **Vice Chairman Pearce** said that early in the session he was approached by a lobbyist with concerns about this issue. However, awhile later, he was given a letter stating that their concerns were resolved, they were happy, and had no opposition to the rule. The motion **passed** by a majority voice vote. Voting nay was Senator Langhorst, who asked to be recorded as such.

Vice Chairman Pearce thanked Director Bacon and Eric Wilson for their participation in the discussion. He then turned the meeting back to **Chairman Schroeder**.

The Chairman said he wished to acknowledge former **Senator Skip Brandt** who is in the audience today.

Chairman Schroeder said they had several bills before them on North Idaho Adjudication and water law. There is also an RS that has been

prepared in the last 24 hours. He stated that the committee would not vote on any of the bills today. **Senator Keough** and **Senator Broadsword**, or their designees, will present the bills, then testimony will be taken, with people from out-of-town testifying first. The hearing on the bills will be continued on Friday, but not past 3 p.m. because of travel plans by the committee members. The Chairman asked the committee to hold all questions until all bills had been presented. He then called on Senator Keough to present her bills.

S 1249

Senator Keough said today is North Idaho Day, and she appreciates the attention to the issues. She also recognized Chairman Raybould and Chairman Schroeder for the time they have spent doing outreach to the Northern elected officials.

She stated that the Farm Bureau sponsored a meeting in Sandpoint this summer and it was attended by 300-500 people listening to a series of presentations on adjudication of water. During the presentations, they heard a debate between prominent water lawyers in Idaho. Senator Keough read a communication from one of her constituents which said, "I feel it is wrong to try to take our water rights. We paid to have our own wells dug for our own use. They will be facing a gun if they come on my property to take my water rights." Senator Keough said this was just one of many messages she has received and they are very similar in vein.

They instructed the Department of Water Resources to go forth, in 2005, to the North Idaho area and work with the Spokane Valley, Rathdrum Aquifer Committee and other local elected officials regarding the adjudication process. It was something those folks wanted to do. The Department did that; however, the meetings she attended, there was no representation from St. Maries, Shoshone County, or Benewah County. There was one member from Bonner County. There should have been a broader outreach across the impacted basins, but that didn't happen at that time.

Senator Keough provided a colored map that showed the basins. The map on the left shows the basins as they were depicted at the meetings. The one on the right shows the basins as they are today. The boundaries have changed. In 2006, twelve co-sponsors put into motion the North Idaho Adjudication. It was broken into three phases, with Rathdrum being the first, as it was the most critical, south of Moscow second, and the last phase in the far North. Her understanding of the phasing protected Idaho's water and protected their opportunities, while giving the other basins the time to ask questions and understand the adjudication. Between the time the 2006 legislative session ended and through last winter, the Department determined the earliest that basins 96, 97, and 98 could be put into place would be 2011, if the legislature funded it. Senator Keough said that provided them the opportunity to discuss it and to decide if they wanted to undertake that effort. It would give them time at the local level for discussion. They procrastinated and some enterprising water attorneys and organizations on both sides of the issue beat them to the public information outreach. As a result, two things happened that were unfortunate. The general public has not had a true understanding of the adjudication process. One meeting was closed down by the Fire Marshall

in Sandpoint because there were too many people for the building. The meeting was then moved to the high school.

At that point, the Department stepped up and began having meetings with local county commissioners and city officials, and ultimately had seven different meetings. Senator Keough said she appreciated what the Department did. By that time, there was an incredible amount of distrust, a question of credibility of legislators and the Department, and the feelings of the public was that they did not want to be involved in adjudication. Being fearful and not trusting the Department or legislators, the people in the northern districts do not know who to turn to or who to ask questions.

One issue was the difference of fees for filing on water rights. They are double to what they were for Southern Idaho. Private property rights are another great concern. Another issue is why are domestic wells included when they weren't for Southern Idaho. Senator Keough said one of the fastest rumors she has ever seen in the 30 years she has lived in her community was the notion that the legislature's efforts here was to place a meter on every domestic well at everyone's house to meter water usage and ultimately tax people for that water usage.

There is support for drafting growth issues and boundary issues in some fashion. The outlying communities and outlying counties, Shoshone, Boundary, and Benewah, don't want to be included in addressing those issues. The potential for federal water rights claim is very discomfoting with the high percentage of federal lands that Senator Keough has in her county, plus the potential for claims by the Nez Perce Tribe on the lower third of the Coeur d'Alene lake.

Senator Keough said this is the climate with which she is asking the committee to assist them. She then reviewed Senate Bills 1249, 1352, 1353 and a new RS.

- S 1249** Senate Bill 1249 would remove Basins 96, 97, and 98 from the NIA. These basins were not scheduled to begin the adjudication process until 2011 at the earliest.
- RS 17857** The new RS, which is RS 17857, removes Basin 98 in Boundary County. It is not hydraulically connected and the two rivers flow into and out of Canada and just pass through Idaho.
- S 1353** Senate Bill 1353 makes it clear that we, as the Legislature, never had an intent and do not have an intent, metering domestic wells.
- S 1352** Senate Bill 1352 restores fees to previous levels and caps the filing fee for power generation projects at a maximum of \$250,000 each.

Senator Keough said she supports Senate Bill 1278 that Senator Broadsword will address, as well as an RS by Chairman Schroeder which will allow the people in Northern Idaho to vote if they want to have adjudication. The Chairman announced that his RS won't be available until Friday as some language is being worked out.

Senator Broadsword said she wanted to draw attention to two handouts that she has provided to the committee. One is a letter from a constituent

and the other is a petition, signed by 180 property owners, opposing the adjudication. The **letter, written by Sidnee Dittman**, is inserted into the minutes.

TESTIMONY:

Dear Senator Broadsword,

Over the last decade, dozens of meetings have been convened in locations all over the state to discuss “water adjudication” — the federally-instigated, state-administered process of converting property owner’s inviolable (Idaho State) constitutional “rights” to utilize the water resources on their properties for domestic purposes into licensed, fee-dependant, court determined privileges. Those most impacted by water adjudication are rural property owners who purchased property under the assumption that they had the unmitigated right to use the water on their property for domestic purposes.

If you were to poll the rural property owners with deeded/constitutional water rights, you would find that 90 to 95 percent of them do not want their rights to use water on their property for domestic purposes downgraded to a fee-based, court-determined privilege.

There is a growing desire among North Idaho property owners whose right to domestic use of water on private property are threatened by water adjudication, to impress upon those representing their interests in the legislature to block attempts by the state to force the adjudication of domestic wells in the five northern counties of Idaho.

We, the expanding number of your constituents who understand and oppose the water adjudication process, respectfully request that you help us stop the adjudication of private wells on private property in North Idaho:

- * Repeal *HB545* (North Idaho Adjudication)
- * Limit the Adjudication to the Rathdrum Prairie Aquifer
- * Remove the Five North Idaho Counties from Adjudication
- * Remove all domestic wells from Adjudication

Water and our deeded, constitutionally-guaranteed right to it is life itself.

Please consider this matter as high on your hierarchy of priorities as do those whose interests -whose lives- you are representing in the Idaho State Legislature.

S 1354

Senator Broadsword said that Senate Bill 1354 is a rewrite of Senate Bill 1277. Senate Bill 1354 defers the water right similar to the way it was done in the Snake River Basin Adjudication allowing people to opt in, if they wanted to, but not demanding them to do so. This bill defers the adjudication of domestic and stock water users.

S 1278

This bill narrows the focus of the North Idaho Water Adjudication to the Rathdrum Prairie, the highest priority need.

S 1279

Senate Bill 1279 is a total repeal of the adjudication. Senator Broadword said there are a number of folks in Northern Idaho that feel this is the thing to do and she is supporting their view.

Speaking next was **Representative Harwood**, who is also a sponsor of several of these bills. He said that he appreciated what Senator Keough said, as she identified what is going on with regards to the adjudication. He said that he has two concerns. In reading the Constitution, it talks about having water rights. If you divert water that is not appropriated, you have a right to that water and it will not be denied. He feels that the adjudication is going around the Constitution, in a sense, because the property owner with water rights must file or they will lose it. The Constitution says you will not lose it. Representative Harwood said he is really struggling with the whole adjudication process, as he took an oath to uphold the Constitution, not adjudication. He said that he did not want to show any disrespect to the Director, but when they had meetings, there was a slide show that lasted about an hour, then some time to talk. He also felt that the meetings were handled differently - same questions, but different answers. That has caused mistrust with the people in the northern districts.

TESTIMONY:

Mr. Dan Dinning, Boundary County Commissioner, was the next to speak. He addressed the issue regarding Basin 98, the Kootenai River Basin. Kootenai River flows out of Canada, into northwest Montana, then into Idaho, then flows back into Canada. The Kootenai River flows out of Canada, into Idaho, then back into the Moyie River. He said the state of Idaho should not be the one to negotiate with Canada, it should be the United States government. Mr. Dinning feels that there has not been good public relations established in the adjudication process. It is his recommendation that the process be put on hold until all the science involved is assessed. The boundary lines and aquifer lines have changed since first discussed. The information needs to be accurate.

TESTIMONY:

Mr. Lewis Rich, Bonner County Commissioner, said the problem as he perceives it, is the process. It began in July, 2007 at the high school in Sandpoint where Mr. Tuthill gave them information that was wrong. The reputation of the local representatives has been seriously jeopardized through no fault of their own. He stated that he has gone to five meetings regarding adjudication and it has changed every time. There is no trust. The process has not involved the counties to any extent.

TESTIMONY:

Mr. Louis Kins, Oden Water Association Inc., feels that a local water issue should stay local and state water should be governed by the state. He stated that with adjudication, the water would be given away.

TESTIMONY:

Mr. Jon Cantamessa, Shoshone County Commissioner, was the next to testify. A copy of his testimony is inserted into the minutes.

Good Afternoon, Senators.

Thank you for this opportunity. I am a County Commissioner from Shoshone County.

I have much more than 3 minutes to share, so I will attempt to be brief—

to the point.

I have attended 7 public meetings with the Department of Water Resources. I think I am pretty well informed, but I still don't see any benefit from adjudication that cannot be accomplished with present water law with permits and licenses.

The meetings held were difficult and confusing. It appeared that the state was filtering information that had to be pulled out with probing questions. This made the story appear to be constantly changing and created distrust of both the department and the legislature. Our citizens are poorly informed and most believe they have been lied to.

Unlike Southern Idaho, water is plentiful in the North — Perhaps 4 times what is used. Our Idahoans believe that our State Government owns the water and should be aggressively using present laws to defend the water rights of Idaho Water Users.

In discussions with legislators the perception of water usage is like dipping water from a bucket and eventually the bucket will be empty. Water licenses refer to diverting water. Diverting suggests that the water is only temporarily used, returning pretty rapidly to the eco system. A recent article in the National Geographic suggested that there is exactly the same amount of water on the planet as there was 1 million years ago. Think about that.

Pend 'Oreille was described yesterday by Water Resources as a "black box" in the aquifer. We don't have enough information.

Four counties and all 12 commissioners signed a letter asking you to halt the adjudication. I wish Jack Buell was here today to present his passionate opposition to you, but he is home in a snow fight.

Our citizens are poorly informed. Most are angry. They need truthful information. There is an abundance of water in North Idaho. Further study of the Pend 'Oreille influence is needed. The original decision to proceed with the NIA was made 2 years before the results of even the Rathdrum Aquifer were completed. You proceeded to the NIA without the facts.

Adjudication will not resolve a potential dispute with Washington. It likely will weaken Idaho's position when we document using only 1/4th of our own water. Adjudication will create decrees for users and documents to strengthen the claims from outside Idaho. While Idaho's citizens have only the right to divert water, Federal agencies, the State of Washington, and various Indian tribes can claim the right to reserve the other 3/4ths of Idaho's water for their future use, thereby stifling economic growth in North Idaho.

Clive Strong suggested another dilemma to me yesterday. He said that this is not a good time politically to proceed with a McCaran amendment Adjudication. If the Democrats control the White House in 2009, the Federal Agencies, the tribes, and the blue state of Washington will be

much more difficult to negotiate with and may significantly increase projected costs for our famously red state.

Your Pro Tem Geddes cautioned all counties yesterday to expect very careful and frugal spending from the legislature this year. "The right amounts for the right reasons". The NIA will be very expensive. You have several adjudication bills before you. We in Bonner, Boundary, Benewah, and Shoshone Counties ask that you repeal the prior legislation and begin the process to consider the NIA on its own merits. Our Citizens in the North deserve this consideration. We have water. We don't have money. We need information. THERE IS NO URGENCY.

TESTIMONY: **Mr. Joe Young, Bonner County Commissioner**, was next to testify. He said he wished to apologize for his outrage yesterday at a meeting. Mr. Young said that this issue is important to North Idaho and also to him. He became involved about a year and a half ago. Mr. Young said he thought they were on the right path, as adjudication had been done in Southern Idaho. His thoughts at that time were unknown, but worked through the process with the legislators. He thought it was something that needed support because of the goals and objectives that he was hearing at that time as it is important to North Idaho to have water rights for future growth and economics. Now, it appears the goal cannot be achieved and that concerns him. He said that he keeps hearing the need for adjudication is because of Spokane and the state of Washington and their demand on North Idaho water. Mr. Young is also concerned about the economic peace in North Idaho. He worked with an Ad Hoc committee earlier regarding adjudication and assumed that when things were approved, they would not be changed later. But that was not the case. Lines were changed and the scope of work was changed. Mr. Young asked that the process be slowed down, looked at, and find out if this really gives the people what you want to accomplish. The process did not get done properly.

ANNOUNCEMENTS: **Chairman Schroeder** said the Commissioners would be in the foyer to answer questions. He also said that he posed the question, "If we had to do this over again, what would you change?" to the North Idaho legislators and other interested parties at a recent meeting. The answer was that they should have started from the grass roots with local elected officials so that they understood what was going on.

The Chairman thanked everyone for coming and for the testimony given.

ADJOURN: He then adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 8, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

He asked Vice Chairman Pearce for a motion for minutes. **Vice Chairman Pearce** said that he had read the minutes of February 4 and moved that they be accepted as written. **Senator Coiner seconded** the motion. The motion passed by unanimous voice vote.

ANNOUNCEMENTS: A letter from Senator Hammond was distributed to the committee members.

Chairman Schroeder said the plan for today is to take testimony for those who have signed up. Voting on the bills will not take place unless there is adequate time to vote on all bills. The meeting will be adjourned by 3 p.m.

The Chairman introduced **Ms. Katharine Gerrity**, an **analyst** in the **Legislative Services Office**, and said that she has been busy working with the Secretary of State's Office and the Attorney General's Office to make sure the language is correct on RS 17893 and RS 17894.

PASSING OF GAVEL: He then turned the **gavel** to **Vice Chairman Pearce** to chair the meeting. (Chairman Schroeder is a co-sponsor of this legislation and wishes to testify.)

Vice Chairman Pearce then asked **Senator Schroeder** to brief the committee on the two RSs.

RS 17893 **Senator Schroeder** said this RS just basically says the North Idaho Adjudication (NIA) is repealed.

RS 17894

Senator Schroeder said this RS is to delay the NIA until July 1, 2009 and to provide for an advisory vote in each basin at the next general election.

He then asked Ms. Gerrity to further explain this RS.

Ms. Gerrity said the statutes that referenced the North Idaho Adjudication were enacted during the 2006 session. Chapter 222, of the Laws of 2006, contained three sections. This RS is repealing Sections 1 and 3 of that chapter, relative to the North Idaho Adjudication. This would be effective upon passage and approval.

Sections 2 and 3 of the RS do just what those sections within the 2006 session laws did in providing for the North Idaho Adjudication. The effective date would be July 1, 2009.

There is one minor difference and that is the date that appears in Section 3 of the RS. Section 4 provides for an advisory ballot to guide the Legislature in terms of whether the Northern Idaho water rights adjudication should proceed. The proposed boundaries of the Coeur d'Alene-Spokane river basin, the Palouse river basin, the Kootenai river basin and the Clark Fork-Pend Oreille river basin are to be accurately described by the director of the Department of Water Resources and accompanied by a detailed map showing the basins. This is to be provided to the county commissioners of each county in which any portion of any of the river basins are located. The boards of each county shall have the designated question placed on the 2008 general election ballot for the registered electors residing within the proposed boundaries. The question is - "Should the State of Idaho proceed with commencement of Northern Idaho Water Rights Adjudication for the following river basins located in Northern Idaho: the Coeur d'Alene-Spokane river basin, the Palouse river basin, the Kootenai river basin and the Clark Fork-Pend Oreille river basin?". Section 5 provides severability and Section 6 declares an emergency.

Vice Chairman Pearce inquired as to the fiscal cost of the election.

Senator Broadsword said that she was advised by the county clerk from Kootenai County that if an additional page was not needed, there would be no cost. If a second page was required, it would be just a few hundred dollars.

RS 17857

Senator Cameron inquired as to what the RSs specifically did. RS 17894 postpones the adjudication until an election can be held. RS 17893 repeals the adjudication altogether. RS 17857 removes basin 98 from the adjudication. **Director Tuthill** said that basin 98 is not hydraulically connected. When asked what issues that basin might potentially be facing in the future, the Director said in the long-term, they anticipate there will be international questions about the use of water in the basin. If the adjudication moves forward, they would determine the water rights on the Idaho side and there would not be negotiations with Canada.

MOTION:

After more discussion, **Senator Cameron** made the **motion** to print RS 17894, RS 17893, and RS 17857. The motion was **seconded** by

Senator Andreason. The motion **passed** by unanimous voice vote.

**PASSING OF
GAVEL:**

Vice Chairman Pearce turned the meeting back to **Chairman Schroeder.**

TESTIMONY:

Latah County Commissioner Tom Stroschein testified. He provided a map for reference. A copy of his testimony is inserted into the minutes.

Chairman Schroeder and Members of the Committee:

My name is Tom Stroschein. I am a county commissioner from Latah County and prior to moving to Latah County 13 years ago, I operated a sheep operation and an irrigated farm in Southeastern Idaho for 30 years. So, I have had the "opportunity" to be involved in the Snake River Adjudication Process from the very beginning.

I am here today representing the Latah County Board of Commissioners asking for your support of the North Idaho Adjudication of Basin 87 in Latah County and for support of funding for the Aquifer Study of the Palouse Basin.

I am not taking a position on any of the Bills before you, but it is imperative that Basin 87 be included in the North Idaho Adjudication Process for three reasons: (Reference Surface Water Map of North Idaho Adjudication Phase 2 Latah County indication the Administrative Basin area shown in yellow)

1. Fairness. 52% of Latah County is included in the Snake River Adjudication, leaving the balance of Latah County vulnerable. Additionally, wells are predominantly used for domestic use with minimal irrigation wells in Latah County. The best way to protect our citizen's property rights is to adjudicate all wells.

2. Washington State is in the process of conducting the (WRIA) Water Resource Inventory Area 34 (the area shown in light yellow on the map of Latah County). They have completed the inventory and the next phase is "In-Stream Flow" analysis.

3. Palouse Basin Study indicates Grand Ronde Aquifer basement is 2,000 feet deep under Pullman, Washington and about 1,300 feet deep under Moscow, Idaho, which is located on the Washington/Idaho border, seven miles east of Pullman.

If Phase I of the adjudication does not take place, we would ask you to replace it with Phase II (Basin 87) and proceed with the adjudication process in Latah County.

Thank you for the opportunity to testify before you today.

TESTIMONY:

Mr. Kevin Lewis, Conservation Director of Idaho Rivers United,

testified. He previously submitted written comments, which are inserted into the minutes.

Idaho Rivers United respectfully urges committee members vote “NO” on the bills listed above. Our concerns include:

- The adjudication of Idaho water is the **key** to developing sound water management practices and policies in Idaho. Adjudication enables quantification of how, and to what extent, our water resources are currently being utilized (S 1249, S 1278, and S 1279).
- The legislature has already wisely voted to begin adjudication in north Idaho. To reverse this decision now will only delay the inevitable and lead to greater concern, expense and conflict.
- The fee structure for adjudication should be revenue neutral to the general fund. Adjudication should not be used as a positive revenue stream nor should it place a financial burden on the taxpayers of Idaho. The legislature has already authorized a fee schedule that reflects the increased costs of adjudication and that fee schedule should remain intact unless review shows a need to adjust it (S1352).
- Domestic wells should **not** be exempt from adjudication. Wells are the major source of water supply in North Idaho and to exempt domestic wells would render North Idaho adjudication meaningless (S1277, S1354).
- Adjudication does **not** require metering of domestic wells. Nevertheless, domestic wells are limited by Idaho code as to the quantity of water and nature of use of allowed. If, at a later date, the state of Idaho determines that metering domestic wells is necessary to ensure usage complies with the law, the state should not be constrained by language that prohibits metering of domestic wells (S 1353).

TESTIMONY: A copy of **Mr. Lewis’s** oral testimony is inserted into the minutes.

Mr. Chairman and Senators: My name is Kevin Lewis and I’m the conservation director of Idaho Rivers United. I promise to be brief as I’ve already provided some written comments.

I’m here before you today because I represent the interest of many Idahoans who desire healthy rivers throughout this great state. Rivers that provide a wealth for the people of Idaho — fish and wildlife habitat, riparian vegetation, recreational opportunities, irrigation and quenching the thirst of a growing population.

Healthy rivers are a product of good management policies and practices. To develop these policies and practices two things need to be

determined:

- 1) How much water is available — both surface and groundwater — one painful lesson learned on the Eastern Snake plain was that our rivers and aquifers are one. At times rivers feed the aquifer and other times the aquifer supplies the river.
- 2) How much and to what purpose is water being used — in other words, adjudication

Without both of these components, it will be difficult to impossible to develop and manage the water resources of North Idaho. Later in this session this committee will hear legislation that addresses the first point I made. Legislation we strongly support. Today's debate is on my second point — adjudication.

Is adjudication scary? No doubt! Then again, not doing what is necessary is not a solution either.

I was in this room on Wednesday so I could hear the concerns of north Idaho as I firmly believe we should all be sensitive to the concerns of our neighbors. And, in support of Director Tuthill, I have worked with Director Tuthill on several occasions over the last year and have found him to be an honest and polite person. So, I would disagree with any allegations that would infer that there has been a deliberate attempt to misinform.

I also contacted members of my organization who live in north Idaho and also attended the IDWR meetings because I wanted to get their thoughts on adjudication. Which, by the way, they firmly support.

It would appear that more communication and outreach might ease the concerns of some north Idaho residents - something I certainly support, and, if it meant delaying implementation of adjudication by a year or two, it wouldn't cause me great heartburn. Unfortunately, this committee hasn't been presented with this option and is now faced with either a yes or a no vote on these bills. Therefore, I respectfully urge a "NO" vote on these bills.

Thank you for your time and I stand for any questions you might have.

TESTIMONY:

The testimony of **Neil Colwell**, who represents **Avista Corporation**, is inserted into the minutes.

Mr. Chairman and members of the Committee, my name is Neil Colwell and I represent Avista Corporation as its manager of state government relations for Idaho and Montana. Avista provides electric and natural gas services in northern Idaho from Grangeville in the south to Bonners Ferry in the north. We have approximately 110,000 utility customers in Idaho and generate electricity in the state using natural gas-fired turbines and hydroelectric dams. Our interest in **SB 1352** stems from our ownership and operation of those dams.

Avista supports the adoption of the legislation before you for several reasons. First, we do not object to moving forward with the adjudication of water rights. Adjudication is the process by which the state certifies the validity of rights claimed by all water users. It makes sense to have the state verify the priority dates and accuracy of claims for the benefit of those holding those water rights claims.

Avista also supports the efforts of legislators in northern Idaho to minimize the impact of the adjudication on their constituents. In the legislation before you, we believe that it makes sense to return the fees to the levels that were in effect for the Snake River Basin Adjudication. In addition, we believe it also makes sense to cap the fees our customers must pay for filing water rights related to power generation.

There are two power generation facilities affected by the north Idaho water adjudication and both are owned and operated by Avista. Post Falls Dam is located approximately 8 miles from the outlet of Lake Coeur d'Alene on the Spokane River. It has an electricity production capacity of 14,750 kilowatts. Under the current fee structure, filing our water rights in the adjudication will require a fee of \$103,250. If this legislation passes, our customers would see those fees drop to \$51,625. The significant issue for Avista's customers, however, is our other hydroelectric facility, named Cabinet Gorge Dam which is located on the Clark Fork River, one-quarter mile inside of Idaho and nine miles above Lake Pend Oreille. That facility has a capacity of 263,200 kilowatts. Under current law, the fee to file our water rights claims is \$1,842,400. A fee of this magnitude can have a material effect on our customers and we are suggesting that it be capped at a total of \$250,000. We believe that we should pay our fair share of adjudication costs but the fees our customers pay should have some relationship to the services that are being provided and should not be especially onerous.

It is our understanding that the budget that was originally developed for the adjudication did not include any revenue related to the Cabinet Gorge Dam. We are, therefore, not asking to reduce the revenue for the adjudication budget by \$1.8 million dollars. We would increase that budget by the \$250,000 we are suggesting as a reasonable cap on adjudication filing fees. This new revenue will help offset the other fee reductions requested in this legislation and other reductions resulting from an option for individual well owners to opt out of the adjudication that is being suggested in other bills.

Thank you Mr. Chairman and members of the Committee for this opportunity to present our comments to you. We urge you to vote in favor of this bill.

TESTIMONY:

Written testimony was submitted by **Lucas Braden, Public Affairs Manager, Coeur d'Alene Chamber of Commerce**. It is inserted into the minutes.

Dear Senate Resources & Environment Committee:

The Coeur d'Alene Chamber of Commerce opposes any changes to existing North Idaho Water Law that would prevent or limit the adjudication of the Spokane Valley/Rathdrum Prairie Aquifer. Our position has consistently been in support of the efforts to initiate the water adjudication process in North Idaho to ensure water rights in the Rathdrum Aquifer are dealt with.

The North Idaho Water Adjudication process has value from two perspectives. First and most importantly, it will enable those of us in Kootenai County to officially and finally validate water rights and claims to the aquifer. This is important not only to establish existing rights but also to give us an idea of how much water has been allocated for future management of this resource.

Secondly, by authorizing this adjudication now, we will be able to take advantage of the resources and knowledge developed during the Snake River Plain Adjudication. By starting before the resources assembled for that adjudication are dispersed, we will be able to maximize the investment Idaho citizens have already made.

We encourage you to keep this process from being derailed and allow the adjudication process to move forward unhindered. If you have any questions regarding our position on this issue, please feel free to contact me at (208) 415-0109.

TESTIMONY:

Mr. Kent Lauer, Director of Governmental Affairs for the Idaho Farm Bureau Federation, testified next.

He said that over the summer his organization sponsored several meetings in North Idaho about adjudication. They felt they needed to educate their members, so that was the purpose of the workshops. At the annual meeting in December, the delegates from North Idaho were instrumental in getting a policy passed. They aren't convinced that the adjudication is in their best interests and they are requesting that the Legislature put the brakes on this process. They remain suspicious and there is a great deal of mistrust. Some issues include their concern regarding property rights; the federal and tribal claims might be extensive, very complicated and difficult to resolve, as well as the cost; and being treated differently regarding domestic wells. Mr. Lauer said there are too many unanswered questions and the risk does not outweigh the benefits.

When asked if there was an opinion of the statewide organization, Mr. Lauer said that the organization, as a whole, has adopted a policy that they oppose adjudication on a basin-wide scale, based on a resolution that came from the North Idaho members. That policy was adopted at the annual meeting in December. Mr. Lauer said they oppose a McCarran type of adjudication because that forces the federal and tribal claims into the process. Another question that was asked of Mr. Lauer was if the members were educated about adjudication. The response was that a

paper was written and distributed to the county presidents. They also held workshops and at those workshops one of the topics discussed was the McCarran Adjudication as opposed to a federal court action.

ADJOURN:

Chairman Schroeder thanked everyone for their participation in today's meeting. He then adjourned the meeting at 2:45 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 11, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Stennett
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He announced that voting on the water bills will be next week, Wednesday or Friday.
- CONFIRMATION HEARING:** The Chairman welcomed **Nate Fisher, Gubernatorial appointee to the Office of Species Conservation as Administrator.**
- Mr. Fisher said he appreciated the opportunity to come before the committee. He then introduced his wife, Jean, and two sons, Nate and Henry.
- The biography of Mr. Fisher has been inserted into the minutes and it is as follows:
- Nate was appointed as Administrator of the Governor's Office of Species Conservation (OSC) on August 16, 2007 by Governor C.L. "Butch" Otter. As a Cabinet member of the Governor's staff, Nate reports directly to the Governor on issues relating to the conservation of native species in Idaho.
- As Administrator of OSC, Nate oversees a staff of six people involved in all aspects of species conservation: Listing and de-listing of endangered and threatened species, conserving at-risk species, and providing funding for on-the-ground efforts to restore species. A key component in OSC's directive is to *"conserve species while maintaining the economic vitality of the State."*
- Prior to his appointment, Nate served as an Environmental Liaison for OSC, working with germane state and federal agencies. Nate worked at the Department of Environmental Quality during the Kempthorne Administration, and as a policy adviser to Governor Batt.

June 2001 to Present

Governor's Office of Species Conservation

Title — Environmental Liaison

Responsibilities Include:

- Coordinate ESA Programs With State Agencies (~67-818)
- Facilitate Collaboration Between State, Federal and Private Stakeholders (~67-818, 2(b)(c))
- Solicit, Provide, and Delegate Funding for ESA Programs (~67-81 9)

June 1996 to June 2001

Idaho Department of Environmental Quality

Title - Regional Program Coordinator / Environmental Planner

Responsibilities Included:

- Coordinate Water Quality Programs Through Basin Advisory Groups
- Obtain Funding for Water Quality Projects
- Develop Benchmark "State of the Environment" Report

January 1994 to June 1996

Office of Governor Philip E. Batt

Title — Natural Resource Policy Advisor

Responsibilities Included:

- Convey Governor's Agenda to Natural Resource Agencies
- Worked to Establish Comprehensive Water Quality Plan

January 1990 to January 1994

Idaho Council on Industry and the Environment

Title — Executive Director

November 1986 to February 1989

Office of U.S. Representative Larry E. Craig

Title — Legislative Assistant, Natural Resources

Education

Bachelor of Fine Arts, English, University of Idaho (1985)

Mr. Fisher said in his five years with the Office, he has worked on species ranging from bull trout to snails to ground squirrels and he is happy to report that they have made great progress in many of those areas. The Office not only preserves species and gets them off the Endangered Species list, but also prevents species from being listed. The Endangered Species Act is quite controversial. Over-all, prevention is the best route. They are working to keep the invasive species out of the state.

During questioning of Mr. Fisher, he was asked his party affiliation. He replied that he was Republican.

Senator Langhorst inquired about wolf hunting. **Mr. Fisher** said it has been a contentious issue with the wolves. If there are lawsuits, the judge should side with the state as there are five times the number of wolves as set by the recovery program. Common sense should prevail, but unfortunately, they heard there are 15-20 conservation groups ready to file an injunction to prevent the delisting.

Senator Pearce asked if there was enough accumulated data and evidence to ward off any lawsuits. **Mr. Fisher** said that each state has to draw up its own management plan for wolves and meet certain criteria with the U.S. Fish and Wildlife Services, and OSC feels that Idaho has an excellent plan. There is some controversy with Wyoming's plan. Senator Pearce inquired if Idaho, Montana, and Wyoming would be lumped together in the lawsuits or could Idaho split away from the other two states and go it alone. Mr. Fisher said there is an arcane provision in the Endangered Species Act that could possibly allow the states to go it alone.

Senator Siddoway asked Mr. Fisher what he anticipated if the sage grouse gets listed. **Mr. Fisher** said the sage grouse is an eleven state issue. There is an ongoing attempt to keep the sage grouse off the list. Idaho has a program, as do most of the other states. He stated that we need to concentrate on two levels - to keep it from being listed and that the species is abundant.

Chairman Schroeder said that his goal is to have a hunting season so that the sportsmen of the state will call them their wolves - like the cougars and the bears - and not the "feds" wolves. The Chairman then thanked Mr. Fisher for appearing before the committee.

**RS 17836
RS 17879
RS 17903**

Chairman Schroeder said there are three RSs on the agenda and gave the committee the option to print all three or talk individually about each of them.

MOTION:

Senator Langhorst made a motion to print RS 17836, RS 17879, and RS 17903. The motion was **seconded** by **Senator Andreason**. In the discussion, **Senator Cameron** noted that RS 17879 was a concurrent resolution and thought there should be some discussion.

MOTION:

Senator Cameron made a motion to print RS 17836. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

MOTION:

Senator Langhorst made a motion to print RS 17903. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.

MOTION:

Senator Langhorst made a motion to print RS 17879 and have it returned to the committee for further discussion. The motion was **seconded** by **Senator Andreason**.

Senator Cameron said he had two questions about this RS. He said that we have an energy task force and asked if the resolution was taken to them, and if not, why not and secondly, what is the over-all purpose of the resolution. **Senator Kelly**, one of the sponsors of the RS, responded by saying this RS was not taken to the energy committee as it was developed after the committee had met. She said what this resolution does is to recognize there is an energy plan and this encourages the state to look at energy efficiency technologies and implementation of energy conservation. Senator Kelly said the resolution also requests that the Department of Environmental Quality and the Office of Energy Resources work together, along with other entities in the state. There are two provisions - one calls for the state to prepare for the likelihood of future greenhouse gas regulation and the other is recommending policies which place the highest priority on the development of energy conservation and instate renewable resources.

After much discussion, a roll call vote was taken on the motion. Voting aye were Senators Langhorst, Coiner, Little, Andreason, and Schroeder. Voting nay were Senators Siddoway, Cameron, and Pearce. The vote was 5-3 and the motion **passed**.

S 1373

Mr. Kent Marlor, Chairman of the Fish and Game Advisory Committee, testified on this bill. A copy of his testimony is inserted into the minutes.

TESTIMONY:

Mr. Chairman and Senators:

Thank you for giving me this opportunity to testify on behalf of Senate Bill 1373. I will be brief. I will not give you a history lesson on the Advisory Committee. Suffice to say that we have been in existence now for over 15 years and make recommendations on F&G, particularly big game depredation. Our recommendations come from unanimous decisions of our 12 member Committee--composed of six landowners and six wildlife advocates.

We have received endorsement for this recommendation from the Directors of the Idaho Fish and Game Department and Department of Agriculture. We have consulted both Federal and State related offices and have received no opposition to this measure.

Before you is Senate Bill 1373 which is the last action necessary to make Grizzly Bears in Southeast Idaho comparable to Black Bear and Cougar in statute (36-1109). The legislation provides animal producers with the same status relative to depredation compensation as when Black Bear or Cougars depredate their livestock.

The same verification process, and the identical claims procedure are provided as well as payment schedule.

Grizzlies in Northern Idaho are not covered in this legislation. They would be covered, of course, when and if delisting occurs. The projected financial impact upon the depredation fund is \$1,000 to \$4,000 per year as mentioned in the materials accompanying the bill.

Let me emphasize that our Committee has determined to make no recommendation on Wolves that would fit with the present depredation statute. That is completely a separate and different matter. There are many challenges to face on wolves and the future on depredation consideration is difficult to predict.

We will begin to consider that matter in our March meeting as we have been charged with that responsibility by the Directors of the Department of Agriculture and Department of Fish and Game.

TESTIMONY: **Ms. Sharon Kiefer, Legislative Liaison for the Department of Fish and Game**, also testified. A copy of her testimony is inserted into the minutes.

Chairman Schroeder and Committee:

In 2002, the Legislature adopted House Concurrent Resolution No. 62, approving the State of Idaho Yellowstone Grizzly Bear Management Plan (State Plan), which was finalized in March, 2002. Subsequently, the Yellowstone Distinct Population Segment (DPS) of Grizzly Bears were delisted in April 2007. Recognizing the need to implement directives in the State Plan, the directors of Department of Fish and Game and Department of Agriculture charged the Fish and Game Advisory Committee (Committee) in August, 2007 to make recommendations to the Fish and Game Commission and Office of Species Conservation on statutory, rule, and procedure modifications to include delisted grizzly bears within the Fish and Game depredation program.

Senate Bill 1373 is one outcome of that endeavor. The Committee agreed the best course of action was to integrate grizzly bear depredation compensation into the existing depredation program authorized in Idaho Code 36-1109 specifically for the delisted bears in the Yellowstone DPS.

The Fish and Game Commission and the Director support this statutory recommendation from the committee.

MOTION: **Senator Siddoway** made a motion to send Senate Bill 1373 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. **Senator Siddoway** is the **sponsor**.

S 1374 **Ms. Kiefer** presented Senate Bill 1374. A copy of her testimony is inserted into the minutes.

Chairman Schroeder and Committee:

The Office of Species Conservation (OSC) has informed this committee that a final delisting proposal for wolves is anticipated at the end of February with implementation soon to follow. Regardless of the general consensus that a delisting proposal will be litigated, the policy and technical direction to both OSC and Idaho Department of Fish and Game

(IDFG) is to follow through with appropriate planning and procedures to support and uphold delisting. This bill is part of the follow through.

IDFG has been working with the Governor's Office, the Legislature, and stakeholders to prepare for the upcoming transfer of wolf population management from the U.S. Fish and Wildlife Service to the department. This process actually started in 2002 with legislative approval of Senate Concurrent Resolution 134 and the Idaho Wolf Conservation and Management Plan. Another example of the preparatory work to implement state management is approval by the 2007 Legislature of a wolf tag for sport hunting, a necessary step for Commission adoption of sport hunting regulations. This Committee has also been briefed about the ongoing work on the IDFG Wolf Population Management Plan, another preparation to provide a framework for Commission rulemaking and management.

Senate Bill 1374 is yet another preparatory step for state management. This bill modifies Idaho Code 36-1107 that deals with depredation, i.e. wild animals and birds damaging property. This bill is a revision of Senate Bill 1266 that responds to several concerns noted about reporting.

Senate bill 1374 creates 36-1107 (c), a new section that clarifies the protocol for wolf depredation control actions by a livestock or domestic animal owner, their employees, agents and animal damage control personnel. The bill authorizes wolf control without a permit from the department when livestock or domestic animals are being molested or attacked. The Department discussed the interpretation of these terms with the Committee at the print hearing for this bill. The bill defines a reporting period of 72 hours with additional time allowed if access to the control site is limited. The bill directs that wolves taken as a control measure shall only be turned over to the director if a request is made. The bill requires a permit from the department for wolf depredation control when there is no molestation or attack occurring unless the control occurs in accordance with IDFG harvest regulations (i.e. the livestock owner has a wolf tag and there is an open season).

I want to clarify the interpretation of "agent" in this statute due to questions at the print hearing. I note that livestock owners, their employees, agents, and animal damage control personnel are also authorized to take control measures when there is black bear, mountain lion, or predator depredation on livestock in 36-1107 (b). The interpretation of agent is the same in both sections of statute. An agent is someone who acts for or in the place of another with authority by him. In people language, if someone has prior permission from the producer/landowner to manage or protect his livestock that is sufficient to be an agent.

We believe this bill is an important state management step and hope that you will agree.

MOTION:

Senator Siddoway made a motion to send Senate Bill 1374 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Langhorst**. The motion **passed** by unanimous voice vote. **Senator Siddoway** is the **sponsor**.

**ANNOUNCE-
MENTS:**

Chairman Schroeder made several announcements.

1) He is hoping that voting will take place on the adjudication bills on Wednesday.

2) He is arranging for someone from the Nez Perce Tribe to talk to the committee about their netting operations that have created some controversy.

3) Grizzly bear discussion with Fish and Game.

4) Arranging for a speaker to talk about global warming.

ADJOURN:

The **Chairman** thanked the committee for their good work then adjourned the meeting at 2:30 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 13, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- He announced that there would be a conference call to accommodate Gubernatorial appointee, **Tom Long**, who is in South America. He has been appointed to the **Outfitters and Guides Licensing Board** to serve a term commencing April 20, 2007 and expiring April 20, 2010.
- APPOINTEE:** **Mr. Long** called at precisely 1:30 p.m. to talk to the committee. **Chairman Schroeder** asked Mr. Long why he was in South America and also why should he be appointed to the Outfitters and Guides Board.
- Mr. Long** said he had a rafting and kayak business there. They do rafting trips and also have had a kayak school for 17 years. His business is a family business and they are there with him (three sons and their wives). The reason why he would like to be on the licensing board is there needs to be a liaison division for an active outfitter to have some input and to try to impart real life circumstances that he sees every day towards the implementation of statute and laws that affect them. He said that going to meetings and functioning on the Board for the last few months, he has been impressed by the fact that the Board has a positive input and impact on the industry.
- Chairman Schroeder** thanked Mr. Long for calling in.
- Mr. Long's biography is inserted into the minutes.
- Tom Long has been involved in the river outfitting community since 1991, when he began Cascade Kayak School in conjunction with Cascade Raft Company on the Payette River. As owner of Cascade Raft and Kayak, the largest day river company in Idaho, Tom has been asked to represent the recreation water user on the Payette River Watershed Council, appointed

by Governor Kempthorne to the Eagle Island Park Planning Committee, and is actively involved in the proposed Payette Whitewater Park in Garden Valley. Each year Cascade Raft and Kayak sponsors the Police Raft Along program, providing 800 kids and police officers a rafting trip to help bridge the gap between these two groups.

Cascade Raft and Kayak has grown to become a thriving family business, with Tom's three sons, three daughters-in law, and wife all involved with the management of the company.

**RECOGNITION
OF PAGE:**

Chairman Schroeder asked **Jordan Lierz**, the committee **Page**, to come forward. He then presented her with a letter of appreciation, signed by all the Senators of the Resource Committee, and a Senate watch. The Chairman thanked her for her good work in assisting the committee.

**ANNOUNCE-
MENT:**

He told the committee that he has provided them with the agencies budget requests - their top two priorities. He asked the committee to look over the information and if they had objections, to let him know.

ONE QUESTION:

Chairman Schroeder then said he wanted to ask Director Tuthill one question that has come up since the hearing, and that is: "Is there any scenario in which the water that is coming from the Cascade Reservoir and the Upper Snake that it could be moved around so that the water will come out of Northern Idaho in the future?" **Director Tuthill** said that the driver for water that is sent downstream for anadromous purposes for anadromous fisheries is the Lower Snake River system and there is no feasible way, to his knowledge, of moving water from North Idaho, meaning basins 87 and above, to provide water to the Lower Snake. There were no questions from the committee. The Chairman thanked Mr. Tuthill for his response.

Chairman Schroeder said he will allow Senator Keough and Senator Broadsword a few minutes to "wrap up" their presentation on the water bills before the committee votes on them.

S 1279
S 1416
S 1278
S 1354

Senator Broadsword said she appreciated all the work and time that the committee has spent on the adjudication bills. She said that she has received another 440 petition signatures since the meeting Monday. In answer to a question asked by Senator Little, she has provided two maps showing the levels of the aquifer. (The maps are from the U.S. Geological Survey, Scientific Investigations Report 2007.)

Senator Broadsword said that her constituents feel they should be treated the same in Northern Idaho as the folks in Southern Idaho were. She said that she would like to see the adjudication repealed, education take place, and a vote of the people. So if there is a will to move forward with the adjudication, that it comes from the grass roots level - not at the state level, telling them what they must do. She, as well as her constituents, feel there is not an immediate need for adjudication. Also, because of the cost and a tight budget year, adjudication is a big ticket item, and she said they need to weigh if that is where they need to put the money.

Chairman Schroeder announced that he made available to the committee some e-mails that he had received regarding the adjudication.

Also received were two letters asking that their written testimony be included in the minutes.

Following is the testimony of **Rick Vernon, Executive Officer and Government Affairs Director for the Coeur d'Alene Association of Realtors.**

We feel very strongly that Kootenai County needs water adjudication now. Water is a critical property right and affects the real estate community directly. Many of our clients profess to have water rights and water is currently available. In a period of serious drought or unusual drawdown, there is no way of knowing if that water would still be available. Our best option to determine what water rights actually exist is the determination that the Water Adjudication provided through IDWR would provide.

We ask that you reject S 1417 which would require an advisory vote that either delays or kills the North Idaho Water Adjudication. The adjudication was approved in a previous legislative year with the full support of our legislators. We support the earliest possible start on the adjudication process and reject the advisory vote that would block the process.

Thank you for your consideration.

Lucas Braden, Public Affairs Manager, Coeur d'Alene Chamber of Commerce also submitted written testimony and it is inserted into the minutes.

The Coeur d'Alene Chamber of Commerce opposes any changes to existing North Idaho Water Law that would prevent or limit the adjudication of the Spokane Valley/Rathdrum Prairie Aquifer. Legislation that would require an advisory vote in order for the adjudication process to take place is particularly troublesome.

Though we respect any effort to give citizens a voice through vote, North Idaho Water Adjudication Law is already on the books and scheduled to commence. Technical analysis and research has been conducted and great efforts have been made to educate the public so that this process could begin. And this process definitively needs to begin. Washington State has already begun moving forward with their own adjudication process. Any further delays could jeopardize the water rights and regional sustainability of North Idaho.

The adjudication process is undoubtedly necessary and is far too important of an issue for the residents of Idaho to be playing politics with. We encourage the Senate Resources and Environment Committee to adhere to the law on the books.

Future management and protection of our water resources are contingent on completion of the adjudication process. We encourage you to keep this process from being derailed and allow the adjudication process to move forward unhindered. If you have any questions regarding our position on this issue, please feel free to contact me at (208) 415-0109.

S 1417
S 1249
S 1418
S 1352
S 1353

Senator Keough said that she, too, would echo Senator Broadsword's statement regarding the time and attention to this issue. She stated that this was started in 2004 and none of the legislators that co-sponsored the original legislation ever intended to force this on people, if they didn't want it. Some of her constituents are adamantly opposed to it, some do not understand it and feel they need more information. In relation to basin 98, the most northern basin, during the deliberations in the last two weeks, they have come to the conclusion that it is not hydraulically connected and therefore could be carved out at this time. However, it would not preclude them to come back into the adjudication at a later date. The people in her legislative district are asking that the process be slowed down and give them the opportunity to find out what adjudication can and can't do. Should it move forward, they would like a reduction in the fees and to make certain that domestic wells are voluntary, as they were in the south. It was never the legislators intent, nor the director of the Department's intent to put meters on everyone's domestic wells and meter the water use.

Chairman Schroeder said they would first vote on Senate Bill 1279, Senate Bill 1416, and Senate Bill 1417. Senate Bills 1279 and 1416 would stop the adjudication process. Senate Bill 1417 would provide for an advisory vote in each basin.

MOTION:

Senator Siddoway made the motion to send Senate Bill 1416 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Andreason**.

SUBSTITUTE MOTION:

Senator Coiner said adjudication is too important to Northern Idaho to walk away at this time. He made a substitute motion to hold Senate Bills 1279, 1416, and 1417 in committee. The motion was **seconded** by **Senator Stennett**.

During the discussion, **Senator Pearce** asked Senator Keough if it was possible to appease all voices. **Senator Keough** said it was not. In Kootenai County, they want the adjudication to go forward. Shoshone and Benewah Counties do not want it. She said there is no easy way to appease everyone. Senator Keough said **Representative Henderson, District 5**, had submitted a letter expressing his position on the adjudication bills.

Representative Henderson's letter is inserted into the minutes.

TESTIMONY:

Chairman Schroeder and members of the committee: I appreciate this opportunity to share my opinion/positions on the various issues contained in legislation now before you for decisions. They are as follows:

1. Removal of Basin 98 in Boundary County (RS17857). I approve as the waters in this basin are not connected to the primary study area.
2. S 1352 lowers the adjudication fee to \$50. I approve this reduction in cost since a new review of cost vs. revenue indicates the higher cost is not necessary and the lower fee is consistent with charges in the SRBA.
3. S1353. I approve this bill.
4. S1277 or S1354 (I'm not certain which #) I approve making adjudication of domestic wells a voluntary (or deferred) action by the owner. This was the policy in the SRBA and should be applied in the north.
5. S 1249. I oppose this bill which would remove northern basins from the program. It will be several years before the adjudication program progresses to these areas and it is my opinion that observation of the process in its early stages will dispel the concerns of people in these outlying areas and correct the failure of early information programs to effectively describe the process and benefits of the adjudication program.

Finally, I would also oppose any legislation that would propose the initiation of the adjudication program should be subject to a vote of the public.

Thank you for consideration of these opinions.
Respectfully, F. N. Henderson

Senator Pearce then asked Senator Hammond to share his district's position. **Senator Hammond** said that in Kootenai County, they are faced with a more immediate concern. They are a rapidly growing area, adjacent to another rapidly growing area, which is Spokane County. They share the same aquifer and the Washington people are already looking at that as their aquifer. The concern of lack of water or not lack of water is not a relevant issue. It is much tougher to do when there is a lack of water. The cities of Coeur d'Alene and Post Falls and North Kootenai Water District, who are water purveyors, went to the Department to seek permits to drill wells but were unable to get the permits. People objected because it was thought they used too much water and wasted water. The problem for the Department was because they don't have all the data on all the wells. Post Falls had to find old water rights that were still active and transfer them to the city so that they could get their 10 cfs. Coeur d'Alene has not been able to move forward with their application for water

rights. He said that he appreciates the desire to slow it down and the adjudication cannot be completed all at once anyway. Senator Hammond said that the adjudication will take years, but hoped they can focus on the Kootenai County area.

Senator Little asked Director Tuthill what was the compelling need for adjudication. **Director Tuthill** replied that from a water manager's standpoint, for water delivery, step one is that the water rights have to be decreed. The Department is not involved until a water district is created.

Senator Stennett inquired if just Kootenai basin could be adjudicated. **Director Tuthill** said that is where they would begin, but one challenge is that in establishing a boundary for a basin, the court is obligated to look at the entire basin, which includes basins 91 through 95.

S 1278
S 1249
S 1418

Chairman Schroeder said what all three of these bills do is to exclude portions of the Northern Idaho adjudication. Senate Bill 1418 excludes basin 98. It is the basin that the Moyie and Kootenai Rivers run into Canada. Senate Bill 1249 excludes the northern most basins, which are 96, 97, and 98. Senate Bill 1278 limits the adjudication to the Rathdrum Prairie only.

MOTION:

Senator Little made a **motion** to send Senate Bill 1418 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**.

Senator Coiner asked Director Tuthill if excluding basin 98 would it affect the McCaran adjudication of the rest of the Northern Idaho adjudications. **Director Tuthill** replied that in his view, excluding basin 98 would not affect the McCaran Amendment ability to adjudicate the other basins.

A roll call vote was requested on the motion. Voting aye were Senators Langhorst, Stennett, Coiner, Little, Cameron, Pearce, and Schroeder. Voting nay was Senator Siddoway. The motion **passed** 7-1, with one absent. **Senator Keough** is the **sponsor** of the bill.

MOTION:

Senator Coiner made a **motion** to hold Senate Bill 1278 and Senate Bill 1249 in committee. The **motion died** for lack of a second.

S 1352

Chairman Schroeder said this bill lowers the fees from \$100 to \$50 and also lowers the fee on the Cabinet Gorge Dam. **Senator Cameron** inquired as to what the actual cost should be in planning for the filing fees. **Director Tuthill** said the full cost of the adjudication is a great deal more than what the required fee is. The Snake River Adjudication costs were three times what the fees were at that time. When the committee was working to develop this legislation, the intent was to provide a fee structure of approximately one-third of the cost of adjudication by fees and two-thirds by the general fund. There are several variables, so it is not an exact number. **Senator Cameron** inquired if Senate Bill 1352 was sent

forward, what would be the ratio. **Director Tuthill** said the ratio would be about one-sixth of the total cost. **Senator Cameron** said there was some consideration about reducing the fees for a period of time, then allow the fees to resume back up. He inquired as to what kinds of problems this might cause the Department. **Director Tuthill** said it would be very challenging if the fees were changed. Regarding the inflationary factor, between 1987 and December 2007, the inflationary adjustment, based on the Consumer Price Index, \$1.00 in 1987 would equal \$1.89 in December 2007. To double the fees from 1987 would be about the same in dollar buying power at the present time.

MOTION: **Senator Cameron** made a **motion** to send Senate Bill 1352 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Keough** is the **sponsor** of the bill.

S 1354 Senate Bill 1354 defers the adjudication of domestic and stock water users.

MOTION: **Senator Cameron** made a **motion** to send Senate Bill 1354 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Pearce**. The motion **passed** by unanimous voice vote. **Senator Keough** and **Senator Broadsword** will be the **sponsors** of this bill.

S 1353 **Chairman Schroeder** said this bill does not allow measuring devices to be put on wells. **Senator Little** asked about the language on page 2, line 55, regarding all measuring devices. He inquired if it would exempt a large feed lot or a large dairy. **Director Tuthill** said it would not exempt a non diminimus right.

MOTION: **Senator Cameron** made a **motion** to send Senate Bill 1353 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Pearce**.

Senator Stennett asked Director Tuthill how domestic use was defined. The **Director** said it is defined by statute. The definition of domestic includes water for a single household.

Senator Siddoway asked the Director if he sees anywhere in the bill that restricts the use of meters in places where the Department needs those meters in order to do the job they are required to do. **Director Tuthill** said that on rare occasions they will order a measuring device on a domestic and that is usually a spring that provides water for two uses. He stated that in reading this bill, that would not be allowed. This is a situation that occurs maybe once per year.

Senator Little asked if there was a protest between two right holders and

the condition of the settlement of the protest was putting in the meter versus part of the law, could the meter still be put in? **Director Tuthill** said that is a concern they have and it is not clear if they could do that.

Senator Keough said the intent is to make it clear that no meters would be put on domestic wells. She stated that if the committee wanted to amend the bill, she will work with the committee and is open to suggestions. **Chairman Schroeder** asked Director Tuthill if he would work with Senator Keough on an amendment to make the bill more clear and to give the Department some flexibility. He agreed to do that.

**SUBSTITUTE
MOTION:**

Senator Little made a **substitute motion** to send Senate Bill 1353 to the 14th order. The substitute motion was **seconded** by **Senator Langhorst**. The substitute motion **passed** by unanimous voice vote. **Senator Keough** is the **sponsor** of the bill.

Chairman Schroeder said that concluded the voting on the adjudication bills. Before them now is committee consideration for Nate Fisher, Gubernatorial appointee as administrator of the Office of Species Conservation.

MOTION:

Senator Cameron made a **motion** to approve the appointment of Nate Fisher. The motion was seconded by **Vice Chairman Pearce**. The motion **passed** by unanimous voice vote. **Senator Langhorst** will be the **sponsor** for the appointee.

**GUBER-
NATORIAL
APPOINTEE:**

Appearing before the committee was **Wayne Hunsucker, Gubernatorial appointee to the Outfitters and Guides Licensing Board**. His term is from April 20, 2007 to April 20, 2010. Mr. Hunsucker's biography is inserted into the minutes.

Wayne has over 32 years of architectural experience. After completing his Bachelor of Architecture, with distinction, at the University of Arizona, Wayne joined the Boise, Idaho firm of Hummel Architects in 1976. He became a principal in 1978. He continued as a principal in Hummel Architects until June 1, 2005 when he left the firm and formed CWH Architects, PS.

In his 30+ years of practice in architecture, Wayne has gained valuable experience in numerous public and private project types. The largest project Wayne was responsible for was the 51 million dollar Benton County Justice Center Expansion Project in Kennewick, Washington.

Wayne's portfolio includes a wide range of projects including correctional, medical, light industrial, commercial, defense, and housing projects for such clients as Mountain Home Air Force Base, Benton County, Washington, and the United States Postal Service.

Education:

* Bachelor of Architecture with Distinction, University of Arizona, Tucson, Arizona

* Bachelor of Fine Arts, The College of William and Mary, Williamsburg, Washington

Registration:

* Licensed in Idaho, Washington, and Nevada. Maintains a NCARB Certification.

Professional Affiliations:

*Idaho Outfitters and Guides, Licensing Board Member

*Ada County Historical Preservation Society, Past Board Member

*BOMA (Building Owners and Managers Association) of Treasure Valley, Past Board Member

*Central Section, Idaho Chapter of the American Institute of Architects, Past President

*Idaho Chapter, of the American Institute of Architects, Past President

Honors and Awards:

* Department of Air Force, "Excellent in Design," Youth Center Addition & Remodel, MHAFFB, Idaho

* Department of Air Force, "Citation Award for Concept Design," Improve Appropriated Military Family Housing, MHAFFB, Idaho

* The AIA Scholastic Award and School Silver Medal, University of Arizona

* "Who's Who in America" Biography

Wayne is an avid fisherman and enjoys hunting and most outdoor activities. He has owned a whitewater jet boat and fished the Idaho Rivers for over 24 years. He plans to retire to his residence on the Salmon River in Lucile, Idaho.

Mr. Hunsucker told the committee that this is his fourth appointment to the Board and he is looking forward to working with the Board for three more years.

Chairman Schroeder thanked Mr. Hunsucker and told him the committee would not vote on his confirmation until Friday.

The Chairman then welcomed the other board members from the Outfitters and Guides Licensing Board. They are Marc Gibbs, Will Judge, Steve Tobiason, Scott Farr, and Jake Howard, Executive Director.

**ANNUAL
REPORT:**

Mr. Howard, Executive Director for the Outfitters and Guides Licensing Board, was prepared to give his annual report to the committee. Due to time constraints, the committee received a written report, which is inserted into the minutes.

Mission

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

Organization

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

Funding

- Dedicated Fund Agency

- FY 2007 Appropriation: \$495,500
- FY 2007 Revenue: \$504,300
- FY 2007 Expenditures: \$458,000
- Free Fund Balance: \$269,500
- FY 2008 Appropriation: \$565,000

Annual Activity

- 410 outfitters licensed in 2007
- 330 Designated Agents licensed in 2007
- 2341 Guides Licensed in 2007
- Process 2100 = special requests.
- Processing 1700 Outfitter allocated big game tags. Increased for 2008.
- Manage nearly 2000 individual outfitter operating areas. Increasing due to business sales, diversification and outfitting on private lands.

Enforcement Activity

- 124 Cases in 2007: 23 Non-licensed, 50 Licensed, 51 Administrative

Review.

- o Disposition: 23 unfounded, 11 no follow-up by complainant, 12 Board action or consent agreements, 38 verbal warning or probationary licenses, 15 letters of instruction or verbal warning, 4 citations, 6 no action taken, 15 open.
- Targeting known problem areas.
- Non-licensed activity major concern for Industry.
- Non-licensed individuals tend to be involved in other criminal activities.
- Addressing employment concerns - third party arraignments.

ADJOURN:

The **Chairman** apologized to the Board for the time constraints. He thanked everyone for their testimony and participation, then adjourned the meeting at 2:55 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 15, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- MOTION:** **Vice Chairman Pearce** said he had read the minutes of February 6 and found them in order and made a motion that they be approved. The motion was **seconded** by **Senator Andreason**. The motion **passed** by unanimous voice vote.
- MOTION:** **Vice Chairman Pearce** made a motion to send to the floor with a do pass recommendation the appointment of **C. Wayne Hunsucker** to the Outfitters and Guides Licensing Board. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Heinrich** will be the **sponsor** for the appointee.
- MOTION:** **Vice Chairman Pearce** made a motion to send to the floor with a do pass recommendation the appointment of **Tom Long** to the Outfitters and Guides Licensing Board. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Bastian** will be the **sponsor** for the appointee.
- S 1348** Presenting Senate Bill 1348 was **Mr. Jack Lyman, Executive Vice President for the Idaho Mining Association**. A copy of his testimony is inserted into the minutes.
- Idaho law states that a water right is forfeited if unused for five years. The law also includes 10 exceptions to forfeiture ranging from participation in a federal crop set-aside program to nonuse if the nonuse results from circumstances over which the water right owner has no control.
- S 1348 would add an eleventh exception to this list. It provides that a water right with a beneficial use related to mining would not be forfeited for nonuse if that nonuse was the result of mineral prices. This exception

is restricted to those mining properties that have a valuable mineral and where the water right owner has maintained the mineral rights and the property for mineral production.

This legislation is needed to provide the security in water rights necessary to attract the investment that will be necessary to expand mineral production and take advantage of current high metal prices. This situation is particularly important in the Coeur d'Alene Basin where the Silver Valley is located. The primary metal produced there is silver but there is also significant production of lead, zinc and copper.

Silver prices are now over \$17 an ounce. The average price of silver in the 1920s, 1930s, 1940s, 1950s and 1960s was below \$1 per ounce. In the 1970s the price averaged \$1.64 per ounce, in the 1990s it was just over \$4 ounce. In 2000 the price averaged \$4.60 per ounce, in 2005 \$8.83 per ounce and in 2006 \$12.62 per ounce.

Lead prices were less than \$0.25 per pound in 2003 — now they are around \$1.10. Zinc prices have moved from around \$0.40 per pound to \$1.05 in that same period and have been over \$2 per pound in the last 14 months. Copper prices were less than \$0.90 per pound in 2003, have bumped up against \$4.00 a pound in the last two years and were \$3.58 yesterday.

These historically high prices have drawn the attention of investors and mining companies to the Silver Valley. The three major silver mines in the area are the Lucky Friday Mine, the Galena Mine and the Sunshine Mine.

The Lucky Friday mine contains current reserves of 18 million ounces of silver, over 100,000 tons of lead and nearly 40,000 tons of zinc. The Galena Mine has proven and probable reserves of nearly 24 million ounces of silver, over 95,000 tons of lead and over 9,000 tons of copper. Sterling Mining Company has reopened the historic Sunshine Mine and has confirmed current reserves of over 23 million ounces of silver.

These mines, as well as several other operators, are looking to expand their production to take advantage of these historically high prices. Those expansion plans will require significant investment, certainly tens of millions of dollars, perhaps hundreds of millions of dollars. That additional investment will certainly benefit mining companies but will also be of huge benefit to workers, to the citizens of North Idaho and to the state.

Years ago workers at these mines accepted labor contracts that tied wages to the price of silver. The recent run-up in prices has been a boon to these workers with price-related bonuses approaching \$40,000 a year and total compensation for some underground miners of nearly \$100,000 a year.

The Idaho Mining Association recently completed a study of the economic impact our members' operations have in the state. We are currently scheduled to present the full study to the Committee on Monday. For today's purposes I can tell you that our operations in North Idaho during

2006 (the latest date for which we have complete information) generated over \$56 million of secondary economic impact to total personal income in the region.

A key component of these expansion plans will be water and the ability to secure existing water rights. Water is used in a mining operation to suppress dust, for air chillers, for compressor cooling, for drilling, and for mill operations where we recover the minerals we are seeking.

S. 1348 would allow these mining operations to secure their existing water rights and to prevent the forfeiture of those rights if the nonuse of the rights was due to mineral prices. The language in the bill was developed with the input of the Idaho Water Users Association and in consultation with the Department of Water Resources. The Department requested several changes to our original draft and all of those changes are contained in the bill before you today.

Of particular interest to the Committee should be the stringent requirements that are necessary to qualify for the exception to forfeiture. This is a mining bill for the benefit of mining companies who want to secure their water rights for mining purposes. This is not an attempt to secure old water rights in order to put that water to some other non-mining use.

The bill provides that the exception to forfeiture would only apply if the water right owner can demonstrate to the department's satisfaction that the owner has the rights to a valuable mineral that the owner has maintained those mineral rights and the property containing those rights for future mineral production.

This was of great concern to the department, and we've had extensive discussions on that issue. The actions that would demonstrate the maintenance of mineral rights and property for future mineral production would include the maintenance of lease rights (which usually include the payment of rent and minimum royalties), the payment of claim maintenance fees (in the case of unpatented mining claims), assuring that any surface use of the property is free of encumbrances that would preclude mining, milling and processing, the maintenance of shafts and adits, even if they have been blocked for public safety, and the maintenance of access to the property for future development.

These actions would be in the normal course of business for a mining venture but would be unusual for water right owners who had no interest in future mineral production. We believe the stringent requirements contained in the bill assure that this exception to forfeiture will only be available to legitimate mining ventures for the production of Idaho mineral resources.

Finally, the bill contains an emergency clause that limits its applicability to water rights that have not been finally determined to be forfeited prior to the passage of the act. This provision will prevent anyone from using this exception to re-open determinations that have already been made in the

Snake River Basin adjudication. We are not interested in undoing the work that has been completed in that process; we only want to protect the mining water rights that have not yet been finally adjudicated.

During the introduction hearing on this bill the Committee requested that we develop an estimate of the impact of this bill. To provide that estimate, we have examined the water rights associated with mining in the Coeur d'Alene Basin —Basin 94 and produced the chart that is attached.

The chart identifies all of the rights that have a listed beneficial use of mining or industrial use. Industrial use rights are included because these may include water rights that were filed for water to be used in milling and processing. You'll see that the rights shown with a beneficial use of mining also include rights that listed mining along with other beneficial uses such as domestic, power, fire protection, irrigation, recreation and recreational storage.

Only those rights that are associated with mining and industrial uses associated with milling or processing would be covered by the bill. It is impossible to know with any certainty which of these listed rights might or might not be eligible for the exception of the bill. In other words, this is our best estimate of the maximum impact of the legislation.

The chart indicates 137 water rights with a total volume of 615 cubic feet per second. To put that volume into perspective, the flow of the Coeur d'Alene River at Cataldo is over 24,000 cubic feet per second.

This bill would facilitate the expansion of mining in the Silver Valley, would secure the mining jobs of hundreds of Idaho workers, could lead to a significant expansion of that work force, would facilitate economic development in North Idaho and would increase revenues to the State of Idaho. We ask the Committee to send this bill to the floor with a "do pass" recommendation.

He provided the committee members a copy of the "Water Rights Summary Basin 94 - Coeur d'Alene Basin" which he referenced in his presentation.

Mr. Lyman said, with the Chairman's permission, he would like for **Mr. Albert Barker** to address the committee. Mr. Barker is a lawyer, representing Hecla Mining Company.

He said that Hecla Mining Company is in the process of looking at ways to open new mining properties and reopen old mining properties in the Silver Valley. One issue is that mines have been shut down due to low prices. They are also looking at the forfeiture statute. He said there is nothing that gives guidelines on how to determine what circumstances are beyond control of the mining company. After discussion with the Idaho Mining Association, Water Users Association, and the Department of Water Resources, a statute was put together. The purpose of the statute is to make it clear that the people who are entitled to utilize the exception to forfeiture are those who have kept their property in a position for mining.

TESTIMONY: **Mr. Justin Hayes, Program Director for the Idaho Conservation League**, testified. A copy of his remarks is inserted into the minutes.

Proposed Amendments:

The following proposed amendments to S 1348 (shown as **double underlined and Bold**) are offered in an effort to eliminate un-intended consequences

As currently written, S. 1348 will:

- 1) Retroactively revive historic, un-used and abandoned water rights. This will have significant impacts on other water users.
- 2) Allow mining related water rights to be held as speculative investments and then sold to the highest non-mining bidder.

SENATE BILL NO. 1348
42-223. EXCEPTIONS OR DEFENSES TO FORFEITURE

(11) No portion of any water right **being put to beneficial use as of the enactment date of this Act** with a beneficial use related to mining, mineral processing or milling shall be lost or forfeited for nonuse, so long as the nonuse results from a closure, suspension or reduced production of the mine, processing facility or mill due in whole or in part to mineral prices, if the mining property has a valuable mineral, as defined in section 47-1205. Idaho Code, and the water right owner has maintained the property and mineral rights for potential future mineral production, **provided that the mineral processing or milling at the site of the original beneficial use.**

TESTIMONY: **Mr. Kevin Lewis, Conservation Director, Idaho Rivers United**, testified next. A copy of his testimony is inserted into the minutes.

Idaho Rivers United opposes this bill for several reasons. Chief among:

- Idaho code contains provisions for parties to protect their water rights against forfeiture — apparently, some chose not to exercise due diligence and now desire a special exemption. This is poor water policy.
- This legislation is duplicative. I.C. 42-233(6) already provides protection from forfeiture for nonuse if the nonuse results from circumstances over which the water right owner has no control.
- In the statement of purpose. it states “At times mining operations have not continued to put their water rights to beneficial use because mining activities have been reduced or discontinued due to low mineral prices.” — If this is the case, wouldn’t it be more appropriate for parties to argue their case under I.C. 42-233(6)?

- Parties wishing to resume operations are perfectly free to apply for a new water right or to acquire existing rights. But, to ask to resurrect water rights they walked away from is patently unfair to other water users who have acted in good faith and lawfully exercised their water rights.
- How would this legislation affect junior users who may have used this water for years, applied it to beneficial uses and now are faced with a loss of their livelihood?

Please, vote “no” on this bill!

TESTIMONY:

Mr. Norm Semanko, Executive Director and General Counsel for the Idaho Water Users Association, testified. He stated that they are in favor of this legislation. Mr. Semanko said there are two primary ways to lose your water right. One is abandonment and the other is forfeiture. Abandonment is a common law created by the court that says if you don't use your water right, and that is coupled with an overt, intent act that demonstrates your intent to never use that water again, that is abandonment. The legislature has said if there is five years of non use, the water is forfeited, without regard of your intent. He pointed out that lines 12 through 20 of the printed bill on page 1, recognizes other exceptions or defenses to forfeiture. Resumption is a valid defense, even though it is not in Code, it is in the law. Mr. Semanko said as they looked at the defenses over time, is it sound to allow people to put their ground into a conservation reserve program to avoid forfeiture? He said yes. Then he posed another question - is it sound policy that a municipality (like the city of Boise) cannot use their water right for, as an example - 50 years, knowing that they are going to grow into that water right. He stated that it is okay, and they supported that in 1996, with what was called the Growing Community Doctrine. Mr. Semanko also talked about putting the water into a water bank. If a person is not using the water, but conserving the water, but later will need it, that is a defense of forfeiture, or if you let someone else use the water until you need it. Mr. Semanko said they are supporting this bill because the policy is sound.

MOTION:

Senator Siddoway made a **motion** to send Senate Bill 1348 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Coiner**. A roll call vote was requested. Voting aye were Senators Siddoway, Coiner, Little, Andreason, Cameron, Pearce, and Schroeder. Voting nay were Senators Langhorst and Stennett. (7-2). The motion **passed** by a majority vote. **Senator Coiner** will be the **sponsor** of the bill.

**AGENCY
BUDGET
REQUESTS:**

The **Chairman** said the committee had been given a copy of the agencies top two budget requests on Wednesday. He is to appear before JFAC on Monday to present the requests and inquired if anyone disagreed with those requests or had other suggestions. If so, he asked the committee

members to contact him.

Senator Cameron said there are two issues that are important to this committee and that has to do with the Department of Water Resources. In the Governor's budget with IDWR, they removed seven positions and \$1.1 million because they thought those positions would be needed for adjudication. It is his understanding that the Department is concerned about those reductions and the Governor operated with some information that wasn't completely accurate. Since then, they have told the Department if they won't take those seven reductions, they are to find ways to reduce their budget to accommodate. At issue is the stream channel operation.

Chairman Schroeder said IDWR's two top priorities are the five percent pay increase for state employees and \$20 million for the aquifer studies.

Senator Little stated that a bill had been passed out of committee that will cost the Department another \$2 million because the fees were lowered. He feels JFAC should be aware of the effect the change will have for the Department.

Senator Cameron suggested that the Chairman, in his remarks, (1) indicate the concern over the Department handling the adjudication with the bills that have been addressed and the fiscal impact; (2) that the Department be able to retain, or maintain, funding for their staff; and (3) support the stream channel operation program.

ADJOURN:

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 18, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- He welcomed **Mr. Jack Lyman, Executive Vice President of the Idaho Mining Association**, who gave a presentation on the "Economic Impact of Mining".
- SPEAKER:** **Mr. Lyman** said that last year they commissioned John Church, a local noted economist, to do an economic analysis of the mining industry in Idaho. This study only reflects information for the seven members of the Idaho Mining Association.
- The seven companies are as follows:
- Agrium Conda Phosphate Operations, operating in Caribou County, Canadian owned, and they produce fertilizer.
 - Coeur d'Alene Mines Corporation, with International Headquarters in Coeur d'Alene, recently sold their operating properties in Idaho to U.S. Silver.
 - Hecla Mining Company, operates Lucky Friday Mine in Shoshone County in the Silver Valley.
 - Monsanto Company, operates a phosphorous plant in Soda Springs, with the mine in Caribou County.
 - Simplot Minerals and Chemical Group, operates a mine near the Wyoming border in eastern Idaho, sends their material in an 87 mile slurry line to Pocatello where it is processed for fertilizer.
 - Sterling Mining Company, purchased the Sunshine Mine in Silver Valley and began production December, 2007.
 - Thompson Creek Mining Company, produces molybdenum near Challis in Custer County.
- Mr. Lyman said the mineral production in the last five years is as follows:
Phosphate - \$440 million

Moly and silver - \$1.4 billion
Sand and gravel - \$418 million
Other (dimensional stone, zinc, copper, lead) - \$446 million

Molybdenum prices five year ago was in the \$3 to \$3.50 range. Today, it is in the \$30 to \$35 range. Silver is important. Five years ago it was in the range of \$3 to \$4 an ounce. Today it is \$17 an ounce. He doesn't represent sand and gravel, but that price is up due to the construction explosion.

Some of the slides that were shown in the Power Point presentation included the following mine sites:

- Monsanto's phosphate mine in eastern Idaho
- Reclaimed phosphate mine that has been re-contoured and vegetated so that the land can be put back to productive use
- Molybdenum mine near Challis
- Lucky Friday mine in the Silver Valley, deepest operating silver mine in America - over 5,000 feet deep
- Galena mine - silver, lead, zinc, copper

The presentation also included slides of some of the equipment. In use is the largest shovel in Idaho, six stories tall, and cost \$17 million. The bucket holds 40 cubic yards of material (weighing 70 ton) and fills the 200 ton Caterpillar 769 haul truck in three passes. The truck costs \$2 million and tires cost \$125,000 each. A set lasts only one year.

Some of the data that has been collected on the mining industry regarding how taxes are levied are as follows: the value of the land is assessed (surface only, not the minerals); the value of the equipment; and mine net profits. This equals the total assessed value, which in 2006, was over \$800 million.

The John Church study obtained statistics for "Mining and Mineral Processing - Direct Economic Impact, 2006". Mining payrolls were \$98 million; mining purchases were \$83 million; processing purchases were \$85 million; and processing payrolls was \$87 million. This created a total direct impact of \$353 million. The secondary economic impact for 2006 was \$161 million from mining and \$176 million from processing, for a total of \$337 million. The total impact for the mining industry was just under \$700 million in 2006. The people Mr. Lyman represents employ 2,096 people. Over-all mining employment in the state was about 4,500. Indirect employment created 4,159 jobs and they are as follows: Agriculture - 160; construction - 99; manufacturing - 174; transportation, communications and utilities - 314; wholesale and retail - 967; finance, insurance and real estate - 341; service - 2,024; and household - 80.

The impact is predominately over the southeastern part of the state, where the bulk of the phosphate operations are. This amounts to \$251 million. Northern Idaho has \$56 million, where the silver mines are, and \$30 million for the rest of the state.

The 2006 taxes from direct and secondary economic impact (taxes from royalties, mine license tax, etc.) were: sales tax - \$16 million; income tax -

\$13 million; and other taxes - \$6 million.

A question was asked regarding if there was a sales tax exemption on equipment. Mr. Lyman responded that there is; however, they do pay property tax on the equipment.

During the discussion, it was noted that the average miner in Custer County makes \$84,000 per year. In Caribou County, the average annual mining and mineral processing wage in 2006 was \$68,445. In Shoshone County, it was \$57,188.

Mr. Lyman provided a brochure to the committee, "At A Glance", regarding Idaho's mining industry from 2002 to 2006. The information in the brochure is data that was collected on all mining in Idaho, IMA members and non-members. It not only included the people he represents, but sand, gravel, cement, and stone. The study was completed in December, 2007.

Some of that information has been inserted into the minutes as it was pertinent to the presentation. It is as follows:

Employment in Idaho's mining and mineral processing industry gained more than 350 jobs in 2006 to reach the highest level in the past five years. Employment and production in the state's phosphate industry are expected to remain stable at current levels into the foreseeable future. Small employment increases are expected in the state's metal industry due to higher prices for silver and molybdenum.

Predicting the future for the industry is always fraught with great uncertainty. Idaho's mining industry can only remain healthy if mining companies make profits. While significant progress has been made in reducing mining costs, many factors influencing profitability are beyond the industry's control.

Mineral prices are set on world markets and are linked to demand. Gold prices are at the highest level in a generation but no large gold mines are currently operating in Idaho. Silver prices have increased significantly in the past year and molybdenum prices have remained at previously unseen levels. The current owners of the Sunshine Mine, Sterling Mining Company, re-opened that mine in 2008. If metal prices remain at current levels, future production at today's operating metal mines should remain stable.

Phosphate prices are more closely tied to broader economic health in the country and to the agricultural component of the national economy. Prices for the products of Idaho's phosphate industry remain strong and stable.

Two major new mines have been proposed in Idaho. A gold mine is proposed near Atlanta and a cobalt mine is proposed near Leesburg. If these projects proceed as planned, employment and the economic impact of mining in Idaho will increase beyond current levels.

ADJOURN:

Chairman Schroeder thanked Mr. Lyman for his presentation, then adjourned the meeting at 2:05 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 20, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Senator Langhorst

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: **Chairman Schroeder** called the meeting to order at 1:35 p.m.

MOTION: **Vice Chairman Pearce** made a **motion** to approve the minutes of February 8. The motion was **seconded** by Senator Siddoway. The motion **passed** by unanimous voice vote.

WELCOME: **The Chairman** welcomed Representative Jaquet and her guests. They are Jim and Jamie Dutcher and Clare Swanger. Representative Jaquet said the Dutcher's video presents a different point of view on wolves that many of you might not have seen or heard. She then reviewed the biography of the Dutcher's, which is inserted into the minutes.

PROGRAM: **Jim Dutcher**

Emmy Award-winning film maker and cinematographer Jim Dutcher began producing documentary films in the 1960s. His early adventures with a camera were spent underwater, part of a Florida coast childhood. In 1985, *Water, Birth the Planet Earth*, his first television film, began a career spent with animals that range from tiny hatching sea turtles to one of the top-ranking predators on the continent, the wolf. Jim's extraordinary camera work and the trust he gains from his subjects have led audiences into places never before filmed: inside beaver lodges, down burrows to peek at wolf pups, and into the secret life of a mother mountain lion as she cares for her newborn kittens. His work includes the National Geographic special *A Rocky Mountain Beaver Pond* and ABC World of Discovery's two highest-rated films, *Cougar: Ghost of the Rockies* and *Wolf Return of a Legend*.

In 1991 Jim received the extremely prestigious Wrangler Award from the National Cowboy Hall of Fame for his documentary *Cougar: Ghost of the Rockies*. Jim's intense personal involvement with the details of his subjects' lives and his eye for the beauty of the natural world have placed his work in a category

all its own.

Jamie Dutcher

Jamie Dutcher, Jim's wife and co-producer, made her mark on the world of film when she won an Emmy Award for sound recording with her carefully collected vocalization of the Sawtooth wolves. A former employee in the animal hospital of the National Zoo in Washington, D.C., Jamie brought to Jim's projects a knowledge of animal husbandry and medical care. Combined with her gentle instinct, these skills enabled Jamie to quickly gain access to the sensitive and secret inner lives of wolves. Her photographs complement the Dutchers' three books on The Sawtooth Pack.

Together, Jim and Jamie Dutcher have been nominated for five Emmy Awards and have won three. Jointly, they created the Discovery Channel's most successful wildlife documentary, *Wolves at Our Door*, and have been interviewed extensively on numerous television and radio programs and in print articles, in both the United States and Europe. Their most recent film and book, *Living with Wolves*, continues the story of the Sawtooth wolf pack that became a part of their lives.

The Dutchers have brought the story of wolves to hundreds of millions of television viewers, radio listeners and readers in media such as:

- The Today Show, NBC
- Good Morning America, ABC
- Dateline, NBC
- 48 Hours, CBS
- National Public Radio
- BBC
- People Magazine
- New York Times
- San Francisco Chronicle
- Washington Post
- and countless others

Jim and Jamie live in Ketchum, Idaho, in a log home at the edge of a wild pond with ducks, flying squirrels, elk, deer, owls, coyotes and a mischievous black bear for neighbors.

The Dutchers showed their film, "Living With Wolves". Inserted into the minutes is information they provided which parallels the narration of the film.

Understanding Wolves February 2008

The purpose and extent of these materials is to provide background support for comments made by renowned wolf experts Jim and Jamie Dutcher to the Senate Resources and Environment Committee of the Idaho State Legislature during the 2008 legislative session.

WHAT IS A WOLF PACK?

A wolf pack is not simply a group of animals that have just come together to hunt. A pack is a family. Wolves are incredibly bonded together. The pack is made up of parents, several years of offspring, aunts and uncles, old and young. They care deeply for one another. Generally only the alpha (i.e., leader) wolves mate. Wolves are the most intelligent and social animals in North America.

Hunters who shoot the trophy deer and elk are likely to also carefully select the trophy wolves, killing the alpha leaders of the pack, along with their superior genes and their knowledge for survival. This knowledge includes things like where to cross the rivers, how to take a moose, or what prey is safe to eat. Over-manipulation of these families will lead to unnatural behavior and perhaps to predation on livestock as pack members struggle to survive.

WOLVES ARE RESPONSIBLE FOR LESS THAN 1% OF ALL LIVESTOCK MORTALITIES IN IDAHO, WYOMING AND MONTANA

Generally, wolves prefer to prey on animals they are familiar with: deer, elk, caribou and moose. In fact, individual wolf packs often specialize in one type of animal, though they will prey on other species as well when necessary or readily available.

Wolves do feed on the carcasses of other animals, however. This includes other wild animals as well as cattle and sheep most often on open rangelands.

Data from the National Agricultural Statistics Service of the U.S. Department of Agriculture (NASS), the U.S. Fish and Wildlife Service (USFWS), Idaho Department of Fish and Game (IFG), Wyoming Agricultural Statistics, and Montana Agricultural Statistics state that wolves are responsible for less than 1% of all livestock mortalities:

- In Idaho, confirmed livestock losses due to wolves for fiscal years 2004, 2005 and 2006 totaled 20, 22 and 30 cattle and 160, 147, and 200 sheep (Compiled by USDA Wildlife Services, and shown in the Idaho Draft Wolf Management Plan on page 14). USFWS reported that wolves killed 244 sheep in Idaho in 2005. NASS stated that out of 22,000 sheep deaths (not including those sent to market) in 2004, 270 (or 1.2%) were killed by wolves.
- The USDA Wyoming Field Office reports that wolves were responsible for 0.6% of sheep and lamb deaths in 2006; and 1.9% of the cattle and calves lost.
- Montana Agricultural Statistics say that wolves were responsible for 1% of sheep and lamb mortalities in 2006.

In recent years, efforts to deal with wolf/livestock interactions in non-

lethal ways have increased and are having significant success. These include: guard animals, herding, predator exclusion fencing, range riding, night penning, frequent checks, electric barriers, alarms triggered by radio telemetry, fright tactics, and carcass removal. According to Montana statistics (NASS), the percentage of Montana cattle ranchers using non-lethal predator control practices ranges from a low of 7.8% (fright tactics) to a high of 31.4% (frequent checks).

Two ranching operations partnered with wildlife agencies and Defenders of Wildlife to experiment with increased non-lethal wolf control measures in the summer of 2006. Lava Lake Land & Livestock (which grazes sheep on the Sawtooth and Salmon-Challis National Forests in Idaho and is one of the largest sheep operations in the region with 6,000 sheep on more than 800,000 acres of private and public land), used “turbofladry” (solar powered electric flagging barrier) to create highly portable night corrals. The Lazy El Ranch, in the Absorka-Beartooth foothills in southern Montana, initiated a successful range rider program in conjunction with guard dogs, night watches by herders and the use of shotguns and cracker shells to deter wolves when they approached their sheep. According to a press release from Defenders of Wildlife on October 25, 2006 that describes these projects in further detail, “Both ranches experienced zero known livestock predations to wolves and credit this success to a collaborative and non-lethal conflict management approach.”

Through The Bailey Environmental Trust ranchers can be compensated for any confirmed livestock loss from a wolf. In addition, a fund from the State of Idaho can compensate ranchers for livestock losses they believe to be from a wolf but cannot confirm.

WOLVES DO NOT EAT ALL THE ELK THAT HUNTERS ARE ALLOWED TO SHOOT

Hunters often argue that the elk are no longer where they are used to finding them; wolves must be killing them off.

In fact, elk are not disappearing. What’s happening is that the wolves are pushing the elk out of their traditional haunts into new places where hunters have to search for them. This is both good for the health of the land and good for the health of the elk. How can this be?

Wolves prey upon the genetically inferior individuals, i.e., those that are sick, old or lame. This leaves the healthiest, fastest and strongest elk to reproduce and perpetuate their species. Wolves are the only predators in North America that select the sick, old or lame.

It was found that without wolves, older cow elk dominated the herds, giving birth to single and usually sickly calves. Now that the wolves are back, and the wolves are singling out the older cow elk, younger cow elk are allowed to breed. Younger cows generally give birth to twins.

Furthermore, elk hunters’ success rates have hardly changed. Hunters still

legally shoot about 20,000 Idaho elk each year. The elk populations are either at their highest numbers ever, or very close to that, in Idaho, Montana and Wyoming. Figures may vary in individual Game Units, but almost always, other factors such as a declining pattern that began prior to wolf reintroduction, habitat loss and/or harsh winter weather either drive, or are significantly responsible for, the declines.

We have spoken to quite a few avid hunters. They agree that the searching for elk now takes more time but say that, for them, the reward is still the same.

WOLVES BENEFIT ECOLOGICAL SYSTEMS

Since the re-introduction of wolves into Yellowstone and Central Idaho in 1995 and 1996, extensive research has been conducted on the wolves' effect on the Yellowstone ecosystem. The positive changes, and the rapid pace at which they have occurred, have amazed the biologists.

In Yellowstone wolves have had a very positive effect on ecosystems. Historically, huge elk herds would hang out in the riparian areas and along rivers and streams, browsing on and suppressing new growth of willow, aspen and cottonwood trees. But the fear of wolves has redistributed the elk — the elk now prefer higher ground where they feel safe.

Meanwhile, back along the rivers and streams, the vegetation has bounced back. Until recently, because elk would eat all the young saplings, the only cottonwood trees in the entire Yellowstone park were no younger than 70 years of age. Trees now stabilize the banks of streams and provide shade. This lowers the water temperature and makes the habitat better for trout, resulting in more and bigger fish.

Before wolves were reintroduced to Yellowstone, there was only one beaver colony in the northern range. Now there are 10 beaver colonies.

The remains of a kill left behind by the wolves provide needed food for scavengers, including grizzly bears, wolverines and bald eagles, to name just a few.

The overpopulation of coyotes, on the other hand has fallen by 50% in Yellowstone because the wolves have killed or chased them away. This has increased the numbers of rodents such as hares, mice and pocket gophers. The rodents provide food for birds of prey; owls, hawks and eagles are now thriving.

Wildlife biologists and ecologists are amazed by the rapid changes they have seen, and all because of the return of the wolf.

The above information is well known and widely studied. Three sources

are:

- Decade of the Wolf: Returning the Wild to Yellowstone. by Douglas W. Smith & Gary Ferguson, The Lyons Press, 2005.
- Idaho Draft Wolf Population Management Plan, 2008-2012, Idaho Department of Fish and Game, October 2007.
- “Yellowstone’s Wolves Save its Aspens,” by Chris Conway, New York Times, August 5, 2007. Citing a new study by William J. Ripple, Professor in College of Forestry and Robert L. Beschta, Professor Emeritus, Oregon State University.

WOLVES CAN BENEFIT LOCAL ECONOMIES

Research says that having wolves back in Yellowstone National Park draws approximately 151,000 new visitors each year, thereby adding an extra \$35 million annually to Montana, Idaho and Wyoming, which is multiplied several times within the local economies. People travel long distances for a chance to see a wolf. Nearly 4% of Yellowstone’s 2.8 million annual visitors (or 112,000 people) say they would not visit the Park if wolves weren’t there.

Source: John Dufield, Department of Economics, University of Montana in *The Billings Gazette*, April 7, 2006.

HEALTHY, WILD WOLVES DO NOT KILL PEOPLE

Wolves are, by nature, afraid of people. If a healthy wolf in the wild sees a person watching it, or even senses that it is being observed, it will alter its behavior, and generally run away. Fish and Wildlife Service biologist John Slown said in Fort Collins Now in January 2008 that, “Healthy wild wolves retain a natural fear of humans and will typically avoid any contact.” There has never been a confirmed attack on a human being by a healthy wild wolf in North America.

WOLVES, LIKE OTHER SPECIES IN BALANCE, REGULATE THEIR OWN POPULATION SIZE

Natural population self-regulation is well known for species inhabiting balanced ecological systems. For wolves, if their food sources decline, they do not produce offspring. Wolves are also territorial. In protecting their own territories, wolves will kill one another, another population control mechanism.

In Minnesota, the only state of the lower 48 where wolves were never exterminated, a 2005 study by the Minnesota Department of Natural Resources states that “The deer population [wolf’s main food source] in Minnesota’s wolf range is currently at an all-time high... Since 1997, there have been no significant changes in the distribution or abundance of wolves in Minnesota.” The study result also “suggests that wolf range

expansion in Minnesota has, at least temporarily, stopped.” (From The Bozeman Daily Chronicle, “The Minnesota Wolf Experience,” by Scott McMillion).

Additional information was provided during the presentation and it is inserted into the minutes.

Adapted from Living with Wolves, by Jim and Jamie Dutcher, Published by The Mountainers Books, 2005.

In our 17 years of studying wolves, we have found four different and general perceptions of wolves that often exist together. These are the wolf of our nightmares, the wolf of science, the spirit wolf, and the social wolf.

1. Wolf of our nightmares

- The beast of ancient fears.
- The concept of the wolf that Europeans brought with them to the New World.
- This savage creature lingers today in the minds of many as a bloodthirsty killer.
- Sadly, this view holds fast despite mountains of evidence to the contrary.

2. Wolf of science

- The wolf pursued and studied by biologists.
- Depicted through data: statistics of breeding, predation, physiology, and travel.
- Acknowledges the wolf’s intelligence, often turns a blind eye to their individuality, to its devotion to its family, and to anything that hints at the capacity for emotion.

3. Spirit Wolf

- This creature, honored in the culture of many Native American tribes, has been borrowed and distorted by modern wolf advocates.
- Animal of great wisdom to be revered as a spiritual guide.
- Holds the wolf in great esteem, often at the expense of accurate scientific knowledge about the animal.

4. Social Wolf (the one we have come to know)

- In our years of living with and observing these animals, we learned to see them as individuals, each with its own distinct personality.
- Yet, they are intensely social creatures extremely devoted to their pack - their family.
- Time and again we saw the great care and affection they demonstrate for one another.
- We concluded wolves are capable of not only emotion but of real

compassion.

This is the view of the wolf we want to share --- a wolf that is neither demon nor deity nor biological robot. Rather, an intelligent and highly sensitive animal that can be both individualist and social. An animal that cares for its sick, protects its family, and desperately needs to be part of something bigger than itself --- the pack.

Due to time constraints, questions were limited.

Chairman Schroeder thanked the Dutcher's for their presentation.

He said the next order of business is to hear from the Idaho Water Resource Board regarding the Eastern Snake Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan (COMP) Progress Report.

**WELCOME
AND INTRO-
DUCTIONS:**

Chairman Schroeder welcomed **Mr. Hal Anderson, Division Administrator of IDWR**, who is serving as spokesperson for today's meeting.

Mr. Anderson introduced **Mr. David Tuthill, Director of IDWR**, and **Board members Gary Chamberlain, Leonard Beck, and Vic Armacost.**

Mr. Anderson provided the committee members with copies of the Idaho Water Resource Board's 2008 Progress Report. He said the committee would be briefed on what they have been doing and how the money that was allocated has been spent.

Mr. Jonathan Bartsch, CDR Associates, presented a Power Point program and following is a reproduction of the slides that he referred to.

OUTLINE

- Background and framework development process
- Formation and operation of Advisory Committee
- Key topics and issues addressed by committee
- Initial Board and Committee recommendations
 - Study of Minidoka Dam Enlargement
 - Voluntary Demand Reductions in the ESPA
 - ESPA Recharge
- Request to the Legislature

MANAGEMENT PLAN BACKGROUND

- Framework Plan funded by 2006 Legislature, SCR 136
- Board conducted extensive stakeholder outreach to develop an ESPA CAMP Framework (2007)
- 2007 Legislative funding and authorization included technical studies and a facilitated planning effort, HCR 28 and HB 320.
- Framework identified a goal and objectives for aquifer management
- Currently finishing year two of a three year effort with the objective presenting a completed plan to the 2009 Legislature.

FRAMEWORK 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.

FRAMEWORK 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

BACKGROUND AND FRAMEWORK DEVELOPMENT PROCESS

- Framework identified interim measures
 - Recharge
 - Conservation Reserve Enhancement Program (CREP)
 - Targeted Demand Reduction
 - Groundwater Model
- Framework recommended creation of an Advisory Committee to develop the CAMP
- Pursuant to House Bill 320 the Board created and convened the ESPA CAMP Advisory Committee
 - Broadly based representatives across ESPA charged with developing consensus-based recommendations to Board (18 month process)
 - Focus on long-term aquifer management plan
 - Guided by the Framework Goal and Objectives

FORMATION AND OPERATION OF THE ADVISORY COMMITTEE

- Committee composition established through a stakeholder nomination and Board selection process
- 16 member committee met for first time in May 2007
- 9 committee meetings and numerous subcommittee meetings held
- Meetings convened across the ESPA
- Operating protocols established
 - Consensus-based decision making process
- Committee Work Plan Developed
 - **Targets** - establish quantitative 5 and 10, 20 and 30 year targets
 - **Management Actions** - identify tools to achieve targets
 - **Funding Mechanisms** - develop funding strategies to implement actions
 - **Adaptive Management Plan** - develop plan to assess progress toward qualitative and quantitative goal and objectives

KEY TOPICS AND ISSUES ADDRESSED BY ADVISORY COMMITTEE

- **The Model** - The Eastern Snake Aquifer Hydrologic Model was discussed as a planning tool and aid to CAMP development
- **Settlement Efforts** - Reviewed and discussed previous efforts to address ESPA issues
- **Funding** - Initial funding strategy principles reviewed
- **Management Alternative Matrix**
 - Managed and incidental recharge
 - Conservation Reserve Enhancement Program
 - Additional surface water storage

- Groundwater to surface water conversions
- Buy-outs and subordination agreements
- Below Milner dam salmon flow augmentation exchanges
- Dry-year leasing
- Crop mix (incentives to plant low-water use crops)
- Weather modification
- Water conservation measures
- **Quantitative Goal Analysis**
 - Evaluation of reach gain and water level changes from a 900kaf change in water budget
 - Review of management action assumptions to accomplish change
 - Deliberation regarding quantitative goal targets, implementation and benefit timeframe, impacts and magnitude of costs
 - Evaluation against goal and objectives

INITIAL BOARD AND COMMITTEE RECOMMENDATIONS

- **Study of Minidoka Dam enlargement**
 - Scheduled for reconstruction in 2011
 - Dam raise could increase available supply between 40kaf and 50kaf annually in ESPA
 - Management actions such as ground water to surface water conversions and others require increased surface water storage
 - Immediate allocation required to complete necessary studies or State will lose opportunity
 - Estimated Cost: \$1.4 million** to support feasibility analysis
- **Voluntary Demand Reductions** (to reduce demand component of ESPA water budget)
 - Buy down select water rights
 - Pursue subordination agreements
 - Execute short or long term dry-year lease agreements (including CREP augmentation in targeted areas)
 - Estimated Cost: \$5 million** to pursue demand reductions in 2008
- **ESPA Recharge**
 - Framework objectives include increasing recharge to aquifer
 - Additional funds necessary to support activities within existing facilities (canals)
 - Measurement of recharge water
 - Construction of appropriate facilities
 - Water wheeling
 - Renting storage water
 - Estimated Cost: \$1 million** to conduct recharge activities in 2008

REQUEST TO THE LEGISLATURE

- Continued leadership and involvement during CAMP
- \$7.4 million in 2008
 - Study of Minidoka Dam Enlargement
 - Voluntary Demand Reductions
 - ESPA Recharge

That concluded Mr. Bartsch's presentation.

ADJOURN:

Chairman Schroeder thanked the Idaho Water Resource Board for making the presentation possible. He then adjourned the meeting at

3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 22, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He said there are some minutes to be approved.
- MOTION:** **Senator Andreason** said that he had reviewed the minutes of February 13 and found them to be correct and made the **motion** to accept them. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.
- MOTION:** **Senator Coiner** said that he had read the minutes of February 15, found them in order, and made the **motion** that they be approved. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.
- MOTION:** **Senator Siddoway** said that he had reviewed the minutes of February 11 and February 18 and there were no corrections. He made the **motion** to accept the minutes. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.
- WELCOME:** **Chairman Schroeder** welcomed **Mr. John Fazio, Senior Power System Analyst with the Northwest Power Council, Portland, Oregon**. He will address the committee on "**Climate Change Impacting Hydro Generation**".
- SPEAKER:** Mr. Fazio presented a Power Point program. Following is the information contained on the slides of the presentation which he referred to in his talk.

OUTLINE

- Caveats
- Who is making predictions about climate change?
- How might electricity demand change?
- How about snowpack and river flows?
- How will hydro generation change?

- Carbon footprint for the NW
- Will future resource choices be affected?

CAVEATS

1. Debate continues on climate change
2. Council is not tasked to resolve this issue
3. Council has the responsibility to assess potential impacts
4. Analysis presented today is somewhat dated and should be considered as illustrative only

GLOBAL CLIMATE MODELS

- Climate Impacts Group (CIG) -University of Washington
- At least four different models
- Downscaled for the NW

Provide forecasts for:
 Temperature increases
 Altered river flows

CIG FORECASTS FOR CHANGES TO NW TEMPERATURE AND PRECIPITATION

Cannot predict higher or lower precipitation
 Can predict higher temperatures

CIG FORECAST CHANGES

- Runoff volume and river flow
 - Average volume not likely to change
 - But the timing will change
- Temperature
 - More likely to increase rather than decrease
 - Could be as much as 3^o F higher

The next three slides were charts/graphs that showed:
 - **Temperature Effects on Demand,**
 - **Change in Natural Flows at The Dalles, and**
 - **Change in Regulated Flow at The Dalles** (forecast for 2040)

SUMMARY OF IMPACTS

Changes to:	Winter	Summer
Flows	Higher	Lower
Demand	Lower	Higher

Impacts to:		
Power Sys.	Better	Worse
Fish	Neutral	Bad
Revenue	Higher	Lower

The next four slides were charts/graphs that showed:
 - **Carbon Footprint for the Northwest.**
 - **Over 88% of the NW’s power system CO₂ emissions are from existing coal-fired plants.**
 - **70% of new resource capacity in the Council’s 5th Power Plan is conservation and renewable energy.**
 - **Reducing CO₂ emissions to 1990 levels or below as advocated by**

some policies cannot be achieved simply by changing the mix of new resources.

OBSERVATIONS

- Existing Western renewable portfolio standards and banning new coal plants will not hold CO₂ emissions to 2005 levels.
- Reducing PNW CO₂ emissions from power production to 1990 levels or below will require changes to existing coal plants.
- Other policies may increase CO₂ emissions from the power system, e.g.
 - Fish and wildlife policies, electric vehicles, biofuels production

GREEN HOUSE GAS (GHG) POLICIES

- GHG Performance Standards - maximum emissions for new contracts or power plants
- GHG Cap & Trade - reduce increases in emissions through marketable allowances
- GHG Reduction Goals - reduction in emissions by a target date
- Renewable Portfolio Standards - targeted development of renewable generation and in a few cases, conservation.

The next slide was a chart showing current GHG Controls and Policies, followed by a slide that showed a map of the states with renewable portfolio standards.

The concluding slide was **KEY RPS FEATURES**

- **Objectives:** e.g., GHG control, economic development, tax base
- **Targets:** Percent sales by given date; with interim targets
- **Applicability:** Usually IOUs, less-frequently COUs; utility size
- **Resource eligibility**
 - Types - Large hydro, MSW often excluded; credit multipliers for certain resource types; *Conservation frequently ignored*
 - Vintage - Wide variation, e.g., date of enactment <> nearly any existing plant
 - Geographic boundaries
 - Renewable Energy Credits (RECs) or delivered energy
- **Implementation**
 - Accounting and project certification
 - Mandatory or voluntary
 - Flexibility to deal with shortages, costs
 - Banking (carry-over of surplus)
 - Alternative compliance payments
 - Cost recovery mechanism
 - Enforcement mechanisms

ADJOURN:

Chairman Schroeder thanked Mr. Fazio for his presentation. He also thanked Mr. John Williams with the Bonneville Power Administration for his efforts of coordinating the program. The Chairman then adjourned the meeting at 2:25 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: February 25, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Senator Coiner

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

He then asked Senator Jorgenson to present RS 17767C1.

RS 17767C1 **Senator Jorgenson** said he would like to provide an explanation for the purpose of this RS. There is a developer in Northern Idaho who wanted to improve a dock, plus other improvements, but in his eagerness to accomplish this, he jumped the gun on permits from the Corps of Engineers, and has disregarded permits/times issued by the Department of Fish and Game. Senator Jorgenson said that this developer's actions were so blatant that when he moved a very large dock, he destroyed kokanee spawning beds. It is not known if the beds can be restored. The penalties for violations were so insignificant that they could be justified as merely a cost of doing business and proceeded with his actions. Senator Jorgenson said that he couldn't understand why penalties weren't larger. If they were, perhaps that would have deterred him from his actions. Penalties for violations for the Department of Lands are less than any others in the state. This RS is requesting the enhancement of those penalties.

A question was asked if this legislation would have an effect on the described violations. Senator Jorgenson said it would not have an effect on that particular situation, but it would send a message that there are elected officials who are responsive to situations that have occurred and are moving to make changes. With the growth and development of waterfront property, there have been instances of developers doing work without permits. Sometimes the jurisdiction would be the county, or the Corps of Engineers, or even be the Department of Environment (DEQ). This is a specific effort to put more teeth in the law as it pertains to the Department of Lands, with respect to subterranean lands. This RS has to do with navigable waters.

Senator Jorgenson also said the Department of Lands fully supports this RS.

MOTION:

Senator Langhorst made the **motion** to send RS 17767C1 to the Judiciary and Rules Committee for printing and requested that it be returned to this committee. The motion was **seconded** by Senator Andreason. The motion **passed** by unanimous voice vote.

Chairman Schroeder welcomed **Mr. Jim Unsworth, Wildlife Bureau Chief for the Department of Fish and Game**, who will speak to the committee about the status of the grizzly bears and will also provide an update on big game winter feeding.

SPEAKER:

Mr. Unsworth provided the committee with three handouts. They are: Yellowstone Grizzly Bear Update and map of the Grizzly Bear Recovery Areas; How to Hunt Safely in Grizzly Bear Country; and Emergency Winter Feeding Update.

Mr. Unsworth said that grizzly bear habitat in Idaho was quite extensive, but now it is quite small. They were listed under ESA in 1975 and there are four recovery areas, parts of which are in Idaho. There are six nationwide. In the Selkirk area, there are 40-50 bears, with about 12 in Idaho; the Cabinet-Yaak area, there are 30-40 bears, with 8-10 in Idaho; the Yellowstone area, there are about 580 bears, with 20-30 in Idaho. In the Bitterroot area, they thought there were none, but last year a hunter mistakenly shot one, so they know there was one. A DNA analysis was done and it linked that bear with the Selkirk population. Mr. Unsworth said that bear made a journey through some pretty rugged country.

Senator Langhorst inquired if through DNA sampling if Selkirk population gene markers were found in a bear in the Bitterroots, did it mean the bear migrated or was there some cross-breeding with the adjoining territories? **Mr. Unsworth** thought the bear had migrated, but said he would check it out.

Vice Chairman Pearce said he had heard reports of grizzlies around McCall and Cuddy Mountain. **Mr. Unsworth** said the Department of Fish and Game has not verified any grizzlies other than in the areas already described. He said that he started his career working on black bears in Council and sometimes people confuse the black bear, which is also brown colored, with the grizzly bear.

In the Yellowstone area, the population reached recovery goals in 1998. The state of Idaho put together a team to develop a plan and that was completed in 2002. As of April, 2007 the Yellowstone population was delisted. Almost immediately, there were lawsuits associated with that delisting. There were three lawsuits filed - one in Illinois, one in Montana, and one in Idaho. They have been consolidated to Idaho, in the 9th District, and Judge Lodge will hear that case. The briefings will start in June, with arguments set for July and August. The decision is likely to be expected in October - December. Mr. Unsworth said they have made statements in favor of delisting. The arguments against delisting are based on food and interaction.

Mr. Unsworth said they are working with Montana, Wyoming, and the Yellowstone National Park to determine allowable harvest, or allowable mortality. Wyoming, in particular, would like to get a hunting season going because they have so many bears. He stated that there could possibly be a hunting season by 2009. For Idaho, that would be a very limited, special opportunity.

The State Management Plan was completed in 2002 and was put together with the help of a citizens advisory group. The Plan's goals are (1) to maintain a viable population; (2) allow grizzly bears to exist in areas that are biologically suitable and socially acceptable; and (3) manage grizzly bears as a big game animal.

The current state management is mostly about information and education. There have been problem animals through the years and this last summer, there were quite a few issues. In the Victor area, a bear was removed and there were a number of bear conflicts in the Island Park area (16). This past year was the highest number of conflicts with bears statewide. There have been a few illegal kills through the years.

Vice Chairman Pearce inquired about Wyoming's problems. Mr. Unsworth replied that 80 percent of the bears in the Yellowstone area are around the park. There have been quite a few livestock problems, as well as conflicts with humans associated with hunters shooting elk and problems with the grizzlies coming in on the kill. He stated that it is not a "front page news story" in Wyoming about grizzly bear conflicts.

Idaho is a member of the Yellowstone Grizzly Bear Coordinating Committee. They determine what the harvest/surplus will be. Within the Department of Fish and Game, they are finalizing a response protocol, to give the people a better guideline on how to deal with bear conflicts. They are working on a harvest MOU with Montana, Yellowstone National Park and Wyoming. They are also monitoring individual bears. With regards to funding, Mr. Unsworth said they feel it is appropriate for the federal government to continue with their funding on bears and wolves. A tri-state package (with Montana and Wyoming) has been put together to secure long term funding for grizzly bears and wolves, particularly through delisting.

An inquiry had been made as to the penalty for killing bears. If they are listed, the penalty can go up to \$100,000 plus jail time. Some people shot a female bear and cub near Island Park. Three people received fines. The low end was \$500 and some time without a hunting license and the high end was \$20,000 and three months jail, plus time without a hunting license.

Another inquiry was regarding the declining population of the black bear in Yellowstone Park. Mr. Unsworth said that when the dumps were closed in the 70's, the black bear and grizzly bear population went way down in Yellowstone National Park. They are making a comeback now. The Park has made it more restrictive on feeding bears, have bear-proof dumpsters throughout the Park, and the bears are now feeding on natural forage, away from roads.

Chairman Schroeder asked Mr. Unsworth what happens to black bears that have a dry summer, followed by a heavy snowpack. **Mr. Unsworth** said bears breed in the spring and if they have a horrible summer and a heavy winter, they may not reproduce for a year or two. Bears have an adaptive ability to reproduce or not, depending upon their conditions.

That concluded Mr. Unsworth's presentation. He then said that **Brad Compton, State Big Game Manager for the Department of Fish and Game**, will give an update on the Big Game Winter Feeding program.

SPEAKER:

Mr. Compton said he would first provide a background on the Department's Emergency Winter Feeding program.

The animals they feed are primarily deer, elk, and pronghorn. It wasn't until 1989 that the program established itself as a program. Two things happened. The Commission has a policy on emergency winter feeding and it basically says that its goal is to maintain natural feeding, but they also recognize when assistance is needed, such as public safety and winter conditions. Also in 1989, the Legislature passed a winter feeding depredation bill that dedicates \$0.75 of each deer, elk, and pronghorn tag to an emergency winter feeding account. That generates about \$200,000 annually. That account can be used for two things. It can be used for expenses associated with winter feeding and can also be used for winter range rehab projects. Those projects are long-term investments. It can't be used for winter range rehab until the balance of that dedicated account exceeds \$400,000. Because of the mild winters the past few years, the account has built up and some of the surplus has been spent in areas where there were fires.

An agreement has been reached on what is "excessive mortality" and that was facilitated in part to a bill that was passed in 1994 creating a regional winter feeding advisory committee. Those committees exist in Southern Idaho where winter feeding is more routine than in Northern Idaho. One of the first roles for those committees was to define the criteria of what is an emergency. Working in concert with these committees, they are very active and provide feedback. Mr. Compton said that brings them from where they were then to where they are now. Recent snowfalls have pushed up the precipitation levels. He provided a chart that shows Idaho at being over 100 percent as of the middle of February. These kinds of conditions are the ones that create tough conditions for deer, elk, and pronghorn. Because of these conditions, they have initiated winter feedings, based on the recommendations of the regional winter feeding advisory committees. There are eight feed sites for elk, feeding approximately 1,000 head. They are also baiting some elk away from some agricultural operations. There are 36 sites for feeding deer and are feeding approximately 2,450 head. On average, this is above average. In the past, the average was 300 elk and 500 deer.

One of the other things they do this time of year is to monitor adult does and fawns (mule deer). There are 10 areas in the state where they have radio collared 300 fawns and 600 does. This is the time of year that mortality starts to show up. Normal mortality from December to mid May is 50 percent of the fawns. The loss for adult does is about two percent.

An inquiry was made about white tailed deer. Mr. Compton said there are no collars on the white tails, but staff are monitoring them. The last big winter kill was 1996-97.

That concluded Mr. Compton's report on the winter big game feeding program.

Senator Little inquired about the new GIS collars. **Mr. Compton** said wolf collaring is funded by federal dollars and is a University of Montana project. Senator Little asked how the new collars differ from the old ones. Mr. Compton said the new collars have the old technology - GPS, and they have VHF built into them. They do have a reduced range. The GPS can be programmed to collect information as often as you wish.

Senator Stennett inquired about the elk west of Ketchum. **Mr. Compton** said they have five feed sites between the Upper South Fork and the Boise and the Upper Big Wood. There are about 550 animals. More elk showed up on the prairie and farther south. Some of those units have declined in the last ten years. In the past, they have peaked out at 1,000 animals. Some of those numbers could be fire related with animals going north of Bliss.

Senator Siddoway inquired as to how many elk are in the state. **Mr. Compton** replied that there are about 115,000. The question was asked about the number of deer in the state. Mr. Compton said there are 300,000 mule deer and 200,000 white tail deer and the numbers are rough estimates. There are two state laws - one is commission policy and the other is a dedicated account. Mr. Compton said that from a biologist's perspective, in a perfect world, the money would go for winter range rehab.

Chairman Schroeder then asked Mr. Unsworth to talk about what they are going to do about the wolf season.

Mr. Unsworth said what they are thinking about, from the wolf season standpoint, would be similar to the bear and lion seasons. It would be managed by general over-the-counter tags and quotas. Some areas could have controlled hunts. There would be more liberal seasons in areas where there is conflict, whether it is livestock conflict or elk management areas. Seasons would be set between August and March and run concurrent with other deer and elk seasons. The season length would depend on how much harvest is wanted and seasons would be closed when the quota has been filled. There will be a mandatory check where the hunter brings the hide and skull in. A tooth will be pulled for aging and a tag will be put on the hide. Notification is 24 hours and the hide check is within ten days. Special arrangements may have to be made for backcountry use. Mr. Unsworth said that what they are looking at the first year or two is to harvest at a 2005 to 2007 level, so that's between 500-700 wolves. The harvest quota would be in the neighborhood of 200-300. He was asked as to how many wolves will be born this spring. The reply was that the total increase is 30-40 percent a year. About half of them will have a natural mortality of some kind, so they think the harvest will be about 20 percent of that number. Mr. Unsworth thinks the harvest will be pretty good the first year in open

country, but in some areas in the backcountry, wolves will never see a hunter. Trapping may be implemented at a later date, but at least not soon. **Vice Chairman Pearce** inquired as to when the regulations would be published. **Mr. Unsworth** said there would be a mockup in March during the big game meetings and hopefully the season would be set in May. The cost of the tag will be \$10.50 for residents and \$150 for non residents. There will be no aerial hunting, or hunting from mechanized vehicles, and no poison is to be used.

That concluded the presentations and discussion. **Chairman Schroeder** thanked Mr. Unsworth and Mr. Compton for their participation.

**ANNOUNCE-
MENTS:**

The **Chairman** announced that on Wednesday there are some bills on the agenda and on Friday, Mr. Penney, the Nez Perce Tribe Chairman, will present a report on the Tribal Fisheries Program.

ADJOURN:

The **Chairman** adjourned the meeting at 2:40 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 27, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. The first order of business was to approve some minutes.
- MOTION:** **Senator Pearce** said that he had read the minutes of February 20 and February 22 and found them to be in order. He made the **motion** for their approval, as written. The motion was **seconded** by **Senator Little**. The motion **passed** by unanimous voice vote.
- Chairman Schroeder** said that H 428 would be heard next and asked **Chairman Raybould** of the **House Environment, Energy, and Technology Committee** to present the bill.
- H 428** **Chairman Raybould** said this bill is a product of the Interim Committee that met last summer that he and Chairman Schroeder co-chaired. This legislation has two purposes. The first part is to repeal Section 42-620, Idaho Code. Chairman Raybould said that as a way of explanation, in the 2005 legislative session, legislation was passed that created 42-620 pertaining to the Eastern Snake Plain Aquifer (ESPA). It was legislation that required the Department of Water Resources to create water districts pertaining to all the water users of water that was hydraulically connected to the ESPA. In promulgating that legislation, it was assumed that they were talking about other available ground water and surface water irrigation. As they got involved with studies of the aquifer, they found that because of the SRVA court's ruling on conjunctive management, all water resources connected to the ESPA would be required to have water districts made under this legislation and under 42-620 and assessments made through them to collect money for the aquifer management. That would have not only included irrigation, but included domestic, commercial, municipal, and industrial water uses. That would have required the Department to set up a rather extensive billing process and collection process. There was nothing in the legislation that would have

allowed the Department to set up for penalties for non payment and it would have cost the Department probably millions of dollars to set this up. This first part of this legislation repeals 42-620 and takes that requirement of the Department off the books.

The second part of the legislation replaces the intent of that first bill and that is to require the Department to engage in water management plans for all of the aquifers in the State of Idaho. The experience that they have had with the ESPA, it is very much justified that they move forward with the planning of all the other aquifers in the state. The problems that have arisen over the ESPA are problems that are apparent that will come up in these other aquifers and as more use is being made of those aquifers. Chairman Raybould said they need to be ahead of the game. What the rest of the legislation does is provide in a new section, Section 42-1779, Idaho Code, and that provides for a statewide comprehensive aquifer planning and management effort over a ten year period. This will allow the Department to use the personnel that they now have and are in the process of completing the ESPA management plan. They have gained experience and are proceeding with all the aquifers in the state to establish this planning so that those aquifers will not get themselves in the same critical nature that ESPA found itself.

The fiscal note information on the Statement of Purpose indicates that the Department of Water Resources and the Governor have recommended that \$20 million be set aside for the aquifer planning and management effort. This would be over a ten year period. It has been recommended that JFAC put \$18.4 million from the General Fund to the Water Resource Board Revolving Development Fund for technical studies, facilitation services, hydrologic monitoring, measurement and comprehensive plan development. It was recommended that \$1.6 million be transferred from the General Fund to the Water Administration Fund for personnel costs, operating expenses, and capital purchases associated with the planning and management effort.

Chairman Raybould said that this bill is being supported by all of the water communities in the state - Idaho Water Users Association, Idaho Farm Bureau, Idaho Ground Water Appropriators, and Idaho Water Resource Board Facilities. He emphasized that this bill has nothing to do with future adjudications.

Chairman Schroeder thanked Chairman Raybould for his articulate and knowledgeable presentation of H 428.

TESTIMONY: **Mr. Wally Butler, Range and Livestock Specialist for the Idaho Farm Bureau** testified. He stated that the Farm Bureau is in favor of this bill, as it is based on sound science.

TESTIMONY: Testifying next was **Mr. Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators and Idaho Irrigation Pumpers Association**. He said they are supportive of H 428 and what it does is that when you look at all the different aquifers across the state, they all have different problems and need different solutions and the only way to find those solutions is to put together management plans for each of the different aquifers. They believe this is good for the entire state and are

supportive of the bill.

TESTIMONY: **Mr. Norm Semanko, Executive Director, Idaho Water Users Association**, testified. He stated that Representative Raybould said it all, but he wanted to impress upon everyone the level of support that this bill has from his association. The reason for the support, as he believes, is that it does three different things. (1) Management of the aquifer; (2) Allocation of the water; and (3) Administration. He is in support of H 428.

MOTION: **Senator Cameron** made the **motion** to send H 428 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Pearce**.

During the discussion, **Senator Cameron** said that coming up with this kind of money is no easy task. The economic problems that could be occurred, should the appropriate studies not be done, then every aquifer could be in trouble and could potentially cost the state millions and millions more dollars down the road. He said that he would like to commend the Natural Resource Committee for bringing it to the Governor's attention and commend the Governor for putting this as one of his top priority initiatives. Senator Cameron said it is not cheap, but expensive, to do the modeling that is necessary. In his opinion, it will save the state a great deal of pain and money if they can accomplish the modeling in a timely manner.

Senator Siddoway said that it takes millions of dollars to put these models together for the aquifers. On the Eastern Plain and in Southern Idaho, they have been fighting over water for 20 plus years. He feels that if there is the foresight to allocate the money to carry through these deals, then they can go into the different basins and make the necessary projections of what needs to be done. Senator Siddoway stated that through this it will protect not only the states' rights, but personal rights when it comes to water. He said that the money needs to be found some way in order to do the things that need to be done.

Senator Coiner stated that this is an opportunity to look at the aquifers and be pro active, to have the knowledge that is needed so that the water can be administered and to know what the water rights are. He feels that to pass this bill is forward thinking and good use of state funds.

The motion **passed** by unanimous voice vote. **Chairman Schroeder** said that he would like to acknowledge the hard work of the Interim Committee and, again, thanked Chairman Raybould. He also acknowledged the assistance from the Governor's Office on this issue and several organizations that worked with the Interim Committee to bring this to reality.

S 1424 **Mr. Semanko** presented S 1424. He said that Senator Coiner and Representative Stevenson worked on this bill with him.

It would allow people who live in irrigation districts to have better access to irrigation water that is appurtenant to their property, but which is not currently accessible. This would be accomplished by improving the ability

of irrigation districts to form local improvement districts (LID) to provide for such water supplies through connection or reconnection to the irrigation system of the irrigation district. Irrigation districts would be allowed to authorize a preliminary study to determine the feasibility and costs of a local improvement district.

Mr. Semanko said there are three things that can be done. (1) Do nothing; (2) Petition to exclude from the irrigation district; or (3) Try to keep that water on the ground. To do that, there is a mechanism in the law and it requires an irrigation LID, not a municipal LID. One of the impediments to do this is that it is expensive to figure out if this should be done and once it moves forward, there is a commitment. He stated that the bill seeks to improve the existing ability of irrigation districts to work with the landowners to do an initial assessment. The bill also states that if 60 percent of the landowners protest the action, then the process is suspended for six months, but can be revisited later.

Mr. Semanko said all they are trying to do is to improve the ability to get irrigation water delivered to lands that are within irrigation districts that are not presently receiving the water. **Ms. Laura Burri, Attorney for the Nampa-Meridian Irrigation District**, was present to answer questions.

Senator Andreason inquired if the money that is paid annually to the irrigation district, even though the landowner does not receive irrigation water, would go to help pay for the study. **Mr. Semanko** said that money goes into the general fund and it would be used as the seed money to do the study.

Senator Langhorst inquired if the Association of Cities and/or Counties were consulted on this. **Mr. Semanko** said no. **Senator Langhorst** then inquired if 59 percent protested, would it go forward. **Ms. Burri** said the threshold is 60 percent, so anything less than that would go forward.

MOTION:

Senator Coiner made the motion to send S 1424 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Pearce**. The motion **passed** by a majority voice vote (8-1). Voting nay was Senator Langhorst and he asked to be recorded as such.

SCR 128

Senator Kelly presented this concurrent resolution. She provided copies of three Executive Orders from the Governor. They are as follows: Order No. 2007-05 - Establishing a state policy regarding the role of state government in reducing greenhouse gases; Order No. 2007-15 - Establishing the Office of Energy Resources within the Office of the Governor repealing and replacing executive order 2207-11; Order No. 2007-21 - establishing a policy to reduce fossil fuel use and greenhouse gas emissions from state vehicles. Senator Kelly also provided a map showing the Renewables Portfolio Standards, and Select State Actions to Address Climate Change, compiled by the National Caucus of Environmental Legislators (NCEL).

This Concurrent Resolution takes a step towards implementing two provisions of the Idaho Energy Plan: one calling on the state to prepare for the likelihood of future greenhouse gas regulation and another recommending policies which place the highest priority on the

development of energy conservation and instate renewable resources. The Resolution requests that the Idaho Department of Environmental Quality and the Office of Energy Resources prepare a report identifying opportunities and steps the Legislature could take to meet these Energy Plan goals.

Regarding the fiscal impact, the tasks identified are within the scope of the existing duties and responsibilities of the Idaho Department of Environmental Quality and the Office of Energy Resources and will be funded by the existing budgets of those entities.

TESTIMONY: **Representative Block** testified in favor of this concurrent resolution and urged the committee's support.

TESTIMONY: Testifying next was **Director Toni Hardesty, Idaho Department of Environmental Quality (DEQ)**.

Ms. Hardesty provided the committee with a printout of Power Point slides that she referred her remarks to. They are as follows:

CLIMATE CHANGE STATE ACTIONS

- Executive Order on Greenhouse Gases by Governor Otter on May 2007
 - Develop statewide greenhouse gas emission inventory
 - Develop baseline inventories and emission reduction plans for each state agency
 - Coordinate among state agencies
 - Develop further recommendations

IDAHO'S GROSS GHG EMISSIONS

- 14% - Electricity consumption
- 16% - Res/Com/Ind Fuel Use
- 28% - Transportation
- 1% - Fossil Fuel Industry
- 3% - Industrial Processes
- 4% - Waste
- 24% - Agriculture
- 10% - Forestry

GHG EMISSION SOURCES

Cabinet-level State Agencies

- 26% - Electricity
- 25% - Heating
- 13% - Equipment
- 36% - Fleet

DEPARTMENT OF ENVIRONMENTAL QUALITY

GHG EMISSION SOURCES

- 40% - Electricity
- 7% - Heating

- 1% - Equipment
- 52% - Fleet

TOTAL GHG EMISSIONS BY STATE AGENCY

A graph showing emissions by the metric tons CO₂e of each agency, with Transportation the highest at 27,000 - followed by Corrections at 17,000. Health and Welfare was at 14,000; Fish and Game at 8,000; Parks and Recreation just over 5,000. Under 5,000 were Administration, Agriculture, Labor, DEQ; Finance, Idaho State Police, Insurance, Juvenile Corrections, Lands, and Water Resources.

ADDITIONAL STATE ACTIONS

Joined the Climate Registry
Developing Telecommuting Policy
Established 25 x 25 renewable fuel effort
Joined the National Action Plan for Energy Efficiency
Joined as observer in the Western States Climate Initiative
Developing Carbon Sequestration Plan
Fuel efficiency purchase standards for state fleet (E.O. 2007-221)

BENEFITS

Reduce greenhouse gases
Reduce energy consumption
Long-term cost savings
Reduce other air pollutants and improve localized air quality

ADJOURN:

Due to time constraints, further discussion on SCR 128 will resume on Monday, March 3.

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 29, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Senator Cameron
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:40 p.m.
- WELCOME:** The **Chairman** said that today's meeting will be a presentation by representatives from the Nez Perce Tribe explaining their fisheries program. He welcomed **Samuel Penney, Chairman of the Nez Perce Tribe; Dave Johnson, Manager, Department of Fisheries Resources; Joseph Oatman, Assistant Manager, Department of Fisheries Resources; and David Cummings, Staff Attorney.**
- SPEAKER:** **Chairman Penney** said that he had been on the Nez Perce Council since 1989 and is currently serving his 11th term as Chairman of the Tribe.
- Regarding the Fisheries Resources Management, the main office is in Lapwai, with other offices in Orofino, McCall and Joseph, Oregon.
- Chairman Penney then referred his remarks to the Constitution and the treaty rights. Excerpts from his remarks are as follows: There were treaties in 1855, 1863, 1868 and an agreement in 1893. However, he felt the most important one was the treaty of 1855, Article 3, in which it stated that the tribes had the exclusive right of taking fish in all the streams running through or bordering said reservation..... Article 11 states that the legal term of a treaty is a contract. It goes on to say that the treaty shall be obligatory upon the contracting parties.... The treaty of 1863, Article 8, clarifies what it means to the Nez Perce Tribe.
- Chairman Penney then asked Dave Johnson to give a Power Point presentation of the fisheries program.
- SPEAKER:** **Mr. Johnson** provided copies of the slides that he referred his remarks to. They are as follows:

FISHING - PUTTING IT IN PERSPECTIVE

Historic conditions

- 4,000 eggs x 90% mortality = 400 fish
- 400 fish x 94% mortality = **24 fish**

Bad habitat & bad returns

- 4,000 eggs x 95% mortality = 200 fish
- 200 fish x 99.8% mortality = **0.4 fish**
- Fishing (harvest) concerns the fish we actually eat after killing.
- The vast majority of fish we kill are part of the Region's "collateral damage" in maintaining our way of life.

Importance of Fish to the Tribe

"The economic cycle can generally be summarized as ten months of salmon fishing and two months of berry picking with hunting most of the year". Indian Claims Commission

As Go the Salmon Runs, So Go the Salmon People

Higher rates of unemployment and poverty.
Higher rates of diabetes, inflammatory and cardiovascular disease.
High rate of alcoholism and suicides.
Fish and fishing are a necessary part of restoring balance.

Map of Nez Perce Tribe Treaty Area

What did the United States promise in exchange for the land?

"The exclusive right of taking fish in all the streams where running through and bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the territory..." Article 3. Treaty with the Nez Perce, 1855

"Great countries, like great men, keep their word." Chief Justice John Marshall. Cherokee Nation v. Georgia. 1931.

Department of Fisheries Resources Management

Ecosystem - "gravel to gravel" management approach
Ridge-top to ridge-top watershed protection spawning and rearing habitats and protection of water quality

Protection on Paper

- Coordinate Restoration Activities
- Review and Comment on Land Management Actions

Stream Rehabilitation

- Providing cover and pools

Riparian Enhancement

- Temperature, sediment abatement, overhanging cover

Road Obliteration and Culvert Removal

- Sediment abatement, passage

Supplementation approach "putting fish in the rivers" with hatchery tool.

The Department released over 5.5 million fish in 2007; all in streams and

rivers where the fish will return to spawn. The focus is on restoring the runs and having a harvest.

Graph of estimated contributions of Fall Chinook Adult returns to Lower Granite Dam, 1975-2006

(The graph showed the highest return rate of 15,000 in 2005)

Protection and providing flows, water quality and passage for upstream and downstream migrants.

- Instream and mainstem flows through the Snake River Basin Adjudication
- Dworshak flow management
- Participation in mainstem river management processes

Participate in US v Oregon for in-river harvest management

Fisheries staff have been the leaders in proposing innovative hatchery actions and harvest ideas that help secure agreements made in this treaty rights lawsuit. The Department has also been active in using this legal forum to bring and settle disputes with state and federal agencies on fisheries management issues.

Afford harvest opportunities in areas consistent with treaties and enforce the tribal regulations governing harvest.

Manage for an abundance of spawners to protect the resource for future generations.

Monitor our activities and the runs to determine effects of the program

- Smolt and adult trapping
- Spawning ground surveys
- Fish marking and tagging

NPT Fisheries Program - 2007

- 150 employees, 118 full time, 32 seasonal
- 46 contracts for total = \$14M annually
- Offices in: Lapwai, Sweetwater, Orofino, Enterprise and McCall
- Perhaps the largest Tribal Fisheries Agency in the U.S.

That concluded Mr. Johnson's presentation.

SPEAKER:

Speaking next was **Joseph Oatman**. He said part of his responsibility in the program is to serve as Director of Harvesting. He provided a chart that showed the hatchery fish harvest from 1995-2002 and a graph that showed the wild fish harvest from 1962-2006. Inserted into the minutes is Mr. Oatman's comments - "**Putting the Issue in Context**".

- The tribal proposed fishery will take only ½ the number of wild fish taken by the non-tribal fishery — gill nets or not.
- The hatcheries that produce the fish are not paid for with fishing/hunting license revenues. The hatcheries are funded as mitigation

for the damage to the salmon and steelhead runs caused by the construction of the dams on the Snake and Clearwater Rivers.

- Because the hatcheries are “mitigation” for the damage done by the dams, the Tribe, with its dependence on salmon and steelhead and its guarantee by the United States to always ensure that the resource would be there, arguably has been impacted far more than the community at large by the damage caused by the hydroelectric system’s development. Yet the Tribe understands the importance of sharing this resource.

The Tribe is the single most active entity in steelhead restoration efforts in the Snake River basin. We restore more steelhead habitat through our projects than any state, private, or federal party. Through the Snake River Basin Adjudication, we’ve mutually provided streamflows for fish in a way never before done in Idaho, and the settlement dispenses new funds for fish restoration by the Tribe and the state.

- The Tribe has successfully advocated for steelhead supplementation programs to allow fish to spawn in the wild in the Snake Basin and thus assist in rebuilding the wild/natural runs. We believe there are better ways to use hatchery technology, to return fish to the wild and give the runs a fighting chance.
- The Tribe has focused its efforts to improve river operations, both on the mainstem Columbia and in the Clearwater and Snake Rivers. At the Tribe’s request, Dworshak reservoir has been managed to provide cool water releases into September that help eliminate the hot, thermal barrier at the mouth of the Snake River, allowing returning steelhead to continue their journey upstream.
- In addition, the Nez Perce and other Columbia River Treaty Tribes have voluntarily curtailed our incidental harvest of steelhead in our mainstem fall Chinook fishery for years. Our fisheries impacts on steelhead are managed to a greater degree than are the impacts of the dams, habitat, hatcheries *or the recreational fisheries*.
- If the issue is about whether or not the Tribe should get ½ of the harvestable surplus, that allocation is the law; that issue is settled. We cannot and will not refight that every year in a public forum. We are counting on leaders in our communities to remember and understand the importance of our treaty fishing rights.

Chairman Penney spoke to the committee again and provided a handout that expressed his views which was published January 27, 2008 in The Lewiston Tribune Online, and are inserted into the minutes.

Netting controversy Wild steelhead runs are in no danger

The Nez Perce Tribe's treaty steelhead fishery has stirred much discussion. I want to put our fishery in context and address some misconceptions we have heard from Idaho Salmon & Steelhead Unlimited (ISSU) and others.

Let me first offer some facts on the steelhead fishery within the Snake River Basin. The Nez Perce Tribe, which has fished this area since time immemorial, reserved the right to take fish at all its usual and accustomed places in its 1855 Treaty with the United States. Courts have held that the tribe is entitled to a "fair share" of these fish, defined as a 50-50 allocation between treaty and non-Indian fishermen. However, in practice, recent harvest by non-Indian fishermen has averaged 72,000 steelhead annually while the tribe's harvest has been only 1,500 fish.

An unnoticed impact of this sports fishery is its catch-and-release mortality. Current information indicates that catch-and-release handling kills an estimated 3.4 percent of the wild run, or 1,000 fish each year. This does not include wild fish illegally caught and kept. In comparison, the tribe's harvest has been less than 100 wild fish.

Gill nets will not destroy the wild runs.

The intent of our fishery is not to target wild fish, but the abundant hatchery runs. Our proposed fishery, using gill nets, would take only half the number of wild Snake Basin steelhead killed by recreational fishermen in Idaho. Although gill nets catch wild and hatchery fish, the take can be managed. Our harvest monitors and enforcement officers will keep accurate and timely information on tribal catch and the tribe will take action to modify or close our fishery when wild fish impacts are reached.

Contrast our real-time management with what occurs in the nontribal fishery. Nobody knows the full extent of the wild steelhead harvest in the sport fisheries until after the season is over. As a result, the nontribal steelhead fishery has rarely, if ever, been closed because the wild take limit has been reached or exceeded.

Discussions with ISSU.

Our former fisheries manager advised ISSU several years ago that any future decision on commercial fishing would be made by the tribal government, and that - at that particular time' - the tribe was not pursuing

gill nets in the Clearwater and Snake rivers. It is unfortunate that ISSU misconstrues these discussions to be a “promise.”

Hatchery steelhead are not paid for by fishing license revenues.

The hatcheries that produce salmon and steelhead are funded by Bonneville Power Administration or Idaho Power Company as mitigation for damage to the salmon and steelhead runs caused by the construction of the hydroelectric dams on the Snake and Clearwater rivers. The tribe, with its reliance on salmon and steelhead, and its treaty-reserved fishing rights, has been impacted far more than recreational fishermen. As shown however, sport anglers have benefitted by the hatchery mitigation program far more than the tribe.

The tribe's fisheries are not “double dipping.”

Harvest impacts on wild salmon and steelhead are managed at different rates throughout their travels. Using the nontribal fishermen from the state of Washington as an example, they have take limits for the ocean, for the Columbia River up to Lower Granite Dam and from Lower Granite Dam upstream. Similar to (although not as extensive as) the Washington fishermen, the tribe has harvest limits for the Columbia River and the Snake River.

The tribe is providing an opportunity to tribal fishermen and the public.

Steelhead have always been important to the tribe for ceremonial, subsistence and commercial purposes. Idaho, Oregon and Washington have recognized that by allowing nontribal members to purchase steelhead from tribal members during an open tribal commercial sales season.

In closing, the tribe appreciates that salmon and steelhead are enjoyed by so many in the Northwest. In fact, no single entity in the Snake Basin is as active in restoring these runs as the Nez Perce Tribe. We understand the importance of fishing to our rural economy - from tackle shops and guides to hotels and cafes, and believe this economy can be sustained, enhanced and shared.

Untold benefits have accrued to the Pacific Northwest by our treaty. It opened the way for our neighbors and provided access to nature's

bounties. In exchange, our leaders demanded, and the United States secured to us, the right to harvest the salmon, steelhead and other fish that have sustained us since time immemorial. Today we invite all of our neighbors to acknowledge and honor that promise, and join with us in appreciating and protecting these runs.

ADJOURN:

Chairman Schroeder thanked the gentlemen from the Nez Perce Tribe for their presentation and information. He then adjourned the meeting at 2:55 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 3, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- He welcomed **Chairman Stevenson, from the House Resources and Conservation Committee**, who will present HCR 37.
- HCR 37** **Chairman Stevenson** said this concurrent resolution would reject a pending rule of the Department of Parks and Recreation pertaining to the Idaho Safe Boating Rules. If adopted, it would prevent the agency rule from going into effect.
- There was no testimony in opposition to this concurrent resolution.
- MOTION:** **Senator Stennett** made the **motion** to send HCR 37 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Andreason**. The motion **passed** unanimously by voice vote. **Senator Stennett** will be the **sponsor** of this bill.
- Chairman Schroeder** then called on Senator Kelly to continue her presentation of SCR 128. (She had previously presented it on Wednesday, February 27, and due to time constraints, it was postponed until today.)
- SCR 128** **Senator Kelly** reviewed what this concurrent resolution will do. It calls on the state to prepare for the likelihood of future greenhouse gas regulation and another recommending policies which place the highest priority on the development of energy conservation and instate renewable resources. It also requests that the Idaho Department of Environmental Quality and the Office of Energy Resources prepare a report identifying opportunities and steps the legislature could take to meet these Energy Plan goals.
- TESTIMONY:** Testifying was **Mr. Dar Olberding**, representing **Climate Solutions**. A copy of his testimony is inserted into the minutes.

As you know, climate change is still a hotly debated issue. As state and federal resources are appropriated to address this issue, Idaho should position itself to forward its agricultural resources for the benefit of the state as well as our environment.

As the bill language notes, Idaho currently imports from other states and countries about 80% of its total energy use in the form of fossil fuels. That is already a big drain on Idaho's economy - we're spending nearly \$2.5 billion a year for fossil fuels and most of that money leaves Idaho. We need to concentrate on reducing our energy imports, and the likelihood of national carbon legislation just adds urgency to that.

On the other hand, cutting energy imports can be a real economic opportunity for Idaho, especially for our rural communities. As we develop wind power, low-head hydro, biomass, biofuels, solar and geothermal energy we'll reduce carbon emissions but more importantly we'll bring jobs and new tax revenues to rural communities, and new income to our agricultural sector. The possibilities of Idaho investigating new water storage facilities may become critical to the vitality of this state.

For the sake of our economy, it is important that the Office of Energy Resources, the Department of Environmental Quality, the Governor's Office and the Legislature work in close coordination to reduce our reliance on imported fossil fuels and increase our use of Idaho's renewable resources. This Concurrent Resolution represents a small but positive step in that direction.

TESTIMONY:

Testifying next was **Ms. Lee Flinn, Executive Director of Conservation Voters for Idaho.**

Ms. Flinn said she is speaking in support of SCR 128. She said that some of you may remember that last year Conservation Voters were supportive of the enactment adoption of the state energy plan. They feel that was a good first step.

They are also supportive of the implementation of that plan and see SCR 128 as a good step forward. It's important to bring together state agencies to find solutions on the possibility of greenhouse gas regulation in the future. They feel it is also important to assess what is currently being done in the area of energy conservation and to explore possibilities for in-state development of renewable resources.

The 2007 Boise State University Energy Policy Survey showed that Idaho residents want more of an emphasis on energy conservation and development of renewable resources. One of the questions in the survey was what kind of energy they would like to see the state pursue. Fifty percent of the people who responded were in favor of developing

renewable resources; 26 percent were in favor of energy conservation and efficiency programs; 20 percent were in agreement to increase capacity of traditional or existing sources of electricity. Ms. Flinn said it is important to note that the breakdown across regions, those numbers held high across all regions. That included the regions of the Panhandle, N. Central, Southwest, S. Central, Southeast and E. Central Idaho.

Ms. Flinn closed her testimony by saying SCR 128 is a common sense step forward and hoped the committee will support it.

TESTIMONY: The testimony of **Ms. Sara Cohn**, representing the **Idaho Conservation League** is inserted into the minutes.

Chairman Schroeder and members of the committee,

Thank you for the opportunity to participate in this process. My name is Sara Cohn and I represent the Idaho Conservation League. The Idaho Conservation League is supported by over 9500 members who care deeply about clean air, clean water, and Idaho's unique quality of life.

We urge you to support SCR 128. This resolution is an essential step towards addressing greenhouses gas emissions in Idaho.

The information compiled by the Department of Environmental Quality and the Office of Energy Resources will be critical in allowing for informed state decisions on future energy solutions. This information will also be helpful in identifying additional economic opportunities associated with renewable energy, such as wind and geothermal resources.

Additionally, we believe this bill is consistent with the vision of the Idaho Energy Plan, adopted in 2007, and provides Idahoans with the opportunity to prepare for anticipated future greenhouse gas regulations.

TESTIMONY: **Ms. Holli High**, representing **Exergy Development Group**, was next to testify. A copy of her testimony is inserted into the minutes.

Chairman Schroeder and Members of the Committee,

I am here on behalf of Exergy Development Group of Idaho. You know our lobbyist, Roy Eiguren, but I would like to provide some additional comments in support of Senate Concurrent Resolution 128.

Due to a rich mix of natural resources, Idaho is in a unique position to become a leader in development of renewable energy including wind, solar, biomass and geothermal power. The 2007 Idaho Energy Plan supports renewable resource development, and Senate Concurrent Resolution 128 (5CR128) lays down a clear path to achieve the goals set forth in that plan. This resolution will identify leadership opportunities for Idaho in the areas of greenhouse gas reduction and the utilization of

renewable energy sources.

Currently Idaho depends on other states to provide slightly over 50% of its electrical energy needs. The development timeline of a clean burning coal or nuclear plant is at least a dozen years, and natural gas was over \$9 a decatherm yesterday at the Henry Hub, making it a \$90 to \$150 per MW producer. Idaho's current renewable resource, hydroelectric generation, is for all intents and purposes, maxed out. In the meantime, Idaho's electrical load increases by approximately 200 MW per year. While we continue to make plans concerning Idaho's base electric load, a reasonable portion of this needed power can be supplied by new construction of renewable sources.

The study also seeks to reveal a wealth of other benefits to Idaho, including the invigoration of rural economies through job creation, tax revenue, and increased energy independence. In addition, much like the export of agricultural products, Idaho is ideally positioned geographically to be the export leader of renewable energy to neighboring states. Increased energy production will also enable Idaho to attract businesses with larger energy demands than the state has been able to accommodate in the past. Already, due to Exergy's actions and presence in Idaho, a wind turbine assembly plant will be locating to Pocatello with the announcement due in the next few days. The report proposed by SCR128 will surely motivate Idaho policymakers to take more aggressive steps to stimulate Idaho's energy future.

Like it or not, the shift to renewables is very real. We all understand that the climate is changing. It always has and always will. The way in which humans impact this change has yet to be agreed upon. But there is a perceptible shift going on and it's not confined to some willing countries and the Kyoto Treaty. It is being embraced by major business concerns and states across the U.S. Perhaps the passage of this resolution by the committee could be best summed up by a quote from Aban Eban, former Israeli UN ambassador, when he said, "A consensus means that everyone agrees to say collectively what no one believes individually."

The basic truth is that it makes little sense for Idaho to stick its head in the sand when our natural resource base and skilled population of the state is poised to take advantage and prosper from this movement.

Why forge a path without a clear picture of the destination? The passage of Senate Concurrent Resolution 128 will allow the Department of Environmental Quality with the Office of Energy Resources demonstrate both why renewable energy is good for Idaho and also draw the roads between State agencies, private businesses and utilities that will get us to beneficial energy policies. Renewable energy is not only good for the environment; it's also good for Idaho.

There was no further testimony from the audience. **Chairman Schroeder** then asked Senator Kelly to provide closing testimony.

Senator Kelly said this bill is about two things - understanding the economy of renewable energy and the implementation of energy conservation and efficiency technologies.

MOTION: **Senator Langhorst** made the **motion** to send SCR 128 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Andreason**. The Chairman was in doubt as to the voice vote and requested that a roll call vote be taken. Voting aye were Senators Langhorst, Stennett, Coiner, Andreason, Little, and Schroeder. Voting nay were Senators Siddoway, Cameron, and Pearce. The **motion passed** 6-3. **Senator Kelly** will be the sponsor of the bill.

Chairman Schroeder said the next order of business was to approve some minutes.

MOTION: **Vice Chairman Pearce** said that he had reviewed the minutes of February 25, found them in order, and made the **motion** for their approval. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

WELCOME: **Chairman Schroeder** welcomed **Mr. Cal Groen, Director of the Idaho Department of Fish and Game**.

Director Groen said that today a presentation would be given on Sage Grouse Conservation; however, he first had an announcement to make to the committee. He said that on Thursday, the Commission will be looking at the wolf management plan and the mule deer management plan.

Mr. Groen said that **Jack Connelly, biologist for IDFG**, will be giving the Power Point presentation about the sage grouse and **Jeff Gould, biologist for IDFG**, will talk about the Murphy Complex Fire.

SPEAKER: **Mr. Connelly** said he hopes his presentation on sage grouse will answer most of the questions that the committee might have for him. Accompanying him is **Dr. Steve Knick, a landscape ecologist with the U.S.G.S**. The two of them work closely together on sage brush and sage grouse issues.

Mr. Connelly said that he would first like to talk about the **biology** of the sage grouse. (The word that is bolded relates to the slide that he is talking about.) They are a very different kind of critter. When people think about game birds, they usually think about quail or pheasants, a bird with a high reproductive rate. Pheasants can live in various types of habitat, but sage grouse have very particular **habitat needs**. Sage grouse are long lived. Mr. Connelly said that of the birds they are marking now, going into the spring breeding season, they expect 55-80 percent of them to be

alive this time next year. About 20 percent of the hens do not nest, but the nesting success, range wide average, is about 50 percent.

Sage grouse are often called “**a landscape species**”. With the populations that he works with in Eastern Idaho, those birds will move, on a year round basis, over an area roughly the size of the state of Ohio. You can imagine how this complicates matters in terms of interacting with other agencies, conserving habitat, and understanding population dynamics.

Sage grouse absolutely need sage brush and without sage brush, there will be no sage grouse. That is a biological fact. Mr. Connelly said that **the habitat needs** during **winter** for the sage grouse is access to sage brush under all snow conditions. The only thing they eat during wintertime are the leaves and buds of sage brush plants and they gain weight on that diet, just about now, as they are going into the breeding season. They don't need dense cover to escape predators, they simply fly away, unless an eagle gets above them.

The **breeding habitat** is more complex. They still have to have the sage brush overstory, but also need healthy grass/forb understory. There is a disconnect and this is how it works. When people are out in the **summer** or hunting in the fall, they are liable to find birds in the middle of alfalfa fields, high mountain valleys, potato fields, and lots of different places. In July, August, and September the sage grouse are looking for moist areas with forbs and insects. When people see them in this situation, they can't understand why the sage grouse need sage brush. That is the disconnect. The chicks are dependent upon insects the first three weeks of their life, just like any other game bird.

Mr. Connelly said that he would move from the biology into the biological process and explain what all the fuss is about and how it has to do with **population change**. Information taken from range wide (not just Idaho) data shows what the sage grouse population has done from 1965 to 2003; it dropped almost in half. From 1985 to 2003, there is little change, with most of the decline occurring in the 60's and 70's. The question is - what is happening now and what are the **current population changes?** Mr. Connelly said he had some preliminary data as to what has happened since 2003. From 2006 to 2007, all the populations dropped by a little over 20 percent. He said that it is not a red flag, but is well within the range of sage grouse population fluctuation. But what is worrisome to them is the production data - the number of chicks per hen. Normally, it is around two or better. It is well under that number (0.67) and it is likely that drought conditions had something to do with it.

If a **rangewide survey** was taken on **sage grouse habitat**, you would find roads, cheat grass, oil and gas wells, pipelines, and fire. All of these things will have some effect on the critters that occupy these habitats. Mr. Connelly said they have been asked what is the effect, the magnitude, and can anything be done about it. He said that is what they are currently working on.

A question was asked about the effect of windmills. Mr. Connelly said that the footprint from an individual wind power plant isn't very large and probably has minimal impact on the sage grouse. What happens when you have an entire ridge line, 15-20 miles totally dominated by them, plus power lines and roads, that footprint expands and that's when problems start.

Regarding **other issues**, they are **predators, livestock, disease and hunting**. In some areas, sage grouse are being affected by predator populations, especially where fox have moved into. It can be resolved by local managers. Mr. Connelly said they do not have any experimental data to link grazing systems to sage grouse populations. Most of the data collected, the areas have been grazed by cattle or sheep, sometimes both. If there is a problem with livestock, it tends to be local in nature and can be dealt with through local management actions. They don't view either of these as being threats to the sage grouse population.

A question was asked about raptors as to which are the most common predators. The reply was the golden eagle, especially in the winter time. Another question was regarding ravens, crows and magpies destroying the eggs of sage grouse. Mr. Connelly said nest loss has not been published, so he doesn't know how that would be rated. The fox is more aggressive as a predator compared to the coyote.

There are 11 states that have sage grouse - 10 of them have hunting seasons. In years past, wildlife managers have typically viewed all game birds as being "one size fits all approach" as far as harvest management is concerned. Typically, they pushed for long season, liberal bag limits. Idaho has been in the fore front of trying to understand the impact of harvest on sage grouse populations and largely through experimental work done here, that approach is not appropriate for sage grouse. What they have seen in the last 7-10 years, virtually all western states have moved to a very conservative sage grouse season - sometimes only one or two days. Some states have a tag or lottery system. In Utah, all the sage grouse tags are sold out in two days. The sage grouse is a very desirable bird, from a hunting standpoint, but the agencies have moved to a more restrictive harvest on the species to reflect the species biology. Mr. Connelly said that the data they have right now, given the current sage grouse populations and the collective approach to harvest, is quite appropriate.

Disease among the birds is getting to be more controversial, especially West Nile virus. West Nile virus raced across the country from 1999 to 2004. Mr. Connelly said that he took pictures of the first known sage grouse that died from that disease. He stated that sage grouse don't seem to be able to recover, and since it was first documented, there have been die-offs in South Dakota, Montana, Wyoming, Idaho, Oregon and California. At this point, they don't know what to do about the disease.

Numerous petitions have been submitted to Fish and Wildlife Service asking for listing. There are **two species of sage grouse**, but Idaho has only one. Colorado and Utah have two and both species have been petitioned. The **current situation** shows that after numerous petitions, in 2005 the Fish and Wildlife Service decided that listing was not warranted. About two months ago, a federal judge said that the decision needed to be re-examined and one of the things that the judge stressed was to use the best available science. The local agency has played a role in this. In 2004, a report was put together and used as a basis for the 2005 decision.

In a **rangewide conservation assessment**, Mr. Connelly and Steve Knick put together a project called "Ecology and Conservation of Greater Sage Grouse: A Landscape Species and Its Habitats". They believe the Fish and Wildlife Service will be using this report, with a draft of it out in November to help them in their deliberations.

In closing, Mr. Connelly said that he would like to make some observation needs based on 30 some odd years of working with this critter. If they are going to be successful in the **conservation needs** of sage grouse, they have to recognize that federal agencies are the key as they are the owners of most of the land. The Forest Service and BLM own an awfully lot of habitat and cooperation is necessary and monitoring is critical. When these projects are put in, and should they fail, they need to know why. There also has to be an understanding of the difference between long-term and short-term programs. In re-seeding an area of sage brush after a burn, there might not be a sage grouse response for many years, but that does not mean it is not vital. There are lots of things that should have short-term returns. For instance, problem fences. In Kansas and Oklahoma, they are using small aluminum strips on the wires. It has to be durable, as well as visible to the birds.

SPEAKER:

Mr. Jeff Gould, Habitat Manager for the Idaho Department of Fish and Game, spoke next. He said that he would address long-term solutions and what they are facing with one of the worst **fire seasons** in a century in Idaho.

This year in Idaho, two million acres burnt and three quarters of a million acres of that was sage brush habitat. He said that 400,000 acres was in sage grouse habitat. The majority of that was in the **Murphy Fire**. This

was the largest fire on history in Idaho since 1910. It is called the **Murphy Complex Fire** because in mid June, there were two fires burning and by the time it was put out in August, there were three fires coming together, known as the Complex, which was 650,000 acres. Most of the fire was in Idaho, with a bit in Northern Nevada.

Following that event, Governors from Nevada, Wyoming, Utah and Idaho got together on a fire conference with several departments, as well as private land owners, to discuss how the states could have a greater role in sharing resources across states. Each state identified a demonstration area. Governor Otter identified the **Murphy Complex Fire as a demonstration project** and immediately signed an executive order that created a statewide wildfire rehab committee, which are members of all state agencies that would be involved not only in fire suppression, but fire rehab. He also assigned Cal Groen as the Chair.

Governor Otter challenged Fish and Game to find seed. That was his number one priority when it was apparent there was a shortfall of it. In addition to mobilizing volunteer efforts to collect sagebrush, Fish and Game worked with the Department of Lands to identify a conservation seed mix that they could use on state endowment lands impacted by the fire. What they used was called the IDL preferred mix. The Fish and Game served as a point of contracting and acquiring seed and working with IDL for distribution.

The Governor's challenge to the statewide rehab committee was to figure out how the state could bring resources to rehab projects and overcome obstacles the federal government typically encountered when developing rehab projects. The BLM was very receptive to the fact that their contractors, when drill seeding could go across a boundary, rather than figuring how to go around a section. In the long run, they were able to drill seed a greater number of acres. The drill seeders began October 1 and ended about December 1, seeding about 70,000 acres. Six thousand acres were endowment lands.

The tally on the work that was accomplished was 1,000 volunteers that spent 4,800 hours collecting 3,500 pounds of raw seed. Re-seeding 300,000 acres is very important ecologically.

However, the challenge isn't over on the Murphy Fire. They will continue to plant in the Spring. BLM has a three year window and will do bitter brush planting, as well as Fish and Game. There are 450,000 acres of noxious weeds that will be inventoried. Mr. Gould said he wasn't sure how much of that would actually be treated this Spring. Next Fall, there will be more drill seeding in areas where there is cheat grass. He said the Murphy Fire is an on-going project where they had figured out some of the barriers that the federal government had not been challenged enough to

overcome. State partners, like the Department of Ag, Fish and Game, and IDL came together to say it is important to make the project bigger and to do this kind of work in the future. The 400,000 acres of critical sage grouse habitat that burned this summer will have restoration work done by IDL, BLM, and Fish and Game. Mr. Gould stated that even though it was a catastrophic fire, there has been some positives come out of it.

He has attended meetings of the Senate Agriculture Committee and the House Agriculture Committee. Even though there are differences of opinion, they want to do green stripping, as well as precision grazing, and to look at all things. He said they need to be wiser land managers. The rehab committee is committed to working through the issues. At the Governor's Conference, there were three things that Governor Otter said that each of the states need to develop a demonstration project that is flexible, has science, and they are committed to follow through. Mr. Gould said that there is a subcommittee working on task raising and also fire severity, but the key is to be flexible.

That concluded Mr. Gould's presentation.

ADJOURN: **Chairman Schroeder** thanked the participants for the presentation, then adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 5, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

The first order of business was to approve some minutes.

MOTION: **Vice Chairman Pearce** made the **motion** for the approval of the minutes of February 27, as written. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

Chairman Schroeder welcomed Representative Anderson who will present H 500.

H 500 **Representative Anderson** said this bill amends Section 58-307, Idaho Code, to further define the term "commercial purposes" as they apply to leases on school endowment lands. These new commercial purposes are fuel cells, low impact hydro, sun or landfill gases, as well as wind and geothermal resources.

This revision broadens the definition of renewable energy projects to give consistency in code, and establish the same definitions as provided in Section 63-3622, Idaho Code. This bill will open the door to provide clean renewable energy projects to be constructed on some of Idaho's 2.6 million acres of school endowment lands.

Representative Anderson said, as you know, state endowment lands were set aside in the late 1800's for one purpose: to generate funds for public education. Historically, the sale of timber, mining and allotments for cattle grazing were the money makers on the leased lands. We now have a new natural resource available.

The new generation of money for education awaits on the wings of dynamic, clean, renewable energy.

Many of the most viable lands for potential leases are currently dormant, non-productive lands whose sole purpose is to support education. To do that in potentially enormous ways while addressing critical energy need, and protect the environment, is the epitome of good legislation. This concept has been presented to the Land Board and received a very warm reception.

The renewable portfolio standards in our neighboring states are as follows:

Oregon	26%	by 2025
Washington	15%	by 2020
Montana	15%	by 2015
California	20%	by 2010
Nevada	20%	by 2015

There currently are not enough renewable projects under construction to fill the need that has been mandated by our neighboring legislatures. He believes that Idaho, with its abundant renewable natural resources, sits poised to fill that increased demand.

This bill is also a product of our findings from the Idaho 2007 Energy Plan we adopted last year.

He said that he is asking for your yes vote on H 500. This gives us that many more tools to use in developing a more secure funding stream for education.

MOTION:

Senator Stennett made the **motion** to send H 500 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Siddoway**.

TESTIMONY:

Testifying was **Ms. Holli High, representing Exergy Development Group**. A copy of her testimony is inserted into the minutes.

Chairman Schroeder and Members of the Committee,

I am here on behalf of Exergy Development Group in support of House Bill 500.

This legislation offers a unique opportunity for Idaho schools, energy and rural areas. Schools are faced every year with tightening budgets. Idaho imports over half of its electricity from neighboring states. Rural economies continue to stagnate as industry shifts to urban areas and overseas. Much to our advantage, the joint efforts of this bill address all of these issues.

You already know the policy of what this bill can do, but here are some figures of what the actual impact could be. One section (640 acres) containing sufficient wind resource would support somewhere around 7 wind turbine generators. With current energy market rates, a typical lease would result in \$4,000 a year for each turbine, totaling \$28,000 for each

such section. With a lease term of 30 years and ever-escalating power rates, Idaho schools stand to reap a huge benefit from this program. Each of these sections could contribute a net of 3 MW to Idaho's power needs, where electrical load is increasing by 200 MW per year. And each of these sections could provide jobs in construction, engineering and maintenance to Idaho towns.

And this is just one section of land and one technology utilized.

H 500 exemplifies legislation designed to positively impact a broad section of Idahoans. It shows that, in true Western spirit, when the standard methods are no longer sufficient to fulfill our needs, creativity is the mortar that will fill the gaps.

A question was asked of **Mr. George Bacon, Director of the Idaho Department of Lands**, as to why this legislation was needed. He replied that it clarifies what the energy projects are and would take any doubt away, whether it is a commercial venture or not.

A vote was taken on the motion. The **motion passed** by unanimous voice vote. **Senator Stennett** will be the **sponsor** of the bill.

RS 17997

Mr. Pete Skamser presented RS 17997. He is representing **Formation Capitol Corporation** of Idaho Cobalt, located in Salmon. He said the company has experienced many delays due to federal bureaucracy. The company has invested \$40 million dollars in the past 14 years and this memorial is asking for federal officials to make timely decisions on necessary permits for the Idaho Cobalt Project. When it is approved, it will create about 196 jobs and generate approximately \$8 million a year in taxes.

MOTION:

Senator Siddoway made the **motion** to send RS 17997 to the State Affairs Committee for printing, then requested that it be returned to this committee for a full hearing. The motion was **seconded** by **Senator Andreason**. The motion **passed** by unanimous voice vote.

S 1449

Senator Jorgenson presented S 1449. He said the bill is about enhancing the penalties for the Department of Lands with respect to damaged lake beds. This is a result of a person who applied for permits and didn't wait for the proper time. He went ahead and started work which resulted in the destruction of kokanee beds. It's not certain if the beds will recover. The penalties at the time were less than any other penalties. This bill would take care of that. The penalties would be increased to a maximum of \$10,000 or \$1,000 per day for each day of the continuing violations. The money from the fines would be put into the Lake Protection Fund.

A question was asked if these rules are enforced by the Department of Lands. The answer was yes. It was also asked if the IDL had a policy regarding this legislation. **Senator Jorgenson** said that he worked closely with IDL in drafting this legislation. **Mr. George Bacon, Director**

of IDL, said that they are in full support of S 1449. He stated that the amount of fines have not increased since 1974 when the Lake Protection Act was established. This legislation speaks to gross environmental damage. **Senator Cameron** asked as to why the fines are retained for the benefit of the Department and to have those fines continuously appropriated. He stated that other entities' fines go to the general fund so that there is not extra incentive for an entity to be aggressive on their fines. **Mr. Bacon** said that it was his understanding that this legislation was crafted to conform with a similar position that already exists for DEQ for environmental damages, air quality, and other things that they oversee. He said his anticipation was that the fines that are levied would probably be spent immediately on repair and mitigation work for whatever damages are done. **Senator Little** said that he is concerned about unintended consequences regarding the fine money to be continuously appropriated. **Mr. Bacon** said the intent of the language was to make the funds available if they were needed for immediate repair, such as the destruction of the kokanee beds.

MOTION: **Senator Andreason** made the **motion** to send S 1449 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Langhorst**.

SUBSTITUTE MOTION: **Senator Cameron** said that there are good features in the bill, but he cannot support it the way subsection (5) is drafted. It goes against public policy that has been made in the past and he does not support the fund being continuously appropriated. He made a **substitute motion** to send S 1449 to the 14th Order. The substitute motion was **seconded** by **Senator Little**. A roll call vote was taken. Voting aye were Senators Langhorst, Stennett, Siddoway, Little, Cameron, and Pearce. Voting nay were Senators Andreason and Schroeder. Senator Coiner was out of the room at the time of voting. The **substitute motion passed 6-2**. **Senator Jorgenson** is the **sponsor** of the bill. Senator Cameron will work with Senator Jorgenson on the amendments.

H 515 **Representative Eskridge** presented H 515. This bill would provide for the operation and use of State outdoor sport shooting ranges and would require State agencies responsible for managing State outdoor sport shooting ranges to establish operation and use standards for each range. It also establishes a uniform noise standard for State outdoor shooting ranges, precludes both public and private nuisance actions for noise against any State outdoor sport shooting range that is in compliance. Currently, the State has no noise standard.

This bill does not affect military and law enforcement ranges and private sports shooting ranges.

TESTIMONY: **Representative Pence** testified on behalf of H 515. A copy of her testimony is inserted into the minutes.

There has surfaced a need to address noise related concerns raised in litigation over the use of the shooting range at Farragut State Park and to properly manage future concerns at other ranges. A need to address a

directive from the Idaho Department of Fish and Game Commission to work with the Idaho Department of Parks and Recreation to develop, operate, and maintain a community, family and sportsmen based shooting range at Farragut State Park and last, but not least, a need to properly manage future noise issues at other state shooting ranges.

H 515 creates a new section in title 67 to provide for the operation and use of state outdoor sport shooting ranges. Only sport shooting ranges owned by the state of Idaho or a state agency and used by the public are affected by this bill. This bill does not affect military and law enforcement ranges. Private sport shooting ranges continue to be governed under Chapter 26, Title 55 of the Idaho Code.

This bill establishes a uniform noise standard for state outdoor sport shooting ranges. Private and public nuisance actions for noise would be precluded when state ranges are in compliance with the noise standard. Currently the state has no noise standard, which leaves noise guidance up to courts, which can hamper range use. Establishing a state noise standard is beneficial to continued operation of state outdoor sport shooting ranges and protecting state interests.

This bill requires state agencies responsible for managing state outdoor sport shooting ranges to establish operation and use standards for each Range.

TESTIMONY: Next to testify was **Nate Helm, Executive Director, Sportsmen for Fish and Wildlife Idaho.** He said that they are in support of this bill.

TESTIMONY: **Ms. Sharon Kiefer, Legislative Liaison for IDFG,** was next to testify. A copy of her testimony is inserted into the minutes.

Chairman Schroeder and Committee:

The Idaho Department of Fish and Game (Department) has worked closely with the Attorney General's Office to draft H0515 for three reasons — a need to address noise related concerns raised in litigation over use of the shooting range at Farragut State Park, a need to address a directive from the Idaho Department of Fish and Game Commission to work with the Idaho Department of Parks and Recreation to develop, operate, and maintain a community, family and sportsmen based shooting range at Farragut State Park and last but not least, a need to properly manage future noise issues at Blacks Creek, our other outdoor state-owned range, or any other ranges the Department may build in the future.

Before I speak about the merits of the bill, I want to share a perspective about the role that shooting ranges play in supporting the mission, objectives, and activities of state wildlife agency programs because it helps explain the IDFG Commission's directive for the Farragut shooting range and our interest in this legislation. To express this, I've plagiarized

comments by the Director of the Arizona Game and Fish Department. There are two very important aspects of our shooting ranges that are central to the Department's objectives, which are support of hunter education programs and providing recruitment/retention opportunities. Like the Arizona hunter education program, we have a mandatory live-firing component in the hunter education curriculum. Access to shooting ranges is critical. But more than that, shooting ranges represent "continuing education" beyond the initial coursework. Ranges are places where hunters visit year-round to improve their shooting skills and to enjoy recreational shooting. To have responsible and safe hunters, we need to provide them with safe and friendly places to practice. Another important role that shooting range programs play in supporting wildlife agency missions is in recruitment and retention. Declining recruitment and participation rates in hunting is a critical trend across the nation. Shooting ranges can offer mentoring with the opportunity to learn and develop skills to help offset that trend.

As I noted, our interest in this legislation partly stems from current litigation opposing expansion of the Farragut Shooting Range. In the course of that litigation, the judge was confronted with the difficult decision of how to balance noise related concerns of neighbors with the public's use of the range. In the absence of any established state standard, the judge was left to fashion a remedy. As a result of the judge's order, the need for a uniform state noise standard for state owned ranges became apparent. This legislation proposes such a standard providing a balance to protect adjoining landowners while at the same time ensuring the opportunity for the public to have adequate access to state recreational shooting ranges. The noise metric measure is straightforward and will provide certainty for all. Thus, providing a state-approved noise standard is an important element of H 515.

Briefly, this bill:

- Creates a new section in Title 67 to provide for the operation and use of state outdoor sport shooting ranges. Only sport shooting ranges owned by the State of Idaho or a state agency and used by the public are affected by this bill. This bill does not affect military and law enforcement ranges. Private sport shooting ranges continue to be governed under Chapter 26, Title 55 of the Idaho Code.

- This bill establishes a uniform noise standard for state outdoor sport shooting ranges. Private and public nuisance actions for noise would be precluded when state ranges are in compliance with the noise standard. Currently Idaho has no noise standard for state owned ranges, which leaves noise guidance up to case-by-case determination by courts. Establishing a state noise standard is beneficial to consistent and continued operation of state outdoor sport shooting ranges and to protecting the interests of adjoining landowners.

- This bill requires state agencies responsible for managing state outdoor sport shooting ranges to establish operation and use standards for each range consistent with the uniform noise standard.

We believe a uniform noise standard for state-owned outdoor shooting ranges provides for the mutual protection of communities from excessive noise intrusion from shooting ranges while at the same time recognizes and protects shooting ranges as important and legitimate public resources. All parties benefit when noise levels are managed responsibly and determined objectively. Also, by establishing a consistent benchmark, a uniform noise standard prevents the proliferation of inconsistent and perhaps arbitrary standards by local jurisdictions and the courts.

I won't go into the technical specifics of the noise standard, which is adequately defined in the legislation. There is a handout describing some of the technical aspects of this bill provided to each of you. The proposed standard is similar to the standard adopted by the State of Arizona for shooting ranges. After more than 10 years of experience, Arizona officials find that the standard is working well for both ranges and surrounding residents. The standard is slightly more conservative (i.e. more protective of communities) than the guideline in the National Rifle Association Range Source Book, a guidance document for shooting range construction and management. The proposed standard follows federal guidance and is based on extensive research and scientific information for noise and sound measurement.

The Department needs state-owned ranges, current and future, to remain a public resource for reasons I've discussed. We need your support of H 515 to accomplish this objective.

That concluded Ms. Kiefer's testimony. The handout she referred to is inserted into the minutes.

Understanding Noise:

A characteristic of environmental noise is that it is not steady but varies in amplitude from one moment to the next. If you stand on a street corner a bus comes by and departs, a skate boarder passes by (click-click, click-click) over the joints in the sidewalk, the exhaust on a taxi backfires, someone scores a goal at a soccer game and the crowd cheers. There is a constant ebb and flow of noise exposure. To account for these variations and to assess environmental noise in a uniform manner you need a metric that accounts for intermittent noise exposure. Sound and what your ear "hears" are not exactly the same, so that is why we measure noise exposure.

1. What is Leq(h)?

We need a way to translate noise energy into a metric that we can physically measure. Thus, we use Leq.

This is an EPA endorsed noise evaluator that has widespread use and scientific basis. This indicator provides a single numerical description that "averages" varying noise energy exposure during the time interval to an equivalent measure of energy were it produced at a steady level.

The three important determinants of noise annoyance are sound

intensity (how loud), noise duration (how long), and noise frequency (how often). Only time-weighted metrics like the Leq are capable of integrating all three determinants into a single descriptor of noise exposure.

Example:

a. 10 gunshots/hour versus 100 gunshots/hour (assume same gun and same location). Because all gunshots in this example are equally as loud, only an LEQ metric can recognize that 10 versus 100 shots is a 10 fold increase in noise exposure. Un-weighted “threshold” or singular event metrics are insensitive to this difference and would treat these two scenarios as equal noise. Only LEQ can integrate how loud, how often, and how long the community is exposed to noise.

Leq is a time weighted metric. There needs to be a specific understanding that, with the proposed standard, singular events could be louder than 64 CIBA but as they “accumulate” in the average there is a “limit” on how many and the total community noise exposure.

In the case of H515, noise energy for the noise standard is measured over an interval of 1 hour during the noisiest hour of peak use during the operation of the range.

2. What is a dBA?

The decibel (dB) is used to measure sound level, but it is also widely used in electronics, signals and communication. The dB is a logarithmic unit used to describe a ratio.

3. How loud is 64 decibels?

Drawing on resources from the National Institutes of Health, The U.S. Department of Energy, and the Federal Interagency Committee on Noise, the noise is similar to:

60 decibels: Quiet office, Normal Conversation, Loud Conversation, Laughter, Dishwasher (rinse at 10 feet)

65 decibels: Normal Conversation, Loud Conversation, Laughter, Electric Typewriter (at 10 feet), Traffic on a busy street, Cash Register (at 10 feet)

70 decibels: Vacuum Cleaner, Hair dryer, Radio/TV audio, Traffic on a busy street.

4. Why is the measurement point for the noise standard defined at 20 feet from occupied structures?

Noise standards are generally viewed as “receiver standards” i.e. measured as per how the receiver will hear them. This is also the distance used in the Arizona shooting range standard that this is modeled on.

5. What does section 67-9104 “Noise Buffering or Attenuation for New Use” mean?

This section means that if there is an established state range that is currently meeting the noise standard and subsequently, there is new use within 1 mile such that when we do the noise measurement as prescribed in this statute (within 20 feet of the occupied structure), if the range no longer meets the standard, it is not the responsibility of the range to provide for noise buffering to meet the standard. However, if there is new use outside of 1 mile and the range does not meet the standard, then it is the responsibility of the range to provide for noise buffering to meet the standard. Thus the State defines the balance of who bears the nuisance burden.

This clause deals with what it generally called “coming to the nuisance” and was demonstrated in the judge’s order on Farragut:

“None of the plaintiffs who have residences down range from the rifle range resided there before the range was created in 1950. Thus, in that sense, each of the plaintiffs have “come to the nuisance”. “Coming to the nuisance” is the notion that if you move to the nuisance after the nuisance already exists, you cannot be heard to complain of the nuisance since you knew what you were getting into.”

MOTION:

Vice Chairman Pearce made the **motion** to send H 515 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**.

In the discussion, **Senator Little** questioned the one mile buffer.

Senator Langhorst said he wanted to thank the sponsors of the bill and the sportsmen for their participation.

The motion **passed** by unanimous voice vote. **Senator Jorgenson** will be the **sponsor** of this bill.

H 473

Jeremy Pisca, Attorney, representing the Idaho Outfitters and Guides Association (IOGA), presented H 473.

He said that earlier in the year, IOGA joined with a trade group to form a task force with the licensing board to look at some significant problems in the industry. One of the things that the task force agreed on was the increased amount of illegal activity out in the field. They are seeing more and more of illegal outfitters taking the public on illegally outfitted guided trips. This was a joint effort between the licensing board and the trade group, and this bill is the result of their findings. They consulted prosecuting attorneys in the counties where these violations occur.

The current fine is \$100 or 90 days in jail. Prosecutors have said that \$100 is not enough of an incentive to slow anyone down from an illegal activity. Mr. Pisca said what they would like to do is to create an enforcement tool so that the laws will be taken more seriously.

On page one of the bill, lines 21 through 25, creates a misdemeanor section for people who knowingly hire unlicensed outfitters. He said this deals with people who knowingly go out and consciously make the decision to hire an unlicensed outfitter.

The second change of the bill is on page two, lines 36 through 46. It changes the administrative subpoena powers of the Outfitters and Guides Licensing Board. The stricken language, lines 19 through 35, shows that the Board already had subpoena powers. That language did not tract with the Idaho Administrative Procedures Act and administrative rules. At the Licensing Board's request, they tried to make those jive with what the current law is that all other agencies comply with.

On page three, the language of the penalties has been changed from \$100 to a range between \$1,000 and \$5,000 in the discretion of the court. In addition, it changes the 90 days in jail up to one year in the county jail, solely in the discretion of the court.

There also is a graduated system for repeat offenders. A second offense would be a fine of not less than \$2,500 nor more than \$5,000, or imprisonment in the county jail for one year, or both in the discretion of the court. Anyone who is guilty of a third or subsequent offense, shall be punished by a fine of \$5,000, or imprisonment in the county jail for one year, or both, in the discretion of the court.

The Outfitters and Guides Licensing Board has to pay the costs to investigate these kinds of violations. It can be costly if someone has to be sent out into the field to investigate. Mr. Pisca said that they believe if someone is guilty of violating the law, they should be forced to pay the investigation costs. This would allow to have that money recouped.

The final thing that the bill does, it gives the judge discretion to revoke or suspend hunting or fishing licenses.

The **Chairman** said there was no one signed up to testify against this bill.

During the discussion, a question was asked about non profit organizations receiving compensation from legal outfitters and would they be in violation. **Mr. Steve Tobiason, Attorney, IOGA**, said if they met the criteria for a non profit organization, there would be no violation. He based his remarks on an Attorney General's opinion. **Senator Cameron** requested that a copy of the AG's opinion be included with the minutes.

That opinion is inserted into the minutes.

The opinion was written November 22, 1991 by Steven F. Scanlin, Deputy Attorney General.

Mr. Dean Sangrey, Executive Director
Outfitters and Guides Licensing Board
1365 N. Orchard, Room 372
Boise, ID 83706

Re: Donated Outfitted-Type Activities

Dear Dean:

I have received your letter of November 8, 1991, requesting a letter opinion on various subjects regarding donated outfitted-type activities.

Your first question was: Is it legal to auction and/or donate an activity that falls under the purview of the Outfitters and Guides Act?

The purpose of the act creating the Outfitters and Guides Licensing Board is:

(T)o promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the...natural resources of Idaho 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 exercise of the police power of this state. It is not the intent of this legislation to interfere in any way with the business of livestock operations, nor to prevent the owner of pack animals from using same to accommodate friends where no consideration is involved for use thereof.....

Idaho Code 36-201 (emphasis added).

As you are aware, outfitters and guides activities that fall under the purview of the Idaho Code are enumerated in Chapter 21, Title 36 and within the Rules and Regulations of the Outfitters and Guides Licensing Board. Included in these sections are definitions of "outfitter," "guide," and types of activities in which licensed outfitters and guides may engage.

Additionally, Idaho Code grants an exception that the definition of outfitter and guide shall not apply to members of a nonprofit organization if

the organization meets certain nonprofit organization criteria including section 501© (3) status, whose purpose is to provide outdoor experiences to young persons under the age of 21

years and its leaders, and that it provides outfitting and guiding services to its own bona fide members on a not-for-profit basis. Idaho Code S 36-2103. In addition, this section states that if the members of the organization provide outfitting or guiding services to persons who are not its members and leaders, the provisions of this chapter shall apply to that organization, its members and leaders.

Other than the above restrictions, there is no prohibition on the auction or donation of activities that fall under the purview of the Board. In short, the answer to this, question is that it is legal to auction or donate an activity that falls under the purview of the Board if it meets all the other criteria of licensing or organizational activities under the Code.

Your second question was: For purposes of the Licensing Board, how should we define a "donated trip?"

From the context of the background in your letter, I assume that you wish to make sure that activities governed by the Board which are donated follow the same laws and regulations as those which are not donated. In this case is not necessary to define a "donated trip" but rather make sure that if an activity has been donated by an outfitter, it meets the same standards as if it had been paid. The reason for this, of course, is that even if the trip is donated, it is not "free;" rather, it represents a donation by the outfitter or guide to the organization. You may wish to clarify this in regulations by stating that donated trips will be regarded and treated the same as compensated trips.

Your third question is that if auctioned or donated trips are acceptable: Should the activities be restricted to recognized "non-profit" organizations?

The only guidance that the Code gives on this question is what activities are exempt from the definitions of "outfitter" and "guide" as described earlier in Idaho Code S 36-2103. Beyond these standards, it makes no difference whether or not the organization is for-profit or nonprofit. The primary difference in this case is IRS status, a matter in which the Board is not involved. The

Board has authority over those activities which fall under the Outfitters and Guides statutes and regulations. The only exceptions to the statutes are those organizations described in 36-2103, and attempting to expand the exceptions by regulation is not advised. In addition, discrimination between for-profit and not-for-profit activities may present equal protection problems.

Your final question is: If acceptable, should the activities be restricted to nonconsumptive with regards to wildlife?

Again, this should be a question of whether the activity is legal or not, not of the type of activity that is condoned. If the law permits auctioned or donated consumptive wildlife activities, then the Board should concern itself with the legality of the outfitter and guide operations associated with that activity, not the wildlife issue.

This letter is provided to assist you. The response is an informal and unofficial expression of the views of this Office based upon the research of the author.

I hope that these answers have been helpful. If you have further questions, please let me know.

STEVEN F. SCANLIN
Deputy Attorney General

MOTION:

Senator Little made the **motion** to send H 473 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. **Senator Little** will be the **sponsor** of this bill.

H 406a

Presenting H 406a was **George Bacon, Director, Idaho Department of Lands**. A copy of his testimony is inserted into the minutes.

Good afternoon. I am George Bacon, Director of the Department of Lands. I would like to present for your consideration, House Bill 406a. This is department sponsored legislation that deals with the leasing of cottage sites on state endowments lands.

As you may know, endowment lands are managed to maximize revenue to various beneficiaries, most notably Idaho's public schools. Residential leasing is one of several revenue centers managed by the Department of Lands. In fiscal year 2007, the department earned about four and one-half million dollars from residential leasing, with program costs of only \$41,000.

Our primary residential leasing activities are 522 high-valued lake-front or second tier cottage sites on Priest and Payette Lakes. There are 354 sites at Priest Lake and 168 sites at Payette Lake.

Under these transactions, lessees rent the state land, and are permitted to build privately owned improvements, such as cabins, houses and other out-buildings. The state owns the land, and the lessee owns the improvements.

Current law restricts residential leasing of state land to ten years. Over the years, the department has come to recognize that this is a problem.

First, the state incurs a certain expense by renewing the leases every ten years. It also causes a spike in our work load for a program that otherwise has extremely low overhead costs. More importantly, the 10-year lease impacts the ability of our lessees to sell their homes and transfer their state leases to the new owners.

Most home lenders will not issue a mortgage for a house on leased property, unless the leasehold is for a term longer than the mortgage. This means that 35-year leases are needed for people to qualify for a 30-year mortgage.

By having ten year leases, the state is limiting the pool of potential lessees. This impacts the ability of our lessees to sell their homes. It also impacts income to the state. You see, we receive 10% of the calculated land value in every sale transaction. In addition, there is a potential to develop as many as 200 more cottage sites at Priest Lake. By having a larger pool of buyers, we will likely see higher sale values in the long run.

This legislation would allow the State Board of Land Commissioners to lease residential cottage sites up to 35 years, at their discretion.

Now, you might be concerned about how rent increases will be applied under a longer lease term. Under our current lease terms, the annual rent is set at 2½% of either the appraised or assessed value of the state land. This provides an annual rent escalator as property values rise. This sort of system can continue to be applied no matter how long the lease is in force.

I have a letter from Mr. Jim Young, President of the Payette Lake Cabin owners association in support of this legislation. He testified in the House Resources Committee that he also represented the Priest Lake folks. He indicated that this bill will help lessees to better qualify for conventional financing which will make the cottage site land leases more viable.

With that Mr. Chairman, I would be more than happy to answer any questions.

A copy of the letter from **Mr. Young, President of the Payette Lake Cabin Owners Association**, is inserted into the minutes.

Dear Director Bacon,

We received a copy of the proposed legislation to extend the term of lease for residential property as prepared by the Idaho Department of Lands. The Payette Lake Cabin Owners Association supports the Department in passing this legislation but recommends consideration be given to extend the term from 30 years to 35 years. Conventional home loans are typically 30 years in duration. The underwriting guideline use by lender is the Fannie Mae Loan Guidelines (attached). Fannie Mae guidelines for land leases require the lease term must be at least five (5) years beyond the maturity date of the mortgage. Therefore, a 30 year mortgage will require a lease term of at least 35 years. By extending the term to 35 years, lessees will be better able to qualify for conventional financing which will make the Cottage Site land leases more viable.

We appreciate your consideration in this matter and if there is any further information we can provide, please feel free to contact me.

TESTIMONY:

Dave Leroy, former member of the Land Board, said that he is **representing the Payette Lakes Cabin Owners Association**. There are about 100 families that hold these state leases in and around the McCall area. They are also associated with the Priest Lake Cabin Owners Association in North Idaho, with several hundred members. Both Associations support this bill. The present leases will expire in 2010. The first key to this legislation is the term of the lease. It will allow more options, more financing, and a larger pool of potential players. Mr. Leroy said this bill sets the tone of how they will work together in recasting these leases over the next ten years.

MOTION:

Senator Little made the **motion** to send H 406a to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. **Senator Little** will be the sponsor of this bill.

H 498

Presenting H 498 was **Jane Wittmeyer, Vice President of Idaho Affairs for Intermountain Forest Association**. A copy of her testimony is inserted into the minutes.

Dear Senator:

The Intermountain Forest Association supports the passage of H 498, a bill dealing with application of "initial cash deposit" funds to the remaining value of a state timber sale.

The Intermountain Forest Association (IFA) is an organization of wood product manufacturers, timberland owners and related businesses in the northern Rockies. IFA develops and implements, solution-oriented policies aimed at securing a stable and sustainable supply of timber on public and private lands.

IFA urges you to support this legislation because it:

- Allows the Idaho Department of Lands (IDL) to return to its former practice of allowing, at its discretion, the purchaser of a state timber sale the opportunity to apply all, or a portion of the purchaser's initial cash deposit, as a final payment or a series of payments toward the remaining value of the timber sale.
- Provides purchasers of state timber sales flexibility in managing their cash flow related to the purchase of state timber.
- Is supported by the IDL.

On July 1, 2007, IDL ended its historic practice of allowing more than one application of the purchasers "initial cash deposit" to the final bill. The reason for the change in 2007 was a Rules Review in 2006 which indicated that although the IDL rule allowed for more than one application of the "initial cash deposit" to the final bill—the statute did not.

State timber purchasers requested a return to the previous practice. IDL agreed. Implementation of this legislation would allow this to take place.

IFA urges you to vote yes on H 498.

Should you have any questions, please contact me at 342-3454 or 859-1590.

The **Chairman** said that no one had signed up to testify regarding this bill.

MOTION: **Senator Andreason** made the **motion** to send H 498 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote. **Senator Broadsword** will be the **sponsor**.

ADJOURN: **Chairman Schroeder** thanked everyone for their good work, then adjourned the meeting at 3 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 7, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Coiner, and Stennett
- MEMBERS ABSENT/ EXCUSED:** Senators Andreason, Siddoway and Langhorst
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:38 p.m. He said the first order of business was to approve some minutes.
- MOTION:** **Vice Chairman Pearce** said he had read the minutes of February 29 and found them to be in order and made the **motion** for their approval. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.
- The **Chairman** then called on Mr. Paul Kjellander to present H 432.
- H 432** **Mr. Kjellander** is the **Administrator, Office of Energy Resources**. A copy of his testimony is inserted into the minutes.
- House bill 432 helps fund the Office of Energy Resources (OER) through the allocation of funds generated by a new Federal lease program. The source of these new funds comes from geothermal leases made on Federal lands. This is the first time a lease of this nature has occurred within the borders of Idaho and this legislation creates the distribution formula for the state's share of renewable resources.
 - If approved, this legislation provides a revenue stream that ultimately will assist the Office Energy Resources as it transitions away from a heavy reliance on federal grants. These funds will ultimately allow the Office the flexibility to respond more quickly to Idaho's energy needs.
 - The allocation formula in the bill only impacts the state share of Federal Royalty payments for renewable resources.
 - Under the Federal Allocation formula.. .the leasing Federal agency keeps 25% of the total lease amount and the counties where the Federal

leases were made get 25%. (The remaining 50% belongs to the state. This legislation outlines how the state will split its share.)

- Under the provisions of HB 432 the states portion of the federal lease revenues would provide 90% to the OER and another 10% to the Counties.
- This would result in a total allocation to the Counties of 30% (25% of the total Federal lease and 10% of the state share).
- A major benefit of this legislation is that it reduces the need to consider future general fund appropriations to support the Office of Energy Resources.
- Approval of this legislation allows the Office to move away from a federal grant driven energy policy to an energy policy that reflects the needs and priorities of Idaho. Specifically, these funds will allow us to be more selective in our pursuit of grants. Ultimately, this bill allows the Office to respond to Idaho's energy needs in a more timely fashion than reliance on Federal grants allows.
- Thank you for your time and consideration and I welcome any questions you have.

During the discussion of this bill, **Senator Cameron** said he would encourage Mr. Kjellander to work with the Department of Financial Management to lay out a budget as to how the money will be utilized and to be careful, if they suggest you treat it as one-time funds, not to use it for salaries. He asked Mr. Kjellander if he thought the fund would ever get to the point where there is more money than what was anticipated. Mr. Kjellander said he doubted, in the short term, that they would ever see that. He said if it ever got to that point, he was sure the Legislature would take a very close look.

MOTION: **Senator Cameron** made the **motion** to send H 432 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Pearce**. The motion **passed** by unanimous voice vote. **Senator Cameron** will be the **sponsor**.

Chairman Schroeder then welcomed **Representative Chavez** who will present H 472.

H 472 **Representative Chavez** said this bill was brought to her by the Fish and Game Department regarding a two pole fishing permit. This legislation is to amend existing law to revise terminology to provide for a two pole permit and to allow persons exempt from purchasing a fishing license to purchase a two pole permit.

Following are statements taken from her testimony.
Persons exempt from purchasing a fishing license include:

- a. Children 14 years and younger who are residents of Idaho;
- b. Children 14 years and younger who are non-residents when they are accompanied by a the holder of a valid Idaho fishing license;
- c. Children under 18 years of age who live in a licensed foster home or children's residential care facility accompanied by the director, supervisor, or foster parent;
- d. For any person to fish on a "free fishing day" designated by the Commission;
- e. State Juvenile Corrections Center Students under the supervision of an officer of the center during an open fishing season;
- f. Boy Scouts participating in an encampment at Farragut State Park;
- g. Participants in Fish & Game sponsored functions.

It amends existing law to revise terminology to provide for a two pole permit and to allow persons exempt from purchasing a fishing license to purchase a two pole permit.

This would allow children exempt from having to purchase a license - to fish with a 2 pole permit. This is similar to provisions of 36-410 (b) and © for steelhead and salmon permits.

At the present time, a two pole permit including the vendor fee is \$13.75 for both resident and non-resident, this would be the same fee for those persons who are exempt from purchasing a fishing license.

Not only will we be increasing access to a life long form of recreation for our children, it has no fiscal impact and does have the potential to increase Fish & Game funds of about \$14,712.

That concluded Representative Chavez's testimony.

TESTIMONY:

Testifying in support of H 472 was **Ms. Sharon Kiefer, Legislative Liaison, IDFG**. A copy of her testimony is inserted into the minutes.

Chairman Schroeder and Committee:

I testify in strong support of House Bill 472 and appreciate the legislative sponsors of this bill taking up this issue. This bill will change what is currently a two-pole license validation in 36-406A into a two-pole permit. There will be no change in the fee.

You may wonder why this change makes a difference. For unlicensed kids it makes a huge difference because a two-pole validation must be placed on a fishing license. Kids who are exempt from purchasing a fishing license pursuant to 36-401 cannot acquire a two-pole validation.

Turning the two-pole validation into a permit makes this fishing opportunity available to unlicensed kids. It also institutes consistent provisions for the two-pole permit as are currently applied for salmon and steelhead permits. The Department thinks this consistency makes sense.

We can create some smiles with this bill and I ask for your support.

MOTION: **Senator Coiner** made the **motion** to send H 472 to the floor with a do pass recommendation and to also have it put on the consent calendar. The motion was **seconded** by **Senator Stennett**. The motion **passed** by unanimous voice vote. The **sponsor** of the bill will be **Senator Coiner**.

H 474 The next bill that was heard was H 474, presented by **Mr. Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators, Inc.**

He said that last year a similar bill was passed (H 78) that eliminated the 15,000 acre limitation on being able to vote in an irrigation district.

As farming operations change, the pool of qualified voters who live within the boundaries of an Irrigation District and are eligible to serve on the Board of Directors is shrinking. Under Idaho Code 43-201, Irrigation Districts of 15,000 acres or less have an option to amend their by-laws to allow electors who live within 15 miles of the District to vote and serve on the Board.

TESTIMONY: **Norm Semanko, Executive Director & General Counsel, Idaho Water Users Association**, was unable to attend the meeting and submitted a letter of support. His letter is inserted into the minutes.

Mr. Chairman and Committee Members,

I apologize that I will not be able to attend the Senate Resources Committee hearing, but wanted to let you know that the Idaho Water Users Association supports H 474, regarding irrigation district elections and eligibility to serve on a district's board of directors. As Rep. Stevenson and/or Lynn Tominaga will be able to tell you, this is a technical correction to match this section of the code to changes that were previously made by the Legislature. We would appreciate your support. I would be happy to answer any questions. Thanks.

MOTION: **Senator Coiner** made the **motion** to send H 474 to the floor with a do pass recommendation and to also have it put on the consent calendar. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. The **sponsor** of the bill will be **Senator Coiner**.

H 407 **Mr. George Bacon, Director, Department of Lands**, presented H 407. He said this bill would amend the statute to broaden the qualification requirements for the Board of Scaling Practices. This would allow board members to have either experience or familiarity with log scaling

practices. This bill would clarify that a log scaling license would not be required.

MOTION: **Senator Little** made the **motion** to send H 407 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. **Senator Little** asked for unanimous consent that H 407 be sent to the consent calender. There were no objections. **Senator Little** will be the **sponsor** of the bill.

H 405 **Mr. Bacon** said that H 405 is a clean-up bill. The Idaho Forest Industry Council has changed its name to Intermountain Forest Association, and this legislation would update that change.

It would also change the name of the State Board of Scaling Practices to the Idaho Board of Scaling Practices. This would make them more identifiable to areas outside the State of Idaho.

Another change would be to change the word "act" to "chapter". This change was suggested by Legislative Services.

There were no questions and no one was signed up to testify.

MOTION: **Senator Little** made the **motion** to send H 405 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Pearce**. The motion **passed** by unanimous voice vote. **Senator Little** asked for unanimous consent that H 405 be sent to the consent calender. There were no objections. **Senator Little** will be the **sponsor** of the bill.

PASSING OF GAVEL: **Chairman Schroeder** passed the gavel to **Vice Chairman Pearce** so that he may present the bills that he is sponsoring.

S 1280 **Chairman Schroeder** said that when license fees were increased in 2005, resident hound hunter permits were increased by 10 percent. Non-resident hound hunter permits were lowered from \$127 to \$100 instead of being increased by 10 percent as were most other tags and fees. This bill would correct that mistake by adding 10 percent to the \$127 pre-2005 fee and establishing the permit fee at \$140, the same percentage increase as resident hound hunter permits in 2005. There is a demand for nonresident hound hunter permits that exceeds the quota, with an estimated 200 applications a year for the 115 issued permits. During the past 10 years there has been an average of 115 non-resident hound hunter permits sold each year. Using this average, the Department can expect an additional \$4,600/year in revenue.

Chairman Schroeder provided information to the committee that was made available by the Department of Fish and Game that showed a 13 year history of license and tag sales. Prices of pelts were furnished by the Idaho Trappers Association and the Montana Trappers Association.

Senator Little inquired if the hunters were out for sport or for commodity. **Chairman Schroeder** said that someone with a pack of hounds does not make a living at it, but does sell the pelts. As the price goes up, the hunting intensifies.

TESTIMONY: **Ms. Sharon Kiefer, Legislative Liaison for the Department of Fish and Game**, testified next. A copy of her testimony is inserted into the minutes.

Senate Bills 1280 and 1281

Chairman Schroeder and Committee:

The Idaho Department of Fish and Game Commission reviewed these bills during their meeting via conference call on January 24 and voted to monitor these bills. Thus, they have not adopted a support or opposition position. They have not had organized discussion about these bills with nonresident hunters, such as at a Commission meeting.

As you know, the Department continues to contemplate the need for a license increase in the near future. The Commission discussed their concern that these bills represent a fragmented approach to a funding package. Certainly, passage of these two bills would not alleviate the Commission's need to have continued funding discussions.

We agree with the statement of purpose for S1280 that there is currently a demand for nonresident hound hunter permits that exceeds the quota. There is no quota for resident hound hunter permits. We are unable to gauge if buyer resistance due to a \$40 fee increase (excluding vendor fee) will balance the nonresident demand with the available quota.

The 10 year average sale of nonresident mountain lion tags represents 4% (rounded value) of the total 10 year average of mountain lion tag sales. For the 2001-2007 period, the nonresident mountain lion harvest represented 26% (rounded value) of the total mountain lion harvest. Thus, total nonresident harvest during this period was relatively high relative to the proportion of nonresident tags sold. Mountain lion harvest is governed by population quota, not tag sales. We are unable to gauge if there will be buyer resistance due to a \$106.75 increase (excluding vendor fee) in the price of the tag. I checked surrounding states for a comparison: Oregon = \$151.5, Montana = \$320, Utah = \$258 and Washington = \$219 (for a bear and cougar combo). S1281 would result in a fee of \$256.75 that is generally in the middle of this pack.

That concluded Ms. Kiefer's testimony.

Vice Chairman Pearce said he would entertain a motion.

MOTION: **Senator Coiner** made the **motion** to send S 1280 to the floor with a do pass recommendation. The motion was **seconded** by **Chairman Schroeder**. The motion **passed** by unanimous voice vote. **Chairman Schroeder** will be the **sponsor** of the bill.

S 1281 **Chairman Schroeder** presented S 1281. He said it deals with cougar tags and the non resident tags were decreased from \$233.50 to \$150, instead of being increased by 10 percent as were most other tags and fees. This bill corrects that mistake by adding 10 percent to the \$233.50 pre-2005 fee and establishing the non resident cougar tag at \$256.75, the

same percentage increase as resident cougar tags in 2005.

During the last five years, Idaho has sold an average of 778 cougar tags annually. Assuming tag sales stay constant, and based on past sales data, IDFG can expect an increase to their budget of between \$77,180.25 and \$83,051.50.

Chairman Schroeder provided information regarding cougar hunts from various licensed outfitters. He also stated that no one, including outfitters, had contacted him regarding either of the bills.

MOTION: Following a short discussion, **Senator Coiner** made the **motion** to send S 1281 to the floor with a do pass recommendation. The motion was **seconded** by **Chairman Schroeder**. The motion **passed** by unanimous voice vote. **Chairman Schroeder** will be the **sponsor** of the bill.

PASSING OF GAVEL: **Vice Chairman Pearce** returned the gavel to **Chairman Schroeder** at the conclusion of the voting.

ANNOUNCEMENTS: **The Chairman** announced that next week, there are two Gubernatorial appointments, plus a few bills. He hopes to be caught up by the end of next week and after that, any meetings will be subject to call of the Chair.

ADJOURN: The meeting was adjourned at 2:40 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 10, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- He welcomed **Mr. Craig Hill, Gubernatorial Appointee to the Lake Pend Oreille Basin Commission.**
- GUBERNATORIAL APPOINTEE:** Mr. Hill was appointed to serve a term commencing July 24, 2007 and expiring July 24, 2010. The biography that he provided indicates that he has lived at Priest Lake for 51 years and is a graduate of Priest River High School. He has attended the University of Idaho and Eastern Washington University. Mr. Hill is the owner of Hill's Resort, married with two children, and president of the Priest Lake Golf Course.
- Some of the community organizations he is active in are:
- Chamber of Commerce - Past President
 - West Priest Lake Fire Department - Commissioner
 - West Bonner County Groomer Advisory Board
 - Kalispel Bay Water and Sewer District - Past Board Member
 - Member "The Lakes Commission"
 - Past Cub Scout Leader
- Chairman Schroeder** asked Mr. Hill what the purpose was of the Lake Pend Oreille Basin Commission. **Mr. Hill** replied that it is a committee that is responsible for the water quality and the water quantity of Pend Oreille and Priest Lake. They also hear presentations on mil foil, review marina permit applications, and the Commission is used as a sounding board on water issues.
- Chairman Schroeder** stated that it is a requirement for all Gubernatorial appointees to appear before the appropriate committee for a hearing and he thanked Mr. Hill for his presence today.

GUBERNATORIAL APPOINTEE:

The **Chairman** welcomed **Mr. Dave Tuthill, Gubernatorial Appointee as Director of the Department of Water Resources**. Mr. Tuthill will serve at the pleasure of the Governor.

Mr. Tuthill submitted the following biographical summary which is inserted into the minutes.

Civilian Employment History: All positions have been with the Idaho Department of Water Resources (IDWR). More detailed information about these positions is provided below:

Jan 1976 - Aug 1976	Adjudication Section Supervisor
Sep 1976 - Nov 1978	Payette River Adjudication Supervisor
Dec 1978 - Jun 1985	Water Allocation Section Supervisor
Jul 1985 - Jun 1997	Western Regional Office Manager
Jul 1997 - Apr 2005	Adjudication Bureau Chief
May 2005 - Dec 2006	Administrator, Water Management Division
Jan 2007 - Apr 2007	Interim Director
May 2007 - Present	Director

Civilian Education:

Colorado State University, Fort Collins, CO	
B.S. Agri. Engineering	1974
University of Colorado, Boulder, CO	
M.S. Civil Engineering	1975
University of Idaho, Boise, ID	
Ph.D. Civil Engineering	2002

Professional Registration and Affiliation:

Idaho Professional Engineering Registration No. 3909	1979
Member, American Society of Civil Engineers since:	1978

Military Service:

30 years of Commissioned Service: Active Reserve
Retired as a Colonel, Corps of Engineers, United States Army Reserve, on July 1, 2004

Military Education:

	<u>Year Completed</u>
Ranger School (Resident)	1973
Airborne School, (Resident)	1973
Engineer Officer Basic Course (Resident)	1977
Engineer Officer Advanced Course (Resident)	1983
Command and General Staff College (Nonresident)	1990
Battle Focused Instructor Training Course (Nonresident)	1990
Signal Officer Advanced Course (Nonresident)	1995

National Defense University, Information Resource Management College: Telecommunication Technology for Managers Course (Resident)	1999
Information Management Planning Course (Resident)	1999
Information Technology Capital Planning Course (Resident)	2000

Position Descriptions:

Adjudication Section Supervisor: Duties included, but were not limited to, review of applications for water permits, analysis of proposed transfers of water with beneficial use calculations, analysis of decreed rights as to location and amount, supervision of six (6) people in the drafting and report writing sections, supervision of water distribution statewide, responding to watermaster/water district problems of water delivery, and supervision and monitoring of three (3) ongoing water adjudications.

Payette Adjudication Supervisor: Duties included, but were not limited to, responsibility for the Payette River Basin adjudication, which was a ten-year water rights adjudication involving some 10,000 water rights covering an area of 3,200 square miles; supervision of three (3) professionals, a secretary and two (2) data entry staff~ analysis of methods of computation of water rights to include comingling of rights, ditch losses and exchanges; preparation of water rights reports; arrangement for public meetings; use of radio, newspapers, posters and television to provide public information about the adjudication; and responsibility for the preparation of recommendations of state and federal water rights, including federal reserved water rights.

Water Allocation Section Supervisor: Duties included, but were not limited to, supervision of four (4) state office subsections; custodianship of a central filing system for all Idaho water rights, including claims, permits, licenses and decrees, including cross-referencing systems for water rights research; responsibility for water right processing, including state office review for approval of water right permits, amendments, assignments, licenses and transfers; central processing and guidance for water right adjudications which were handled in the regional offices; oversight of the state office drafting department; and responsibility for implementation of a state-wide mandatory water right claim filing program, which included preparation of posters and brochures, radio and television advertisements, and public education programs.

Manager of the IDWR's Western Regional Office: Duties included, but were not limited to, oversight of all aspects of Western Regional Office activities, including personnel and salary; oversight of water right application processing and beneficial use examinations; general oversight

of the Western Regional Office's adjudication unit; oversight of dam safety and stream channel alteration programs; implementation of IDWR policy and procedure; implementation and maintenance of IDWR databases and files used at the Western Regional Office; coordination of the various section activities in the Western Regional Office; oversight of water distribution and administration throughout the Western Region; serving as Chairman of the GIS Utilization Task Force; supervision of the creation of the Southeast Boise Ground Water Management Area (SEBGWMA); and formation, operation and technical liaison with the SEBGWMA Advisory Committee.

Adjudication Bureau Chief: Duties included, but were not limited to, implementation and oversight of the IDWR's statutory duties in the water right adjudication process, supervision of a staff of 44 technical and legal personnel located in six offices throughout the state, and responsibility for all IDWR activities regarding water right adjudications, including the Snake River Basin Adjudication containing more than 170,000 claims.

Administrator, Water Management Division: Responsible for activities of the Water Management Division, consisting of 105 employees and the following programs: water rights, water distribution, water allocation, water right adjudication, well construction, well driller licensing, underground injection, safety of dams, stream channel alterations, flood plain management and regional offices.

Director: Responsible for planning and administration of water resources in the State of Idaho.

Mr. Tuthill said it was a pleasure to appear before the committee to seek confirmation as Director of the Idaho Department of Water Resources. He said that since he has previously been before the committee, he will stand for questions.

Chairman Schroeder said he would like for Mr. Tuthill to talk about futile calls. **Director Tuthill** said futile calls have a long history in Idaho's surface water. First in time is first in right, and senior users can call for a water right. He said their initial reaction is to curtail juniors on certain water systems. Many times, a senior will be downstream on the stream and upstream will be curtailed. However, during the season, sometimes the flow has receded. At the point where the watermaster determines that the water would no longer reach the senior, the watermaster can designate that the junior receive the water upstream in a futile call. What is more complicated is the administration's futile call on ground water. Ground water futile call does have some common law that they have looked into. Right now, under Conjunctive Management Rules, they have an explicit set of actions that take the place of futile call. Last year when

they were investigating the rules, as determined by the District Court to be unconstitutional, they looked at futile call for ground water and have made some initial legal assessments that the Supreme Court determined that the rules are not unconstitutional. Mr. Tuthill said they stopped the process of looking at ground water application under futile call.

Chairman Schroeder asked if Idaho's laws are sufficient to deal with the concept of futile call. **Mr. Tuthill** said it is, given the fact that the rules do describe how futile call is to be administered by ground water. If the rules at some point are found to be unconstitutional as applied, the state would have to take another look at futile call relating to ground water.

Senator Little said if the Director was to make a prediction about curtailment regarding a ground water right, when would that be? **Mr. Tuthill** said that the snow pack is tapering off and they are below 100 percent normal; however, they are hopeful that there will be enough water this year. He stated that his expectation this year is that most likely there won't be a requirement for curtailment based on the surface water coalition call or the irrigation district call. He also expects that some solution will be developed regarding the Thousand Springs to avoid a curtailment. Next year, if there is a below average supply and barely get by this year, we could be facing a potential curtailment.

Mr. Tuthill said that Idaho is moving methodically through the process of determining the laws in the statutes in the adjudication required for administration of ground water. It is a difficult task. Idaho is the second state in the west in moving toward conjunctive administration. He said that by the time the cases that are currently underway get through the Supreme Court, Idaho will be poised for the administration. He stated that the challenge in Idaho in the 20th Century was to administer surface water. Now the challenge in the 21st Century is to incorporate the administration of ground water.

Chairman Schroeder asked at what point do taxpayers dollars enter into the picture. **Mr. Tuthill** said there has been widespread recognition that because of the magnitude of the Eastern Snake Plain Aquifer and the challenges, there have been many state dollars spent to study the aquifer. He said that in his view, it has been an investment in knowledge about ground water, both technically and legally.

Senator Siddoway inquired about transfers and why it seems to take so long to find out the status. **Mr. Tuthill** said one of the reasons they developed a backlog was because of their effort to adjudicate the basins where these transfers are located. They held up processing the transfers so that they would not transfer undeveloped or unknown water rights, but decreed water rights. They are now able to do more processing in the regional offices than before. The last four months, they have had record processing transfer applications.

Senator Coiner inquired if it is Mr. Tuthill's plan to administer water rights as they come through adjudication. **Mr. Tuthill** said there was a step before they do that and that is to receive interim administration approval by the court and that has been done in many basins. He said the approval is necessary because the SRVA final decree has not been issued. At this point, in the basin that has many objections, the court is reluctant to issue interim approval until those basins are largely resolved. Basin 37 is a basin that they have received a request for interim administration, but they have received about 27 percent objections of the water rights there.

Senator Stennett inquired if Mr. Tuthill had received any proposals regarding recharge on the Eastern Snake Plain in response to a letter he had sent. **Mr. Tuthill** said initially, they received three responses. Since then, they have been in contact by telephone with two other water districts. It appears at this point, because the reservoirs are so low, they will be recharging as much as they can, based on the water rights that exist.

The Director was asked if water does become more available, are there safeguards in place in the accounting system, that water diverted for recharge will be in priority this year, as opposed as to what has happened in past years. Mr. Tuthill replied that the priority date of recharge right now is the priority date of the Water Resource Board since 1980. The water is in priority when it is in. He said that they have all learned a lot about recharge in the past few years and there will be intense scrutiny on what water is being delivered when and they plan to have that scrutiny based on lessons learned, and based on the operation of the model.

Chairman Schroeder asked if dams are built, how do the water rights lie. **Mr. Tuthill** said that if additional storage is added to the system, new storage will have its own priority date and it also depends where the system is at on the river.

Senator Cameron inquired if the stream channel program could be kept due to a reduction in the budget for it. The **Director** replied that they can continue it. **Senator Cameron** then talked about the backlog of transfers and inquired if the process could be re-evaluated to see if it could be made more efficient and more prompt. **Mr. Tuthill** said one of the challenges is conducting hearings on the protests. They have not had enough hearing officers, so more have been hired. Also, now that they have recommendations as a result of the adjudications, the transfers can be processed more rapidly.

Senator Stennett asked Mr. Tuthill what the Department's position is on Fish Creek Dam. **Mr. Tuthill** said to repair that dam would be very expensive. One option is to transfer that water that was stored and credit it to the aquifer.

Senator Little said given the debate on the North Idaho Adjudication this session, asked if there was a problem administering surface water in North Idaho, and if there isn't, why is adjudication needed? **Mr. Tuthill** said they are seeing a rapid increase in the number of water problems in North Idaho. Most of the problems are based on small users; one is on Twin Lakes and another on Hidden Lake. Both are based on domestic users. What they are seeing in North Idaho is that additional domestic wells are having a significant impact on the water.

Chairman Schroeder thanked Director Tuthill and said the committee would vote on the confirmations at the next meeting. He then called on **Chairman Stevenson of the House Resources and Conservation Committee** to present HJM 8.

HJM 8 **Chairman Stevenson** said this legislation would allow for an increase in the size of the Minidoka Dam and a study for the replacement of Teton Dam. The advantage of the Minidoka Dam increase would be that it is projected to provide an additional 40,000 to 50,000 acre feet of water storage. There would also be a feasibility study of water supply and flood control on the Boise River, including Twin Springs Dam.

MOTION: **Senator Cameron** made the **motion** to send HJM 8 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Pearce**.

TESTIMONY: **Mr. Norm Semanko, Executive Director, Idaho Water Users Association**, said they are in support of this bill.

The motion **passed** by unanimous voice vote. **Senator Cameron** will be the **sponsor** of this bill.

H 433 **Norm Semanko** presented H 433. He said that this legislation is to allow Irrigation District Board of Director's flexibility on the date of canvassing elections, while retaining the deadline of the Monday following the election to complete the canvass of returns.

Chairman Schroeder said that no one had signed up to testify on this bill.

MOTION: **Senator Siddoway** made the **motion** to send H 433 to the floor with a do pass recommendation and asked for unanimous consent for it to be put on the Consent Calendar. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Siddoway** will be the sponsor.

S 1470 **Senator Stennett** presented S 1470. This legislation would insure that the state provide for a public access right-of-way of a width of twenty-five feet in exchange for the disclaimer of interest. Any agreements in excess

or less than a twenty-five foot access would be at the discretion of the State Land Board. It also codifies current guidelines already implemented by the Idaho Department of Lands and the State Land Board in disclaimers of interest, and protects the public access to our rivers.

Senator Stennett said this is a way for the state to protect public access. He provided a copy of pages 8 and 9 of the Attorney General's opinion regarding this issue. The **Conclusion** of the opinion is as follows:

"The Board has a fiduciary responsibility under the Public Trust Doctrine to maintain public access to the submerged lands underlying navigable waterways. Private interests may attempt to claim formerly submerged lands. However, due to the complexity of the legal and factual prerequisites to a claim of title, the Board is justified in requiring compensation in the form of a 25-foot public use right-of-way from the party claiming title. This compensation is a settlement of a disputed boundary and does not constitute the taking of private property for a public purpose. The Board is acting in a proprietary capacity in compromising a disputed claim to public trust resources."

In the discussion, **Senator Cameron** asked who would file the disclaimer and at what point in time would they issue the disclaimer of interest? **Senator Stennett** replied that if someone wanted to develop the property and there is a cloud on the title showing the state has a right through the property, this bill would allow for an exchange somewhere else on the property. The owner could go to the state and ask for a disclaimer or go to the District Court and try to quiet title the property. Senator Stennett said that he wanted to codify this to ensure that in the future, if there is a change in the Land Board, that the policy of exchange for a twenty-five foot easement is in place.

TESTIMONY:

Mr. Bob Brammer, Assistant Director of Lands, Minerals, and Range Management for the Department of Lands testified. He said the state was granted ownership of the beds of navigable rivers at the time of statehood and they don't know exactly where they were at that time. There were meander surveys done about the time of statehood. They have surveyed the approximate locations of the ordinary high water mark that defines the state's ownership. Over time, rivers have moved and flows have been altered through damming, diking, and irrigation withdrawals, so the flows have moved over what they would have been at statehood. When an upland property owner wants clear title to his property to the high water mark as it exists today, it may be that his property was defined to the meander line. Those upland property owners can come to the state, voluntarily, and request a disclaimer of interest of those lands that are no longer the bed of the navigable river - they are indeed uplands. The department goes out, identifies where the ordinary

high water mark is, the applicant pays a surveyor to define the high water mark and the upland property that is in question. The state then issues a disclaimer and they recognize, because of the alteration of the flows, that the state public trust may have been diminished because they can't tell exactly where it is. This is a way of requesting a twenty-five foot public right-of-way to protect the public's interest and access along the river.

Senator Stennett made a request of Mr. Brammer to provide a list of navigable rivers in Idaho. Mr. Brammer said that he would do that.

MOTION: Following the discussion, **Senator Little** made the **motion** to send S 1470 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Stennett** will be the **sponsor** of the bill.

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 12, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- MOTION:** **Vice Chairman Pearce** made a **motion** for the approval of the minutes of March 3 and March 5, as written. The motion was **seconded** by **Senator Little**. The motion **passed** by unanimous voice vote.
- ANNOUNCEMENTS:** **Chairman Schroeder** announced that the committee has been provided with a list of navigable rivers in Idaho, as requested by Senator Stennett in the meeting of March 10. There is also information provided by DEQ in conjunction with their presentation today. On Friday, the committee will hear the Senate Joint Memorial on mining, as well as the emissions bill. Director Bacon of the Department of Lands will give an update on the status of public lands at Tamarack. Tamarack's lobbyist has also been invited to Friday's meeting.
- The **Chairman** said that the committee needs to give consideration to two **Gubernatorial appointments - Dave Tuthill as Director of the Idaho Department of Water Resources and Craig Hill, appointed to the Lake Pend Oreille Basin Commission.**
- MOTION:** **Senator Cameron** made the **motion** to accept the appointment of Dave Tuthill as Director of the Idaho Department of Water Resources. The motion was **seconded** by **Vice Chairman Pearce**. The motion **passed** by unanimous voice vote. **Chairman Schroeder** will be the **sponsor** of Mr. Tuthill.
- MOTION:** **Senator Little** made the **motion** to accept the appointment of Craig Hill, appointed to the Lake Pend Oreille Basin Commission. The motion was **seconded** by **Senator Andreason**. The motion **passed** by unanimous voice vote. **Senator Keough** will be the **sponsor** of Mr. Hill.
- WELCOME:** **Chairman Schroeder** welcomed **Ms. Toni Hardesty, Director of the**

Department of Environmental Quality and the **DEQ Board members**. In attendance were **Craig Harlen, Don Chisholm, Joan Cloonan, Nick Purdy, Randy MacMillan, and Kermit Kiebert**.

The **Chairman** then turned the meeting to Ms. Hardesty.

SPEAKER:

Ms. Hardesty said that she would like to introduce some of her staff that has accompanied her today. They are **Martin Bauer, Administrator of the Air Quality Division; Barry Burnell, Administrator of the Water Quality Division; and Orville Green, Administrator of the Waste and Remediation Division**.

Ms. Hardesty said agency highlights for this past year and issues of interest will be what she will present today. The topics she will cover will be:

- Mercury Update
- Crop Residue Burning Update
- Treasure Valley Air Quality
- Basin Cleanup
- Coeur d'Alene Lake Management Plan

Following are Ms. Hardesty's talking points.

Mercury Update

- Federal Clean Air Mercury Rule (CAMR) has been vacated
- No change to Idaho because we had opted out (cap and trade)
- Memorandum of Understanding
 - Idaho, Nevada, and Utah
- Conducting mercury monitoring throughout the state
 - 3 Mercury Deposition Network Monitors
 - State-wide Lakes Survey

DEQ Mercury Activities in 2007

- State-wide Survey
 - Fish collected @ 50 lakes
 - Fish collected @ river sites
- Air Deposition Monitoring at three locations

Preliminary Mercury Results

- 30 out of 50 lakes were below criteria (60%)
- 62 of 89 fish samples were below criteria (70%)
- 4 out of 7 rivers were below criteria (57%)
- Largemouth and Smallmouth Bass and Walleye usually exceed criteria
- Rainbow Trout are usually below criteria

Air Monitoring

- Salmon Falls Creek Reservoir
 - 1 Year Data Collected
 - Draft Report Being Peer Reviewed
 - Limited Data
- Craters of the Moon
 - 6 Months Data Collected (not enough to determine trend)

Mercury Plans for 2008

- Monitor mercury wet deposition at:
 - Craters of the Moon
 - Lake Lowell
 - McCall
- Conduct fish tissue survey in large rivers
- Follow-up on Silver Creek
- Develop comprehensive mercury data base

Fish Consumption Advisories

- Currently 10 lakes/reservoirs have mercury fish advisories
 - They are: Priest Lake, Lake Pend Oreille, Lake Coeur d'Alene, Brownlee Reservoir, Lake Lowell, Silver Creek, Strike Main Reservoir, Jordan Creek, Salmon Falls Creek Reservoir, American Falls Reservoir.
- 1 advisory is for selenium (East Mill Creek)

Crop Residue Burning

- Background
 - Lawsuit
 - Crop Residue Burning Not Allowed State-wide
 - State/Plaintiff/Growers trying to negotiate settlement agreement
- Negotiation process has resulted in agreement points including:
 - Program administered by DEQ
 - Modeled after Nez Perce/Washington Program
 - Transparency
 - Robust Monitoring
- Statute Signed into Law 03/07/08
- Negotiated Rule Process

Treasure Valley Air Quality

- Status of Air Quality
 - PM 2.5
 - Proposed New Ozone Standard
- Treasure Valley Air Quality Council
 - Council met many times over the past year
 - Developed Recommendations
 - Stage 1 Vapor Recovery
 - Negotiated Rulemaking Update

CDA Basin Cleanup

- Remediated 536 properties in 2007
 - 87 (16%) were high risk (young children/pregnant women)
 - 74,521 cubic yards of waste were remediated (Big Creek Repository)
 - 2,573,394 square feet of property were remediated
 - 9,177 truckloads of waste went to the BCR
- The total cost to date is over \$13.6 Million
- Risk reduction
 - 9,697,862 square feet of property remediated since 2002

- East Mission Flats repository
 - Completed 30% design of EMF repository and made changes in final fill height to address public concerns
 - Working on a phase I limited operation plan that would allow up to 20,000 cubic yards of material to go into EMF until final design and construction are completed

CDA Lake Management Plan

- Superfund Alternative
- DEQ is developing a Joint Lake Management Plan with the Coeur d'Alene Tribe
- We anticipate that the plan will be completed this year
- DEQ will likely include a decision unit in next year's budget request for implementation of the plan

At the conclusion of Ms. Hardesty's talk, Chairman Schroeder asked her if she would provide the committee with information regarding the 2007 mercury lakes results. Ms. Hardesty said that she would. He thanked her for her update regarding the activities of DEQ.

Chairman Schroeder said that he would now entertain questions from the committee to the DEQ Board members.

Senator Siddoway inquired of the Board if they had studied the forthcoming emissions bill, H 486, and also, what are their thoughts regarding the emissions control monitoring?

Mr. Chisholm said the monitoring has been assigned to the Treasure Valley Air Quality Council and there are different emissions that they are dealing with now. As long as the TVAQC does what it was intended to do, that will not come back before the Board of Environmental Quality to deal with. If they fail, Mr. Chisholm said that it would be incumbent for the Board to implement the regulation. With changing technology, he feels they will have to adapt. There has been great dedication of the Legislature to have most things handled at the most local level possible, but the folks that are involved need to share their part of responsibility for Ada County or it is not going to work.

Senator Langhorst inquired if any of the Board members would like to speak to the question of – if the Treasure Valley Air Quality Council's recommendations are not implemented or don't work, and they reach non-attainment, what would the consequences be? Economically or otherwise. **Ms. Cloonan** said they all have thought about the question that has been posed to them. She said the first consequence is that federal funding for highways is in jeopardy and they would need to come up with a plan. If the Treasure Valley group and the local counties don't do it for themselves, then it would go to a higher level, such as DEQ and come up with regulations that would be far more onerous than even the testing that is being suggested right now. She said they would have to think of other ways to reduce emissions and if a nuke plant or industry wants to come into the area, they will have to find offsets for their emissions. It will not be a one-for-one offset, but an extra percentage added on. They would have to find a way to sell offsets for those

emissions and they would have to be verifiable offsets. It would make it very difficult for any new businesses that had emissions to come into the Treasure Valley. Those are some of the consequences.

Senator Langhorst asked, without declaring your support for a particular bill, is anyone willing to say that it is a good idea to try to look for the best kind of reductions that can be found at the lowest possible cost? **Ms. Cloonan** said that she had looked at the bill and she is in support of it and that it makes sense to look for the easiest, cheapest, most sensible way. Transportation emissions is a very difficult problem right now because there are many small sources, and it is hard to corral. Stack emissions from industry are pretty well controlled. There probably needs to be programs for dry cleaners and smaller sources. **Mr. Harlen** said it is also a matter of not just regulation, but it has a very chilling effect on investment, even for existing facilities. He said they can't generate money to come in if they are close to the non-attainment line because they can see that they are going to be in a huge mess, so the funding dries up. **Mr. Kiebert** said that is where the bill originated. The business community was looking at that and once you got into non-attainment, they were fearful that it would have an impact that Mr. Harlen talked about. Most of the business community supports the bill.

Vice Chairman Pearce asked what could be done to lighten the regulatory load. **Ms. Cloonan** said that the rest of the world is catching up with us in terms of the degree of regulation. She said that she had spent time in Canada for the J. R. Simplot Company working on getting a new plant licensed. They do it differently. The part of regulation that says "reduce your emissions" needs to be based on attainability, and a system that is sensible with the paperwork in the administrative part so that the burden isn't overwhelming. She said that a safe, clean environment is needed and as they become more sophisticated and understand science more, the implications are understood. Ms. Cloonan said not to waste time on the incremental, but to go after the things that are important. As more studies are done, they have found that mercury is important and as more studies are done, they have found that ozone is important. She stated that she now understands the competitive part because she is now a partner with her husband in a small business trying to do things and dealing with the environmental pressures.

Dr. MacMillan said that the rules they develop needs to be technically and scientifically sound. He said that he could argue that some rules, at the federal level, were granted by politics, not based on sound science. From his perspective, whatever the natural resource or environmental issue is, it is really important to have good sound rules. **Mr. Harlen** stated that one of the small things they try to do as a Board, and the Department does informally, is that in the rules they promulgate, they try to put a sense of certainty, so that when someone has to comply, it is not a question of "I may get approval" or "I may not get approval". They try to make sure that as people meet the goals along the way, they will be granted a permit. **Mr. Purdy** said that it is important to keep the regulation of the regulations in the state and that is why there is a need for the Department of Environmental Quality so that it is driven by the

Legislature, the Board and employees of the state. He feels another thing that helps is the negotiated rule-making that they do. It gets the laymen involved, the regulator, and the regulated person and it is amazing what comes out of those sessions. **Mr. Chisholm** said one of the things that has to be remembered is that if they lower the standards to be competitive, they run the risk of compromising the health of the people. If permanent contamination of ground water sources, or whatever that is a liability, that ought to be figured as part of the cost of production of that commodity.

Senator Pearce said he would not want to go back to dirty rivers and polluted lands, but he thinks sometimes decisions are made that are not always correct. He feels those issues should be corrected and as new science is found, it tells us that some things are not as important as was thought. Senator Pearce said sometimes we can regulate ourselves out of business. **Chairman Schroeder** said that is one of the reasons there is a DEQ Board. **Mr. Chisholm** said the process is open and people can come in and ask for modifications of rules at any time. They have the capacity to go both ways.

Chairman Schroeder said one of the things in the news these days is the amount of pharmaceuticals and medicines in drinking water. Has it been thought about in Idaho? Is so, what has been done about it? And if not, what are we going to do? **Mr. Barry Burnell** said the Idaho Department of Water Resources has a program for ground water monitoring. It is a state-wide ground water monitoring network and each year they go out and monitor 400-500 wells on an annual basis. Some of the wells are repeat wells and that is so trend data can be obtained. Part of what IDWR does is monitor emerging contaminants of interest. Most of the emerging contaminants have been around for a very long time period, but the technology and methods to detect these has gotten to be so sensitive that their presence can be measured in very low concentrations. Mr. Burnell said they have an ambient monitoring program that they partner with U.S.G.S. for the surface water. Part of that contract includes monitoring for some of the personal care products. Regarding the health implications, because these levels are low, there is very little information about the toxic health effect of these low doses. He said what grabbed some of the newspaper headlines were the reports on feminization and fish that are exposed to these low levels of compounds. Mr. Burnell said you must remember that fish, because of their biology, have the capability of changing from male to female and female to male. The chemicals in the water may be inducing those fish to express those changes. It is something to watch and be cognizant of, but he feels that we are years and years away from any kind of a regulatory standard. **Ms. Cloonan** said that she would like to add that the city of Boise has been looking at this issue for some time and it is not known yet what the side effects on humans would be of these low levels. She said that they would probably have a hard time getting dosages so that people don't eliminate the drugs from their systems and they go through the waste water treatment plant. At the same time, Health and Welfare regulations for disposal of unused drugs when someone passes away have been changed. Previously the unused drugs were dumped down the drain. Now they are mixed together with an unuseable conglomerate and put in the trash. Little

things are being done to prevent pharmaceuticals from going down the drain. The city of Boise has a hazardous waste collection program, as well as a drug collection program.

Chairman Schroeder asked the Board what role they are playing regarding CO2 emissions and carbon credits. **Ms. Cloonan** said that so far, they don't have a role. However, they have gone to workshops just to keep up with what is going on. She stated that DEQ has a role in the CO2 emissions program. **Ms. Cloonan** said that she doesn't know if the problem with climate change is man-caused or not. Without having an official system within the United States, there are a lot of groups out there who will buy carbon credits or accumulate carbon credits. **Chairman Schroeder** inquired as to who is making the money. **Ms. Cloonan** said the brokers and the people who are willing to sell. **Mr. Chisholm** said that some years back, the Legislature passed legislation to create a carbon sequestration commission or committee. He has talked to one of the members and it is his impression that not too much is going on. **Ms. Cloonan** said that not much has been done with carbon sequestration. That is one place where, if you pay someone to sequester your carbon through a program that injects it thousands of feet down in the earth, where your money would go.

Senator Stennett asked what role the Board plays in energy management/efficiencies or alternatives. **Ms. Cloonan** said the Board has some very specific authorities that they were granted under the statute and one is to promulgate rules and another is to hear contested cases. **Mr. Chisholm** said the stringency doctrine keeps them from playing an active role, unless the authority is delegated to the Board. Regarding accountability, **Mr. Chisholm** said that it is important to remember who has the authority and what they are allowed to do.

Chairman Schroeder inquired if a citizen of the state contacted the Board and said that a staff person of DEQ did something to them, how would the Board react to that? **Dr. MacMillan** said that he has been approached by people with that problem and he tells them that he will notify DEQ, typically the Director. He feels his responsibility is to pass along the information to the proper person. **Mr. Purdy** said that it has been his experience that the Department has been very pro active in contacting the person and resolving it.

Chairman Schroeder asked the Board how they viewed their role. **Ms. Cloonan** said she did not view their role as being in charge of DEQ and that is because of the way the statute is framed and it is very narrowly defined. She said there is a reason for that. **Ms. Cloonan** was involved when DEQ was taken from being a division of Health and Welfare and made into a department. A concern was if there would be a Board and what kind of Board. **Chairman Schroeder** also asked if they had the legal tools they need to do the job that needs to be done. **Ms. Cloonan** said they can initiate rule-making and hear contested cases. She said that at times, as a Board, in terms of planning - was how were they involved in planning. To officially do it, they need statutory authority to do it. At one point, they suggested to the Governor that it would be good to have environmental strategy for the State. Their ability was only to

suggest. **Mr. Chisholm** said they don't have anything to do with the budget or hiring/firing the director and that is fine. He feels the Board has done a good job with what they have been assigned to do. **Dr. MacMillan** said the way things are right now, in many respects they can reject proposed rules by DEQ (and sometimes they do), but he feels they compliment each other. **Mr. Harlen** said he feels that one of their most important functions is to be the "check and balance" on the Department, in case there could be an over-zealous administrator who wants to change the course of the State. He said the Board brings a lot of business experience, a lot of practical experience, and they do say no occasionally on some rules.

Chairman Schroeder thanked the Board for visiting with the committee and he said that if any of them had any ideas on how to be more effective, he would appreciate hearing them.

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 14, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Schroeder called the meeting to order at 1:30 p.m. He said this issue is not on the agenda, but the Outfitters and Guides Board want to clarify an answer to a question that came up in the meeting the other day. That will be followed by H 586, followed by the Tamarack report.

Jake Howard, Executive Director, Idaho Outfitters and Guide Board, said that when they testified on H 473 a few days ago, some questions were asked. One question that was addressed at the previous committee meeting was not fully answered and they wanted to respond to clarify it.

Steve Tobiason, Attorney, Idaho Outfitters and Guide Board, addressed the committee. He stated that Senator Cameron and Senator Stennett both had questions regarding H 473. He said that he indicated at the prior meeting that they keep a notebook of all prior opinions. He obtained the opinion and presented it to the committee secretary to be made part of the minutes for that day. The last opinion they had was written by Steve Scanlin in 1991 when he was a deputy attorney general. When they cross-checked with the Board's notebook, they found, not necessarily a legal opinion, but a letter written by Mr. Scanlin in 2005. He was no longer an attorney general, but was just working for the Board. Mr. Tobiason said that he and Mr. Howard met with Chairman Schroeder yesterday and discussed this matter and at the request of the Chairman, that is why they are here today. He then presented copies of that letter to the committee. **Senator Cameron** inquired if this letter would make a difference regarding the previous responses to his question. **Mr. Tobiason** said that Mr. Scanlin had attached a copy of the 1991 opinion to his 2005 letter. The letter is inserted into the minutes.

August 3, 2005

Oscar Williamson II
President, Deer Hunters of Idaho
3606 E. Kingsgate Dr.
Boise, Idaho 83702

Re: Donated Hunt

Dear Mr. Williamson:

This office represents the Idaho Outfitters and Guides Licensing Board. Board Executive Director Jake Howard has asked me to respond to your letter to him dated August 2, 2005 regarding donated hunts.

I have enclosed a copy of the 1991 Attorney General's Letter Opinion which I wrote regarding donated hunts by outfitters. The difference between the question you have asked and the one addressed in the letter opinion is that you propose that a non-outfitter provide the hunt.

This is still outfitting, and in this case outfitting without a license. Let me tell you how it worries. The individual providing the hunt is actually making a donation to the organization for the amount of the hunt, this is a "gift" from the individual providing the hunt to the organization. When the hunt is donated, someone (in this case the "buyer" or winner of the auction) pays money to the organization. What the buyer receives for this payment is an outfitted hunt. Therefore there is compensation provided for the hunt and it becomes an outfitted excursion under the provisions of Section 36-2102, Idaho Code. Even though the individual providing the hunt doesn't receive compensation directly, he gets credit for making the donation to the organization. If he were a licensed outfitter, it would be a charitable income tax deduction if the organization qualifies.

The only way to get around this prohibition is for the hunt to be provided by a professional licensed outfitter. This avoids any licensing issues as well as insures for the health, safety and welfare of the public. It also reduces the liability the organization faces from anything going wrong on the hunt.

Thank you for your attention to this matter. If you have questions, please call me at the above number.

Very sincerely, Steven F. Scanlin

Chairman Schroeder suggested that Senator Stennett, Senator Cameron, and himself, since they are members of the Ad Hoc Fish and Game Committee, work with the Outfitters and Guide Board over the summer to clarify this issue. Both Senators agreed to the suggestion.

Senator Little stated he thought the answer to Senator Stennett's question was if you do not go out and market yourself as an outfitter and you donate a hunt, you would not fall under the jurisdiction of the OGLB. **Mr. Tobiason** said that it takes three elements for someone to be a licensed outfitter. They are (1) advertising as such; (2) getting compensation; and (3) providing services. **Chairman Schroeder** said

that what he doesn't want are ambiguities in the law that are such that "you may be arrested, but no one is ever going to do it". He said that is not a good law and it needs to be spelled out. **Senator Langhorst** suggested that online trading of hunts could be included in the review this summer. **Senator Cameron** inquired as to where in the system is the bill that was passed (H 473). He was informed that it is on the way to the Governor. He said that he was okay with meeting this summer, but he suggested that Mr. Tobiason, in his role as Counsel, to write the Chairman a letter and formalize some of his testimony today and record that as part of the minutes.

Chairman Schroeder said that he appreciated the fact that Mr. Howard and Mr. Tobiason volunteered to come back today and clarify this issue.

Senator Langhorst said that the laws need to be very clear and some organizations feel there is an unanswered question. On one side, they are dealing with non-profit and on the other side, there are people who are for-profit and doing donations. The non-profit organizations need to be exempt, and the for-profit organizations need to be held accountable.

That concluded the discussion. The next order of business was to approve some minutes.

MINUTES:

Vice Chairman Pearce said he had read the minutes of March 7 and found them to be in order and made the **motion** for their approval. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

Chairman Schroeder said they would now hear H 586, with the sponsor of the bill to open. **Vice Chairman Pearce** will be the timekeeper, limiting testimony to five minutes or less. The Chairman will switch back and forth between pro and con and he asked that testimony to not be repeated.

H 586

Senator Langhorst said that Peter O'Neill and Toni Hardesty would also help with the opening remarks. He then explained that this legislation will give authority to the Department of Environmental Quality to establish a vehicle emission testing and maintenance program to control air pollution emissions from vehicles in airsheds that are approaching non-attainment with applicable air quality standards and rules.

He said this bill creates a new section to be known as Section 39 -116B, Idaho Code, and it describes the trigger mechanism under (a) and (b). Those two things have to happen for the bill to kick in. Under (a), an airshed that has ambient concentration design values equal to or above 85 percent of a national ambient air quality standard for three consecutive years starting with the 2005 design value and (b) the department determines air pollutants from motor vehicles constitute one of the top two emission sources contributing to the design value of 85 percent. Section two deals with the rule-making standards by which DEQ would come up with a program to solve the problem in that air shed. It would designate the counties and cities applicable, line up the requirements necessary to authorize the testing stations, and specifically, inspections would occur no more than every two years. Under (g), the fee for a motor vehicle

inspection would not exceed \$20 per vehicle. In Section three, there is also a local opt out provision. They would have 120 days to come up with an alternate motor vehicle emission control strategy that will result in emissions reductions equivalent to that of a vehicle emission inspection program. Section four states that enforcement is carried out by the Idaho Transportation Department by revoking the registration of vehicles that fail to comply. In Section five, it calls for an annual review of the program by DEQ. Section six states that every five years, the director shall review the air quality data and determine whether the program should be continued, modified or terminated. Section seven has some very specific exemptions, such as: electric or hybrid motor vehicles, motor vehicles less than five years old, classic automobiles, motorized farm equipment and registered motor vehicles engaged solely in the business of agriculture. Senator Langhorst said that this bill is not intended to prevent the Department from doing other things that they might need to do.

Pete O'Neill, Chairman, Treasure Valley Air Quality Council, said that the Regional Quality Air Council Act was passed by the Legislature in the Spring of 2005, members were appointed by Governor Kempthorne in December, 2005, went to work in January, 2006 and submitted the plan to the Legislature, as requested, in early 2007. The Legislature wanted to see a science-based plan, designed to protect, preserve and approve the air quality of Treasure Valley while accommodating private, public and commercial interests. He said they had lots of meetings of the council as a whole, lots of subcommittee meetings, listening to professional technical presentations. They also, as required by the Act, went through a citizens committee process (made up of citizens in Ada and Canyon Counties) that met a number of times in 2006. There were two advertized public hearings on the bill and after considering all of the gathered information, they made six specific recommendations. Emission testing was one of those recommendations.

Mr. O'Neill said that the Treasure Valley is a single airshed and it is defined by geological boundaries. The quality of the air in Treasure Valley is getting worse and bad air is bad for your health. He said the trend for ozone is heading for non-attainment sometime in the near future. The root cause of the decreasing air quality in Treasure Valley is due to the growth - more cars are being driven per capita and they are being driven more miles per day. Mr. O'Neill said that we are clearly headed for non-attainment. He then explained what non-attainment is. The reason the standards are set where they are is because of bad air and that is bad for your health. He stated that there are a number of them on the Council that thought that was a strong enough reason to do what they are doing and not use scare tactics of non-attainment. Non-attainment will have an enormous cost to the state. DEQ would have to do an inventory of where the pollution is coming from, advise, implement, monitor a plan to fix the problem, and report on a regular basis. To get out of non-attainment would surely include emission testing and a maintenance program, as well as some of the other recommendations. It would have a negative impact on small businesses- dry cleaners, paint shops, etc. Existing businesses would have to do an inventory on the best available technology in order to expand or to do anything. The net result, even with

an out, would be that the feds would withhold transportation funds. It would also impact our quality of life in Idaho.

Mr. O'Neill said that in conclusion, in retrospect, the Council maybe erred in not presenting the plan with a little more sense of urgency. He feels they would be a lot further ahead if they would have had this discussion a year ago. He stated that, speaking for the members of the Council, he assured the committee that (a) they are proud of what they have done; (b) they have become passionate about the issue as they learn more about it; and © they are committed to work with DEQ and other stakeholders to do what they were asked to do in the first place and that is to protect and preserve.

Toni Hardesty, Director, Department of Environmental Quality (DEQ), said that this bill is a preventative measure designed to give an opportunity to geographical locations in the State to avoid non-attainment. Non-attainment is a significant issue and has economic and regulatory implications. This legislation is similar to some of the control measures that they would implement. Emission reductions are a combination of many factors, and what they are looking for are the most cost effective matter. Cars are becoming cleaner, but this legislation will help reduce emissions.

Chairman Schroeder asked how Ontario, Oregon's department fits into the air issue. **Ms. Hardesty** stated that when they look into a geographical area, they look at the airshed to determine how they need to make the strategy. What they do as an agency, within that metropolitan statistical area, is look at the airshed. Then they would look within that airshed, what are those parts that would be appropriate to focus control measures on. **Chairman Schroeder** inquired if Ontario was a significant factor. **Ms. Hardesty** responded that the way this legislation was written, they would not be reaching across state lines in order to regulate. **Chairman Schroeder** inquired if Ontario might do something in the future that would jeopardize what Idaho is trying to accomplish. **Ms. Hardesty** replied anything within an air shed where air is shared back and forth, states do need to work together in order to accomplish their goals.

Senator Andreason inquired if the way the legislation is written, does it meet all of the needs DEQ has in order to be successful in solving the problem? **Ms. Hardesty** responded they did not know for sure if emission testing alone will prevent the area from non-attainment. This is a big challenge. However, any emission reduction they can make will be helpful. **Senator Andreason** asked how the legislation might have been written differently, if she would have had the opportunity. **Ms. Hardesty** answered as far as the emission testing part goes, it is a very good plan. She said that it may take more than emission testing and they may have to regulate other sources beyond vehicles, if they go non-attainment.

Senator Langhorst added this was one of the cheapest and easiest ways to reduce emissions. **Senator Andreason** said that he attended a meeting last year in the House Caucus Room where a plan was presented, which he thought was an excellent plan, and stated that he is sorry they are not further along. He feels this bill might be the start and

inquired if that was true? **Mr. O'Neill** replied that it was true. In the long run, the two biggest impacts they will have, is that they need to change their behavior. Motorists in the valley drive 11 million vehicle miles a day. Five to ten percent reduction of that would make a much bigger difference than the emission testing would probably make. Also, doing a better job of our land use policy and transportation policy, so that it makes it easier for people to combine trips, will have an enormous effect, but they are longer in term, in nature. He said they are not asking the Legislature for money with this education change of behavior program, but it is in the bill if there is money that can be devoted from the fees to the education change of behavior program, which some of them feel is a key part of it.

Senator Pearce asked that **Director Hardesty** address non-attainment more fully. **Ms. Hardesty** stated there are areas in the United States that are non-attainment and it is still possible for communities to function, but the reality is once a community goes towards non-attainment there are regulatory federal requirements they have to meet, along with a state implementation plan that demonstrates to the federal government how they are going to reduce their emissions in order to meet the standard. There are mandatory components of those programs and that includes such things as implementing inspection and maintenance program, completing a detailed emission inventory of all your different sources, ensuring that all of your major stationary sources have installed available control technology and new businesses have to come up with emission offsets. She stated that you can move forward, but it is a more expensive and costly way. Oftentimes, the smaller sources then have to be regulated. **Senator Pearce** stated that he understands there are many sources of pollution. He asked if the Department has investigated all the other sources of pollution before targeting vehicles. **Ms. Hardesty** responded that they have investigated other sources of emissions and the pie chart with the percentage of contributing emissions show that vehicles contribute the most at fifty percent (50%), which is why they are targeting them. The other sources and their percentages are:

- Construction equipment - 10%
- Agricultural equipment - 10%
- Industry - 9%
- Commercial equipment - 6%
- Miscellaneous - 6%
- Fuel Combustion - 4%
- Locomotives - 3%
- Lawn and Garden - 2%

TESTIMONY:

Charles Johnson spoke in opposition to the legislation. A copy of his testimony is inserted into the minutes. (It has not been edited.)

I am Charles A. Johnson residing at 67 N. Happy Valley Road, Nampa, Idaho 83687.

I'm opposing HB586. I realize the legislature is passing this Bill over the honest objection of the Canyon County Delegation. Because the Governor supports it. Because its about public health one should expect it to be heard instead before Senate Health and Welfare if Bill supporters are

telling the truth and have nothing to hide. Its really not about I/M its about the truth so we ask you to both supporters and opponents please base your judgment on truth supported by unimpeachable documents - reason and peer review science.

The DEQ has a 5 year attitude keeping I/M on Ada County that hasn't been needed since 1988 and force it on Canyon County regardless of the fact they have never had one exceedences of any criteria pollutant ever. Governor Otter listens to Toni Hardesty his Air Quality Advisor, TVAQ council Ada Legislators, Langhorst and Snodgrass and the John Kerry Statesman, all supporters of HB586. And thus far not to any of those who oppose.

HB586 makes Toni Hardesty the absolute decider - she will decide when pollution is 85% of the standard. She has already decided that all those new clean cars from Canyon County are the problem when in fact all the polluted air during an inversion evening leaves Boise and goes down the Boise drainage to Canyon County. This Bill gives Canyon County 120 days of temporary local control to join a joint powers agreement or agree to an alternative VET Program that is equivalent to the current VET Program. And if no equivalent deductions are proposed Toni Hardesty is given the power to implement said VET Program.

This Bill is not different than HB714 that Commissioner Beebe opposed in 2004 or SB1142 Air Quality Council of 2005 — Commissioner Beebe quotes the law Legislature shall not regulate County business. In fact DEQ, in selling their airshed vision to Compass said it was a community responsibility. Why does the Governor support the Bill.

I also feel that House Bill 586 will allow the local elected officials to work with DEQ in developing a (different) alternative strategy (plan) other than (VET) but not limited to (VET) to reduce pollution in an airshed within 120 days of nonattainment (designation). In all honesty this Bill DOES NOT SAY THAT DOES IT? Within 120 days of nonattainment not within another 120 days of written notification by DEQ's director. That's a whole world of difference. That's what the Governor expects in the Bill — Then lets put it in the Bill or Canyon County will believe it still must do (VET).

You've been shown 158 bad air alert days which is raw data, but how many of those days was the Boise Basin filled with smoke from Range / Forest fires - DEQ - No response -Queried EPA. How much haze is produced from trees, vegetation, Hydrocarbons and Isoprine the Great Boise Smokeys. The 1999 peer review science base year of Environ says Biogenic (Trees, Vegetation 32.5% vehicles 14.8%) DEQ not response Queried EPA. DEQ says we are in the same airshed. They forgot to tell the Governor EPA says that is not true. DEQ has been using Canyon

County's cleaner emission in both the CO plan and PM 10 plans so this is why they are determined to combine the counties.

The real truth of attainment - nonattainment is the quality assured monitor readings which the state owns - operates and are trusted by EPA to report the true values. Using this for the 85% figure Canyon by itself 2005-07 is $0.066 - 0.071 - 0$ no monitor = 137 divided by 3 = 45.6 or Ada $0.075 - 0.082 - 0.087$ combined with Canyon's $0.066 - 0.071 - 0$ no monitor = 381 divided by 6 = 63.5 —old standard 8.5 85% = 72 8.0 85% = 68.0. The ozone monitors are shut down in September as 2 Ada, 1 Canyon were in 2006. 113 days later on 1/21/07, I took the readings for 2005 and 2006 when we run the composite 5 -6-7. Monitor readings on Feb 11 and 13. We faxed EPA - Why have the 2006 monitor readings been increased- They have asked DEQ Feb 18th - No response at this time. I believe these values were intentionally changed to reflect DEQs agenda - Bad air. So how can 2007 be trusted? The 2003 Legislature Required DEQ by law to use peer review science in making their ruling; Who holds DEQ accountable? The peer review science - Environ, N. Ada County PM 10 Plan showing vehicle emissions decreasing dramatically to 2020 was accepted by DEQ at a cost to the state of \$2 million. DEQs extensions TVAQ Council says DEQ 1999 emission inventory in Environ -Compare the 2 sheets. They reject the projections and tell us vehicle emissions are the same in 2008 as 1999.

ACAQ board has been using OBDII since June of 2002 - It's not a new program - could have given 5 years exempt for new vehicles and tested every other year in 2002. Compass now says that OBD will save 500 tons of NOX and 500 tons of VOC emissions out of about 23 thousand tons of emissions. Other things DEQ didn't tell the Governor the EPA doesn't step in. State makes all recommendations attainment or non attainment including control measures signed by the Governor. DEQ hasn't told the Governor that non attainment designation, loss of Federal Funding or business loss is a myth. The Director has told the Governor that she doesn't have the authority to stop VET, but EPA says she can do it anytime. The Clean Air Act requires DEQ to review the N. Ada County CO I/M plans and if I/M is not needed they can stop it. But they refuse to do so.

The 1999 Minnesota House of Representatives by a Bi-Partisan 93-40 votes abolished VET because it was an unfair tax in 8 counties population 2,700,000. Who's going to tell the Governor the truth? What will DEQ say when we have one of the cleanest air years ever? Because that is what will happen.

TESTIMONY: **Jayson Ronk, Vice President, Idaho Association of Commerce and Industry**, spoke in favor of the legislation. A copy of his testimony is inserted into the minutes.

My name is Jayson Ronk and I am the Vice President of the Idaho Association of Commerce and Industry.

I am here to testify in support of House Bill 586, which the IACI legislative committee has voted to support.

This legislation would provide authority to the Department of Environmental Quality to authorize a vehicle inspection and maintenance program to control air emissions from vehicles in air sheds that are approaching non-attainment.

One of the major reasons behind IACI's support for this legislation is our concern of reaching non-attainment status and having the Environmental Protection Agency step in to regulate our state for us. We believe that it would be much better for the state of Idaho to run this program, rather than be required to implement restrictive and federally-mandated control measures.

Thank you and we urge your support for H586

TESTIMONY: **Al Freeman**, Canyon Country citizen, spoke in opposition to the legislation. A copy of his testimony is inserted into the minutes.

I am W. Allen Freeman. I live at 1127 W Edwards Ave, Nampa, Idaho. Since August 2002, I have been involved in the vehicle emissions testing issue and have spent many hours in research. My sources have been from EPA, DEQ, NOAA, COMPASS, the ENVIRON Report, DEQ's CO Maintenance SIP, and research data supplied by other persons involved in this issue.

From the beginning, I was uncomfortable with some of the information DEQ provided to support Vehicle Emissions Testing (VET) due to the supposedly eminent EPA designation of CO nonattainment in Canyon County that would cut off our federal highway funding and short-circuit economic development if VET was not implemented. It soon became evident the effort was based on a political agenda that had no basis in reality or scientific data, as it has remained so even to today! Three examples. 1) Elimination of the background ozone monitor east of Boise (Simco and Tilli Road) that showed ozone AQI's between 30-50 — 2.5-4 ppm - in June, July and August 2005. At the TVAQC April 2006 meeting, in answer to a TVAQC member question as to what is the background ozone, DEQ responded, 2 ppm, but that is down in SE Idaho. I would call that misleading, and now, there is no current data as none is being recorded. 2) No 2007 ozone readings from the Canyon County monitor making all of the ozone alerts in 2007 based only on the three Ada County monitors. DEQ has stated in its "Strategy" Plan, "When air is calm or stagnant, pollution tends to stay near the same area that it is emitted, allowing concentrations to build up." DEQ's 2001 CO Maintenance Plan states, "The bowl shaped topography of the region also presents a barrier to movement of air in the Ada County area, contributing to the potential for accumulation." The ENVIRON Plan stated, "A very light but distinct

topographically-driven valley circulation sets up, with drainage flow at night moving down from the surrounding mountains and along the river basin to the northwest, reversing to a thermally-driven flow during the day moving up the basin (to the southeast).” The ENVIRON Plan’s depicts the Spatial distribution of pollution during the worst day of one of the Treasure Valley’s worst inversions that occurred in 1991. It shows that during stagnant air, the air masses over Nampa and Boise do not mix. To illustrate the accuracy of this chart, DEQ has stated about the December 2002 worst inversion since 1991, “. . . about 26% of the pollution was actually from wood burning,” and DEQ data from Nampa only, “. . . there is very little phosphorus in the sample indicating it is not a woodstove burning issue.” Where is the Canyon County ozone monitor located? On the Boise riverbed at the Purple Sage Golf Course in Caldwell. So, when DEQ does monitor ozone in Canyon County, the readings will reflect Ada County pollution and the data will not truly represent the air quality in Canyon County. 3) January 2004 had 22 days of fog. Newspapers screamed AIR POLLUTION with DEQ declaring major dire consequences. Ada County had 5 moderate days and Canyon County had 6 moderate days. There were 26 “Good” — under 50 AQI clean air — days. These are three examples of “spreading illusions and depending on gullibility.”

Aldous Huxley said, “Facts do not cease to exist because they are ignored.”

One attribute of anyone in position of authority is that they must think critically and analyze what they see, hear and read in order to serve and make decisions that are in the best interests of the citizens of their district and state. You know the truth is in the details. It will become evident that vehicle emissions as a major air quality factor have diminished significantly from 1999 to 2008. The reality is federal data expects vehicle emissions to be even more insignificant 2010 to 2020 and remain low through 2030, all with increased population. Continuation and implementation of any vehicle emissions testing is an exercise in futility in terms of actual results at a huge whopping economic cost to our local economies.

In connection with the City of Boise’s Air Quality Summit, Proponents of HB 586 made these statements:

“Current emissions are a problem and need to be addressed.”

Not true. EPA’s annual data 1999-2006 show all 6 criteria pollutant measurements decreasing. “Population data used in the (ENVIRON Report) modeling is now known to be too low.”

A 9.4% over estimate is not excessive for such an 8-year projection.

“Vehicle emissions would be expected to increase with increases in population estimates.”

Increased numbers of new vehicles reduce emissions.

“Drawing conclusions regarding ozone from existing information is not valid.”

There is no other valid “peer reviewed science” available on which to base any conclusions.

“An ozone analysis has not been completed yet”

Agreed, and none will be available until at least May 2009. DEQ, in

describing the purpose of this new study stated: “The result of this study will be the first complete picture of the air quality problem in the valley and the resulting report can be used by both local and state decision-makers to determine what kind of control measures will be effective in reducing the ozone and PM2.5 pollution problems that we face.

DEQ does not know what kind of control measures will be effective in reducing the ozone and PM2.5 pollution problems that we face? This is a conclusive indictment that HB 586 is premature.

What is the latest position stated by proponents of HB 586?

a truthful statement, but it is only about a third of the truth.

The second statement is a truthful statement, but it is only half of the truth.

The third statement is known to be an outright totally fraudulent boldfaced fabrication.

Finally, I will tell you the plain unadulterated truth based on act and peer reviewed science.

First statement: “According to the most recent DEQ emissions inventory, on road mobile sources contribute approximately 50% (9,932 tons) of total nitrogen oxide (NOx) emissions in Ada and Canyon Counties (19,967 tons). On road mobile sources contribute approximately 15% (5,052 tons) of total volatile organic compound —hydrocarbons - (VOC) emissions in Ada and Canyon counties (34,075 tons).” — DEQ March 4, 2008

Second statement ‘NOx and VOC emissions contribute to fine particulate and ozone concentrations in the Treasure Valley airshed.’ — DEQ March 4, 2008

Third statement: “According to modeling performed by COMPASS, implementing motor vehicle emissions testing in Ada and Canyon counties is expected to reduce NOx emissions by approximately 563 tons and VOC emissions by approximately 522 tons.” — DEQ March 4, 2008

With respect to the first statement, DEQ admitted that this information is DEQ’s 1999 peer reviewed science data as reported in the ENVIRON Report published in 2002. In answer to the question as to whether these emissions were lower today due to new vehicles, it was stated unequivocally that it was “believed” these levels were approximately the same today due to the increase in vehicles on the road today since 1999.

Missing information in the first statement: DEQ data shows 1999 vehicle NOx in Canyon County was 14.8% or 2,963 tons and vehicle VOC in Canyon County was 4.7% or 1,590 tons. Canyon County represented only 30% of these 1999 vehicle emissions!

Also, both the Federal Highway Administration and the ENVIRON Report that EPA, DEQ, COMPASS and Idaho Clean Air Force accepted as “peer reviewed science data,” shows that with increased population and vehicle

miles traveled (VMT), both vehicle NOx and VOC significantly reduce 1999-2010. Canyon County vehicle NOx reduces from 14.8% down to 5.8% or 1,619 tons and vehicle VOC reduces from 4.7% down to 2.4% or 876 tons; a 45% reduction by 2010.

What is unconscionable is for the DEQ and TVAQC to take the position that since ENVIRON Reports underestimated population growth by 9.4%, the rest of the projected data is invalid. IF there is a 3% growth 2008-2010 in both Ada and Canyon counties, the "error" is only 11.2% over 12 years. I find that accuracy amazing.

The second statement is misleading because of missing information. NOx and VOC are not the only precursor gasses to ozone and PM2.5. No one has discussed Ammonia (NH3) and sulphur oxide (SOX), the two other precursor gasses. How much and where do all four gasses come from and when? How do they figure in the formation of ozone and PM2.5? The ENVIRON Report answers how much and where for all four gasses, but WHEN is can not be discussed nor is what part they play in formation of ozone and PM2.5 because DEQ has no idea and no data. 1999 DEQ data: NH3: 91.3% (6,260 tons) from Area Sources and SOX: 45.2% (1,715 tons) from Industrial Sources and 41.1% (1,559 tons) from Non-Road Sources. Ada County has only 34.9% of NH3 and Canyon County, 65.1%. Ada County has 3% Industrial SOX and Canyon County, 97%. But in 2010, DEQ has Industrial sources in Canyon County increased to 7,280 tons of SOX with the other figures fairly stable. Do you know where this additional 4,200 tons of Industrial SOX in Canyon County will come from and why will it be permitted? I can't answer the first part, but I have an idea about the second part.

Third Statement projects an approximate reduction 5% reduction in NOx (563 tons on 9,932 tons) and 10% reduction in VOC (522 tons on 5,052 tons) by implementing motor vehicle emissions testing in Ada and Canyon counties." This statement of results is pure fabrication, has no peer reviewed science data on which to base it, and is geared to impress the intentionally uninformed who still believe the ongoing public misinformation first made back at the beginning when publicized in August to December 2002, and repeated as authoritative by people of position. Do you realize that even if you accept these figures, the actual reduction in total NOx is only 2% and in total VOC is only 1.4%? Do your really think such small reductions will make a significant difference in whether ozone or PM2.5 will be formed? Neither do I.

I think this is a "DUH" moment, too. Please forgive me, but do you really understand the reality of this promise of performance? There are probably 150,000 cars that would be subject to the new OBDII emissions test. These amounts would be reasonable reduction expectations if none of the cars were tested previously, but Ada County vehicles are already emissions tested. Therefore, the only reduction that can be expected is from Canyon County vehicles and at the DEQ projected 8% failure rate, the total reductions in NOx would be around 160 tons and in VOC, 90 tons in the whole Treasure Valley: NOT 563 tons NOx or 522 tons VOC!

Based on 2010 ENVIRON Report data. 160 tons represents about 1/2 of

1% total NOx and 90 tons represents 1/4 of 1% total VOC. SUCH A SMALL DECREASE WILL CERTAINLY NOT MAKE ANY DIFFERENCE IN OZONE OR PM2.5 FORMATION BUT WILL COME AT A HUGE EXPENSE TO THE CITIZENS AND ECONOMIC LOSS TO THE ECONOMY OF CANYON COUNTY!

Think about the cost/benefit factor. Based on a conservative estimate of 50,000 vehicles and average annual cost of \$500,000 and a conservative 3:1 economic ripple effect, Canyon County's economy would lose \$1.5 million every year! You want to use 60,000 vehicles? Cost is \$600,000 at an economic loss of \$1.8 million.

Think about VET being eliminated in Ada County. Under HB 586 and at 100,000 cars, the average annual cost savings would be \$1 million and the economy would get a \$3 million boost. Vehicle emissions testing represent a huge economic loss to the Ada County economy! CURRENT COST IS \$4 MILLION PER YEAR AND ECONOMIC LOSS AT 3:1 RIPPLE EFFECT IS \$12 MILLION PER YEAR OR \$60 MILLION FOR THE NEXT 5 YEARS THROUGH 2012. After all, DEQ stated 2001 CO emissions were the same as 1995/1996.

TRUTH:

ALL EPA DATA FOR THE SIX CRITERIA POLLUTANTS IN CANYON COUNTY HAVE DECREASED 1999 THROUGH 2006 BASED ON DATA AS OF FEBRUARY 2007. DEQ charts showing high 2007 ozone readings are all recorded in Ada County only and all yellow and red alerts were based on "preliminary and non quality assured" monitor readings. No ozone monitor readings were recorded in Canyon County in 2007.

THE ISSUE OF POLLUTION FROM CANYON COUNTY VEHICLES TRAVELING TO ADA COUNTY IS A TOTAL MYTH. Ada County monitors measure pollution from all vehicles in the area and the EPA's clean air standard worst "quality assured" CO reading in 2006 was under 20% of the clean air standard and DEQ is no longer monitoring CO in Canyon County. Both Ada and Canyon County's PM2.5 worst "quality assured" readings in 2006 were about 30% of the clean air standard. Our air is cleaner today than in 1999.

HB 586 HAS NO LEGAL BASIS AS ONE MAJOR PROVISION OF HB 150 HAS BEEN IGNORED AND ANOTHER HAS BEEN VIOLATED BY DEQ AND TVAQC IN PROPOSING THIS BILL Section 1. 39-1070(1) and (2) that state: 'The legislature directs that any rule formulated and recommended by the department (DEQ) which... proposes to regulate an activity (vehicle emissions testing in Canyon County) not regulated by the federal government "the department (DEQ) shall utilize the best available data which has been subject to peer reviewed science and supporting studies."

a. EPA does NOT require vehicle emissions testing in Canyon County as Canyon County has not violated any Clean Air Act pollution standards and has never been declared in nonattainment of any pollutant. Therefore, the "proposed" VET requirement in Canyon County is "not regulated" and as such,

b. Use of "peer reviewed science" is mandatory! The only such data available to DEQ and the Treasure Valley Air Quality Council (TVAQC) is the ENVIRON Report and both DEQ and TVAQC rejected all but the initial 1999 data based on understated population growth of around 10% 1999-2010 at 3% growth 2008-2010. This is a minor consideration and I will use only one example: With all the dirty Canyon County vehicles that travel to Ada County, the worst CO reading by EPA was under 20% of the clean air standard in 2006. TVAQC did not obtain any updated peer reviewed scientific data as required by SB 1142 on which to base any conclusions or recommendations other than "preliminary non-quality assured" DEQ AQI's.

DEQ'S PROJECTION OF INCREASED OZONE AND PM2.5 CAUSING DETERIORATING AIR QUALITY 2010 TO 2020 IS DEQ'S OWN PROJECTED INCREASED INDUSTRIAL POINT SCOURGE NOx EMISSIONS FROM 9% TO 53.8% OF THE TOTAL TREASURE VALLEY TONNAGE. SECONDLY IS DEQ'S CONTINUED PROJECTION OF HIGH AREA SOURCE VOC EMISSIONS OF 69.4% AND THE 45.2% SOX FROM INDUSTRIAL POINT SOURCES IN THE TREASURE VALLEY AS SHOWN IN THE ENVIRON REPORT. An unasked and unanswered question is what if DEQ's 2010 Industrial Point Source NOx emissions are not 53.8%? If not, then the high ozone readings must be coming from the high Area VOC and high Industrial SOX, not vehicle emissions that have reduced by half or more with 70% of the vehicles already being subject to VET.

DEQ SHOULD FOCUS ON WHY AND HOW TO REDUCE THE 45% INCREASE IN INDUSTRIAL POINT SOURCE NOx EMISSIONS SINCE 1999 AND DETERMINE HOW TO LOWER THE 69% AREA SOURCE VOC AND 45.2 SOX EMISSIONS. The problem emissions are from sources entirely under the purview of DEQ only. DEQ does not know where and how these precursor gasses of NOx, VOC, SOX, and NH3 come from or how they interact or how much of each is needed to create ozone and PM2.5. DEQ's research study schedule calls for it to study this in 2008 with a report due May 2009.

Be assured that our air is getting cleaner with the increased number of newer cars and industries that are reducing emissions. Do not be swayed by statements that we are on the brink of non-attainment; we will lose highway funding and suffer economic loss; the federal government (EPA) will force more stringent programs on us; and the like. They are myths and used as scare tactics that have been used on Canyon County since 2002. What you should be scared of is an emissions credits and trading program. Do not allow DEQ, responsible for the emissions under its direct control, to be allowed to dirty our air under such a program.

CONCLUSION: NO FURTHER REGULATION OR PROGRAM OF ANY TYPE, ESPECIALLY VEHICLE EMISSIONS TESTING, SHOULD BE INITIATED UNTIL THIS STUDY AND REPORT ARE PUBLISHED AND THE PEER REVIEWED SCIENCE IS KNOWN. (Did you know that nine states have eliminated VET, the last three being Texas, Minnesota and Florida? Minnesota did it in 1999 for the 7 county area around Minneapolis/St. Paul with a 2000 population of 2,732,000, and you are

initiating VET in a county with a 2007 estimated population of 184,251?)

The citizens of Canyon County especially need you to stand up for us now and vote no to defeat this HB 586.

As Albert Einstein said, 'The difference between genius and stupidity is that genius has its limits.' Thank you for your kind attention.

TESTIMONY:

Next to testify was **Pat Barclay, Executive Director, Idaho Council on Industry & Environment (ICIE)**. A copy of her testimony is inserted into the minutes.

My name is Pat Barclay. I am the Executive Director of the Idaho Council on Industry & Environment also known as ICIE.

ICIE'S mission is to facilitate the use of science and facts in shaping public policy on environmental issues.

ICIE'S Environmental/Regulatory Affairs Committee members have done a thorough review of the air quality data in the Treasure Valley.

The science and facts have lead the committee to recommend support of this bill because it provides the means to deal with air quality issues. Today it would apply to the Treasure Valley, but the other areas in the state are facing growing air quality issues.

This is not only an economic issue, but a health issue. The cost of doing nothing is very high both in terms of its impact on our health and the impact of non-attainment on our economy.

TESTIMONY:

Written testimony was submitted by **Lee Flinn, Executive Director, Conservation Voters For Idaho**. A copy of her testimony is inserted into the minutes.

Dear Chairman Schroeder,

Conservation Voters for Idaho is an Idaho based bipartisan organization that advocates for the protection of Idaho's clean air and water, wildlife, natural areas, and public health.

We support HB 586 and ask your support of this bill.

House Bill 586 - Regarding auto emissions

Conservation Voters for Idaho supports HB586 because it would allow the Idaho Department of Environmental Quality to establish a vehicle emissions testing and maintenance program in order to control air pollution.

If enacted, HB586 would allow Idaho to pro-actively seek solutions to the air pollution that is increasing in urban areas. Air pollution threatens human health and is a detriment to future economic growth and quality of Life in Idaho.

As the Treasure Valley faces the likelihood of achieving non-attainment, it is important that steps be taken now, before the problem worsens and the federal government steps in with required remediation.

Responsible stewardship and protection of our air, water and land 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 HB 586.

Thank you for your consideration of this bill.

That concluded the testimony on the bill. After a short committee discussion, the Chairman called for a motion.

MOTION:

Senator Cameron made the motion to send H 586 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Coiner**. A **roll call vote** was requested. Voting aye were Senators Langhorst, Stennett, Siddoway, Coiner, Andreason, Little, Cameron, and Schroeder. Voting nay was Vice Chairman Pearce. The vote was 8-1 in **favor of the motion**. **Senator Langhorst** will be the sponsor of the bill.

Chairman Schroeder said the next order of business would be to hear a report on "State Lands at Tamarack Resort". **Mr. George Bacon, Director of the Idaho Department of Lands** gave the report and a copy of his testimony is inserted into the minutes.

TESTIMONY:

Tamarack Land Exchange

It should be remembered that the proposed land exchange is between the USFS and the state, not Tamarack. The next step in moving forward is for the parties to sign an Agreement to Initiate (ATI) the exchange. Because of the USFS budget issues, Tamarack has agreed to pay certain expenses of the USFS, including the cost of the Environmental Impact Analysis, which is estimated to cost \$1.6 million.

Tamarack has not paid any USFS expenses to-date related to this exchange; that would only happen after an ATI is signed. Tamarack would be a party named in the ATI because they have agreed to pay the costs to be incurred by the USFS pursuant to the exchange. Because of Tamarack's interest in expanding the resort to the acres that IDL would acquire through the USFS exchange, the land board has requested a formal business plan and proposal from Tamarack on how the land might be used. This will help us determine if Tamarack's use is the highest and best use, or if the land should be used in some other way, or if other lands should be the focus of an exchange with the USFS. That determination may impact Tamarack's interest in funding the federal expenses. It also goes without saying that Tamarack's ability to meet any ongoing and future financial obligations resulting from such an exchange will have to be proven to the satisfaction of the state before further efforts are made relating to any interest by Tamarack.

Regardless of this project involving property adjacent to Tamarack, the

state will continue to pursue land exchange opportunities with USFS for scattered parcels surrounded by federal ownership. Consolidation of scattered properties is in the best interests of the endowments because the scattered lands can be difficult to manage, and often do not maximize financial returns.

Any business venture proposed for lands acquired by the state, or on other endowment land, will need to conform to the range of financial return expectations set by the Land Board in the current Asset Management Plan. If expanding the resort is deemed the best use of the state's land, then any acquired property would be classified "Commercial Recreation" and will need to meet an investment return rate of between 5-15% on asset target.

That concluded Mr. Bacon's formal testimony.

DISCUSSION:

Chairman Schroeder asked if it was possible, if a scenario develops in which we trade with the Forest Service and Tamarack does not come up with the \$1.6 million, and we end up with former Forest Service land, is it still a good deal for the state - the land exchange? **Mr. Bacon** said that whether it is a good deal or not, it is part of the analysis they are doing now is working with Tamarack's business plan and looking at property the state might dispose of versus what is acquired. Even if Tamarack wasn't on the hill and there was no ski resort, he said they may be looking at a similar exchange as it is a smaller, isolated parcel that they might be able to expand bigger.

Senator Coiner inquired as to where the land is that is being considered for exchange. **Mr. Bacon** said that what is on the mountain now is state endowment land, with almost all the ski hill area on state land, except for the bottom. By agreement through the lease, if something should happen to Tamarack, the state has easements to continue to use their property for the ski hill. There is also two and one half holes of golf course that is on a separate piece of state land. The property that they are looking at for the exchange is more of the mountain to the west and south that would potentially enable the Tamarack project to expand in those directions.

Senator Coiner asked what was the makeup of the ownership of the facilities on the mountain, the restaurants, and any other buildings. **Mr. Bacon** said the relationship that they have in the lease with Tamarack is that they deal only with one entity. **Mr. Scott Turlington, Lobbyist for Tamarack**, said the ownership in the mountain itself and the ground belongs to the state. Tamarack has a 49 year lease with the State of Idaho. The improvements on the mountain belong to Tamarack and as such, they have ownership of them as it includes the lifts, any structures, and the ski patrol hut. Tamarack does no development of residential or commercial on the mountain. Tamarack Resort LLC is the owner.

Vice Chairman Pearce inquired as to how many acres are in the piece of ground that is being considered in the exchange. **Mr. Bacon** said that currently, the area around the ski resort is about 2,000 acres and they are looking at another 6,000 to 8,000 acres. In exchange for that, they would probably be exchanging about 8,000 acres somewhere else. It is not a

straight acre for acre, it is based on value.

Senator Coiner asked about the ownership of the golf course. **Mr. Turlington** replied that the golf course is owned by Tamarack Resort LLC; however, as Director Bacon pointed out, two and one-half holes of the golf course is on state land, which is a sixty acre parcel. **Senator Coiner** asked again about ownership of the buildings, the golf course, and the lifts. **Mr. Turlington** said that Tamarack Resort LLC is the owner. For liability reasons and other issues, the Resort itself has created separate LLC's. **Senator Coiner** inquired about the ownership of the common areas and the roads, and also about the responsibilities of them. **Mr. Turlington** said the Resort owns 1,500 acres of titled land and leases 2,143 acres from the State. Under the land that the Resort owns, there is a municipal association that manages that property. **Senator Coiner** said that he was concerned about the roads and inquired again about who has the responsibility for them. **Mr. Turlington** said the roads within the Resort are private roads and it is the responsibility of both Tamarack Resort and Tamarack Municipal Association, which is an association that the homeowners pay into. Those two bodies take care of the roads at the Resort. **Senator Coiner** inquired again about the ownership of the golf course and ski resort, and the operation and maintenance responsibility. **Mr. Turlington** responded that the ownership is solely owned by Tamarack Resort LLC and it is their responsibility.

Vice Chairman Pearce said the Resort is located in his district and presently, land is leased to people with livestock and there could be some cross-use with the Resort. He asked Mr. Bacon if there is anything they are doing now that would interfere with the livestock leases and if they might be terminated. **Mr. Bacon** said there was a grazing lease on that area before the Land Board decided to make the primary use of that property a ski resort and golf course. Before that, the primary use was timber production and grazing was the secondary use. They identified when the grazing lease expires, there may be a conflict between grazing and recreation. They are continuing to graze that property on a year-to-year basis. As the resort grows and if conflicts occur, the Land Board may not allow grazing on some parts of the mountain. **Chairman Schroeder** inquired if the grazing leases were contiguous with other grazing opportunities on the west side of the mountain. **Mr. Bacon** said that most of the grazing is on the west side, away from the ski runs and bike trails. There are federal grazing allotments there also. The **Chairman** asked if there are fences. **Mr. Bacon** indicated that there are fences, and he doesn't know where all of them are, but there are fences that have allotment boundaries and riparian boundaries, but cattle can drift over the hill and down into Tamarack. **Vice Chairman Pearce** said the 8,000 acres that will possibly be exchanged apparently has Forest Service permits. He asked what will happen to the permit holders, what is your extended plan, and will it have a secondary assumed use or will it be cattle off? **Mr. Bacon** said that generally when they have a land exchange with the federal government and grazing leases are involved, they have permits in state leases for a period of ten years and the feds reciprocate by converting our leases into their permit system. At the end of that ten year period, if grazing looks like it is something that isn't

working for whatever reason, then they would work with the lessee to determine what is the best interest of the trust. Mr. Bacon said that he has talked with the folks who own the federal allotments and they are concerned about being kicked off. That is not the plan, right now. He said that if the land is exchanged, the land lease with Tamarack would have to be modified to include that new property in whatever way in the state's best interest. Grazing will have to be watched closely to see how it fits into the best interests of the trust.

Vice Chairman Pearce asked how far along is this land exchange? **Mr. Bacon** said that IDL has given the Forest Service a list of lands that they are interested in exchanging and the list is large. The Forest Service has submitted a list that they are interested in exchanging. The next step is to whittle down which properties they are talking about and the reason they start off with large lists is because they want more property than they need to make an exchange work. Because of the different values, they need enough properties involved to mix and match to get an equalized exchange. They are not yet to the point where they narrow down the list until they have an agreement to initiate (ATI), then they would move forward to do an environmental study, appraisals would be done, and a better idea of which properties would be considered. On the Forest Service side, their process requires a lot of public input and comments, which is more formalized than the State's process. A request was made to have a map of the proposed area and Mr. Bacon said that he would provide one.

Chairman Schroeder said that five years ago when they talked about the ski area, the question came up about cattle wandering into the recreation area and if it would be necessary to construct a fence, who would pay for it? The minutes of one of the Resource and Environment Committee meetings showed that, at least a verbal agreement by Tamarack people, that they would pay for the fence, rather than the cattlemen. He asked Mr. Bacon if that was still his understanding. **Mr. Bacon** said he remembered discussions like that, but he could not recall any firm decisions. He stated that if fencing could control the cattle, that would be something they would want to look at. **Vice Chairman Pearce** inquired as to what would happen to hunting in that area (the 8,000 acres) - would it be open or closed to hunting after the exchange is done and leased to Tamarack? **Mr. Bacon** said the state land would be open for hunting, but people would have to be careful when they hunted.

Mr. Turlington said he would like to add to the discussion on grazing and he stated that perhaps he could do one better than the agreements that may have been made five years ago. He said they have been in ongoing discussions with Indian Mountain Grazing Association and Tamarack has committed extensively to do a number of things in writing to the Association. They have been in dialog back and forth and there has been give and take, but in addition to fencing which we said we would do, the open range law dictates that Tamarack would be responsible for that. They have made commitments to pay for range riders. The issue with cattle is they seem to crest the ridges about mid August, and Mr. Turlington said they understand the responsibility and developed a good working relationship with the folks on the ground. They make the call for

them to come get the cows out and it has worked out fine. Tamarack has zero interest (and has put it in writing) in requesting having cattle taken off, at least on the backside. They committed that they would stand up and advocate that those leases be extended the ten year period. On the front side, there is a difference of opinion and there is one particular section that is grazed by Weldon Branch. It's the section where the Mid Mountain Lodge and Restaurant is and that is where they have offered to have range riders actively stay engaged during those months when the cattle are over there. They have recently offered to help them with some of the costs that they incur doing that. He also said that they are not interested in picking a fight with the Indian Mountain Grazing Association and as far as they are concerned, they have left the dialog open and are committed to discussion with the grazers as they were with the snowmobilers. Tamarack signed a precedented agreement with the Idaho State Snowmobile Association, which had never been done before with that industry. With that same thought in mind, they will move forward to work out an arrangement with the Indian Mountain Grazing Association. **Chairman Schroeder** inquired if an agreement had been signed and **Mr. Turlington** said that it had not; however, one has been proposed and he had been contacted by the Idaho Cattle Association several weeks ago to set up another meeting.

Chairman Schroeder said he had one more question and that is on the existing lease. Should something happen to the LLC, will the State be left holding the bag? **Mr. Bacon** said that his understanding of the financial troubles with the holding companies of Tamarack really will determine who the lessee is. He said that they are hoping Tamarack will remain the lessee, but if the worst should occur, there will be someone new in charge of the lease through the mortgage people. **Chairman Schroeder** asked if the State doesn't get paid, will they own a ski slope? **Mr. Bacon** said that part of the development of the Resort was a phase approach. Tamarack completed phase one, which was the ski hill. That put them in a position with agreements in place to use the bottom of the hill, which is on Tamarack property. His understanding is those agreements can't be changed, no matter what happens financially to Tamarack. There is a reclamation bond if something should happen. For some reason, should the lease be abandoned, the State would have a choice to find someone to run the ski hill that is there and is an operable unit or the State could use the reclamation bond to tear things out and reclaim the land.

The **Chairman** thanked Mr. Bacon and Mr. Turlington for talking to the committee today.

**ANNOUNCE-
MENT:**

He announced that there would be no meeting next Monday, March 24. He also thanked the committee for their hard work.

ADJOURN:

Chairman Schroeder adjourned the meeting at 3:20 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 19, 2008

TIME: 1:30 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Schroeder called the meeting to order at 1:30 p.m. He then called on Representative Trail to present his bill.

HJM 11 **Representative Trail** said the purpose of the Joint Memorial is to urge the U.S. Forest Service to exhaust every effort such as mediation, consultation, and coordination with private property owners who hold easements pursuant to the Wild and Scenic Rivers Act, and have operated in good faith under such terms and conditions of said easement before initiating legal efforts against such citizens of the State of Idaho.

Representative Paul Shepherd, Senator Lee Heinrich and himself have tried to help some people who live along Highway 12 on a two acre parcel of land between Lowell and Kooskia. When the couple bought the land, it came with the easement of the Wild and Scenic Rivers Act. The Forest Service filed a lawsuit in 2005 that claimed the couple built a dog kennel in violation of the easement. Under the conditions of the easement, they could have built a small dairy or swine operation. The couple raises champion German Short Hair Pointers and they also board dogs for hunters and the Forest Service employees during the hunting season throughout the year. This, ironically, included the dogs of the Forest Service Supervisor who initiated the problem. The couple was advised, under the terms of the easement, that they could raise and train their dogs inside their home, but they could not have outside kennels to keep their dogs or to board dogs. The couple's neighbors recently settled out of court with the Forest Service and their new easement allows them to do exactly what this couple is being punished for. This case has now gone to the 9th Circuit Court of Appeals. They have spent over \$70,000 on legal fees, which is just about all of their retirement money. He and Senator Heinrich conferred with Senator Crapo's staff and it was determined that trying to call a meeting with all the stakeholders to come up with a solution was too late. Senator Crapo's staff helped with drafting the Joint

Memorial and they strongly recommend that the U.S. Forest Service strive to use mediation, negotiation, consultation and coordination before pursuing legal action against Idaho citizens.

Representative Trail mentioned that this particular supervisor has since been demoted.

Senator Heinrich said that at some point in time one gets frustrated because you can't help people. He said that this situation is one of those times. He also indicated that he wished the bill was stronger than what it is and he asked for the committee's support.

There was no one signed up to testify on this bill.

MOTION:

Senator Little made the motion to send HJM 11 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Stennett**. The motion **passed** by unanimous voice vote. **Senator Heinrich** will be the **sponsor** of the bill.

Chairman Schroeder said they would hear H 619.

H 619

Ms. Jane Wittmeyer, Vice President of Idaho Affairs for the Intermountain Forest Association presented this bill.

She said the purpose of this legislation is to amend Section 42-201, Idaho Code, to recognize that the diversion of small amounts of water from a natural water course for use in forest dust abatement and forest practices defined by the Idaho Forest Practice Act may occur without a water right.

Helping with the development of this bill were Directors from the Idaho Department of Lands, Idaho Department of Water Resources, and representatives of the forest land owners. The language was developed with the help of the Attorney General's staff and there was close review and input by the Idaho Water Users Association.

Ms. Wittmeyer said that water traditionally has been diverted in small amounts to satisfy these purposes without water rights being obtained because of the continuing and frequent change in location of both the points of diversion and the places of use. The State's formal water right permitting procedures are impractical as a means of regulating these small and constantly changing water uses.

There is also an appeals process for water right holders who believe they are deprived of water by an exempted use.

Ms. Wittmeyer said the bill passed in the House by unanimous vote. There was no one signed up to testify and there was no opposition to the bill.

MOTION:

Senator Siddoway made the motion to send H 619 to the floor with a do pass recommendation and also asked for unanimous consent to send it to the Consent Calendar. The motion was **seconded** by **Senator Stennett**. The motion **passed** by unanimous voice vote. **Senator Siddoway** will be

the **sponsor** of the bill.

MINUTES: **Vice Chairman Pearce** made the motion for the approval of the minutes of March 10, as written. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

ANNOUNCEMENT: **Chairman Schroeder** said that the Department of Environmental Quality (DEQ) has provided information regarding 2007 mercury lakes results. The first two pages are the results sorted by Fish Species. The next two pages are the results sorted by Lake. This information was requested during DEQ's presentation on March 12.

Chairman Schroeder said the rest of the time will be devoted to hearing an update regarding "Future Funding Challenges" by four agencies: the Department of Parks and Recreation; the Department of Fish and Game; the Office of Species Conservation; and the Department of Lands.

He said that some of the things that were before them 16 years ago are still here today and he feels that not a whole lot has been done. Watching the vagaries of the political system's interaction and the revenue stream has been an interesting experience for him. He feels they haven't gotten anywhere and in 16 more years, will the people wonder why nothing was done?

The Chairman said the first thing that needs to be done is to start talking about what we want to do, so that everyone understands the challenges better. Last summer, there was a proposal to ask for \$10 from everyone who filed an income tax. He has had a bill drawn up to do that, just like the permanent building fund, but it doesn't identify what it might be used for. That is something that needs to be decided in the interim. He has asked the agency directors to talk about future funding challenges and, specifically, what their needs are going to be. Chairman Schroeder said he is convinced to get past the day-to-day administration of the agencies and actually do some of the infrastructure things that people feel we need to do, there should be funds. It seems to work for the permanent building fund, so perhaps it would work for our resources.

Chairman Schroeder said the Department of Lands dilemma has not been resolved about public access. The public is doing \$1 million dollars of damage to property every year and IDL has a responsibility to make money for the endowment fund, the schools, etc.

He said that ATV's are becoming a problem and if they don't have a place to go, they go where they want to go. It was interesting when the Parks Board was before the committee. Two of the members identified that non-motorized trails should be one of our priorities in the state. We have a good trail system, but we do need to tie it together - motorized and non-motorized.

Chairman Schroeder said the committee would now hear from the four agencies.

SPEAKER: **Director Robert Meinen, Idaho Department of Parks and Recreation**

spoke first. A copy of his testimony is inserted into the minutes.

Chairman Schroeder and Committee Members

The IDPR has prioritized our most urgent funding requirements to help provide continuity to our operations and realistic projections for future needs.

We firmly believe it is critical that we take care of what we have and address our ongoing maintenance needs. In recent years, we've received significant recognition and support from the Legislature allowing us to address these agency-wide needs. Some of the most urgent requirements we have involve water and sewer systems, and general deterioration of many of our campground facilities and administrative buildings. We need to focus on repair, rehabilitation, and protection so as to provide the best opportunity to maintain a high level of customer service.

Coupled with that, it is critically important to formally identify management strategies and goals for each of our facilities so that a well-structured program is developed for long term, effective operation of our parks and programs. This can only be accomplished in conjunction with the development of a general development plan for each park. Approximately 50% of our parks and facilities have an approved plan in place at this time, and several of those are over 30 years old.

Providing adequate staff housing is of crucial concern to the Department, as has recently been acknowledged and supported by the Legislature. The impacts from cost-of-living demands around the state have directly affected our ability to hire and retain qualified staff at a number of our park locations. The cost for local housing, either rentals or purchases, has far out-stripped the wages we are able to provide to our ranger and management staff, especially in these locations. Providing on-site options for affordable housing is a significant benefit to our staff and ultimately to the agency as a whole.

A primary focus of IDPR short and long range program and facility planning and development is to address energy conservation and enhancement of offerings for children to get them into our park facilities and keep them coming back. In order to effectively accomplish these goals, adequate funding is critical to provide the needed resources.

The agency has a responsibility to continue providing appropriate recreational opportunities for the growing number of recreationists around the state, especially the motorized users. We are currently registering approximately 130,000 ATV's and motorbikes and we continue to experience diminishing access resources, especially in some areas of the state.

Our recreational registration program is becoming more antiquated all the time, and the demand to keep up with all of those ATV and motorbike registrations, along with 86,000 boats and 53,000 snowmobiles every year, continues to tax this system to its limits. In order to maintain a suitable level of service to our users, the registration program needs to be ungraded soon.

Our customers are constantly encouraging us to diversify and upgrade our facilities. Our cabins and yurts continue to experience healthy demand and we need to be able to provide more of those options.

I've touched on but a few of the more significant challenges we see facing us in the near and long term. The state will continue to grow, and we are constantly made aware of the increasing demands on our services and resources.

I hope this overview will be of assistance as you contemplate the future natural resource requirements for our state. Please contact me if we can provide more detailed information.

SPEAKER:

Mr. Virgil Moore, Deputy Director for the Idaho Department of Fish and Game was the next speaker. A copy of his testimony is inserted into the minutes.

Chairman Schroeder and Committee:

Thank-you for the opportunity to talk to the committee about this issue. Director Cal Groen sends his apology that he was unable to participate. I am sure you will hear echoes of previous messages from the Director about our funding needs in my testimony today.

I first want to acknowledge Chairman Schroeder's leadership in convening the "Ad-hoc Funding Committee", along with Chairman Stevenson. Those of you who have participated have provided invaluable counsel and insight as we discuss department funding needs. The Department sincerely hopes that we will be able to continue that forum in the future to help with these challenges.

The Department's biggest future funding challenge is to broaden our funding resources sufficiently to support and expand our programs that benefit not just hunters, fishers, and trappers but also benefit the citizens of Idaho. Our license buyers should not be the only financial supporters of the part of our mission that tells us to preserve, protect and perpetuate wildlife for the citizens of this state. Our crystal ball says citizen and other state government demands on the Department will only continue to increase.

Key programs that we feel fulfill the needs of a broader constituency than just our license buyers, and which we feel qualify for consideration of a broadened funding base include:

Access: We find that many of the Department properties are used by folks pursuing outdoor recreation other than hunting, fishing or trapping but license buyers pay for the access privilege via their license or federal excise taxes on equipment. We offer about 378,000 managed acres for public use in the form of 325 public access sites (mostly fishing and boating) and 32 Wildlife Management Areas. We have a significant backlog of maintenance and improvement needs. In addition, additional revenue would allow significant enhancement of our private lands access program, "Access Yes" enroll private and larger-scale corporate lands. Access to a diversity of lands is crucial to our vision of ensuring a rich outdoor heritage for all generations. The access issue is not unique to the Department. This committee has discussed the multi-agency aspect of citizen outdoor access needs over the last two years.

Stewardship Services: These are services to ensure we maintain diverse wildlife resources and intact habitat for all to enjoy. The services range the gamut from urban wildlife conflict resolution to assisting local governments and developers with development planning to protect and sustain wildlife. These demands are rapidly increasing. We have the technical expertise and responsibility to fulfill these needs, but they are services beyond those traditionally needed to manage game populations for harvest. One only has to look around to realize the huge need for assistance in this arena and the burden on the Department to keep up with the needs fostered by rapid development. This is not just an urban issue — our Salmon Region staff recently received kudos for their efforts to work on the Lemhi Count comprehensive plan update by providing tangible solutions to balancing development on private lands with a desire to protect wildlife and habitat. This benefitted the whole county, not just our license buyers. Other efforts in the news include a current effort to reduce wildlife/vehicle conflicts such as right out the door on Highway 21. Those efforts are conducted on behalf of the safety of citizens AND wildlife.

Stewardship services also include the contribution of our nongame and Conservation Date Center programs to the State Comprehensive Wildlife Conservation Strategy and Threatened/Endangered species programs as well as general nongame programs. Precluding further listing of species is a benefit to economics of the State, not just our license buyers. The majority of our wildlife species, which are entrusted to the Department to protect, preserve, and perpetuate are nongame species. A critical need to sustain these programs is match for federal contract dollars. Our license plate program and the income tax checkoff are not enough — we need a broader based mechanism and we have been in discussion with Office of

Species Conservation and many of you about possible options.

In addition, I would classify invasive species initiatives in this category. This is an emerging arena that will require the diligence and efforts of multiple agencies to protect state resources.

Off-Highway Vehicle Management: OHVs are a rapidly growing recreational pursuit and a tool also used by many hunters. Our enforcement contribution is growing, particularly in backcountry areas where we have a primary presence to ensure compliance with registration, travel plans, hunting regulations, and to provide safety information. We also have a responsibility to work with other agencies such as IDPR and stakeholders to ensure there are trail systems that support the recreational needs but that minimize natural resource damage. OHV management is a critical component of sustainable access to private and public lands.

GO: I use the moniker of our new kid's website — **GET OUTSIDE** as a catch-all for the programs we are building to ensure a rich outdoor heritage for all generations. These are actions to get our youth and adults outside to appreciate and experience Idaho. A key focus is a multi-stakeholder effort to connect kids with the outdoors and we have an excellent foundation with our educational programs to build on to play a key role in making a difference. Some of our vision includes more traditional activities that play a role in recruitment and retention such as mentored youth programs and enhanced hunter education. But our vision of an outdoor heritage is for all citizens, not just hunters, fishers, trappers. Providing more urban outdoor opportunities, such as urban ponds and nature centers are on our list. Maybe that kid at the urban fishing pond starts a life-long interest in birds or frogs or willows even if fishing is not the activity of choice. We are building other new and innovative programs, such as our new kid's website. Stay tuned for more. But, we can't mentor kids alone. It takes parents, teachers, and other adults, so their outdoor education and experience is also important.

Habitat: Wildlife needs habitat. More funding means more and/or better acres. This goes not only for new protection, but also for weed control, fire rehabilitation - the whole gamut of habitat protection and enhancement.

The Department has investigated various mechanisms which might provide broadened funding. I heartily recommend a report that we provided to the Ad-Hoc Funding Committee that reviews what other states have done — just let me know if you'd like a copy. We have had discussion with the Ad-hoc Funding Committee about a couple of ideas — an income tax line item for access and stewardship programs similar to the line item for the permanent building fund and an increase in the registration fee for OHVs to provide OHV enforcement and OHV

education/safety funding for the Department. We have also discussed use of state general funds for some of these nontraditional uses, such as assisting local governments with development needs and such as the state match for contracts related to the State Comprehensive Wildlife Strategy Species strategies, other T/E species, or nongame species contracts. The Department actually submitted legislative ideas for this session for the income tax and the OHV registration fee increase — but we did not receive approval to pursue the income tax discussion and did not pursue the OHV fee increase in order to gain consensus with IDPR on the fee approach.

I have not focused on funding challenges for our more traditional management activities and do not mean to belittle that challenge — it's big. However, I think you are more familiar with the programs we support with license fee increases so I wanted to focus on the broadened funding challenge. However, I am happy to answer questions about any of the topics I've noted.

With that, Mr. Chairman, I appreciate the opportunity to share this perspective with you and the committee and will answer questions.

SPEAKER: **Mr. Nate Fisher, Administrator of the Office of Species Conservation,** presented that agency's funding challenges. A copy of his testimony is inserted into the minutes.

Overall, from an Idaho State General Fund perspective, the Office of Species Conservation (OSC) funding should remain stable into the near future. (FY '09, \$628,500, 6FTEs). Funding challenges will come from federal and regional perspectives, as outlined below:

1) Wolf Funding. OSC, the Nez Perce Tribe, and the U.S. Fish & Wildlife Service receive approximately \$1.1 million of federal funds per year for wolf recovery, control and research. OSC remains concerned that, once the wolf is delisted, the federal government will not continue to provide funding for these programs.

2) Salmon Funding. OSC receives funding for salmon recovery from three sources: Bonneville Power Administration (BPA), Pacific Coast Salmon Recovery Funds (PCSRF), and the Snake River Basin Adjudication Settlement Agreement (SRBA). The SRBA funds are new this year, and Idaho will receive approximately \$5 million per year from this fund.

3) Sage Grouse Funding. OSC has received approximately \$250,000 over the past four years for sage grouse recovery. This year OSC has requested from the Idaho Congressional Delegation \$1 million. This is due to the catastrophic wildfires in Idaho and the increase in project

proposals.

Current Funding Challenge: OSC currently administers over 60 restoration projects for a number of species, and expects to receive more funding from the SRBA funds. At the current staff level of six people, OSC does not have the capacity to administer more funds. We will be looking at using "Administrative Fees" from both SRBA and PCSCF for an additional project person.

Future Funding Challenge: The State of Idaho needs to look at all fish, wildlife, and plants in a holistic manner to preserve our native species, and to prevent future listings under the federal Endangered Species Act (ESA). 80% of our species are neither hunted nor fished, and little funding goes toward their conservation. Idaho needs a more robust program to preserve all species in Idaho.

SPEAKER: **Mr. George Bacon, Director of the Department of Lands**, was the next speaker. A copy of his testimony is inserted into the minutes.

NON-ENDOWMENT PROGRAMS:

1. Forest Fire Preparedness and Suppression (Dedicated, General & Federal Funds):

Dedicated funds are from forest landowner assessments. Income is flat or decreasing while inflation and rising costs attacks fund balances. We expect the dedicated fund to go negative in one or two years. Federal funds are severely threatened. President Bush's budget for 2009 cuts the State Fire Assistance program 23.3%.

This program is undergoing an external contract analysis. The purpose of the study is to analyze Idaho's history of wild land fire funding, the current funding formula and mechanisms used by other states to fund both preparedness and suppression. Report results will be shared with policy makers and could result in major differences to how Idaho funds fire activities in the future.

2. Private Forestry/Landowner Assistance (Dedicated, General & Federal Funds):

Dedicated funds are from forest landowner assessments. Income is flat or decreasing while inflation and rising costs attacks fund balances. We expect the dedicated fund to go negative in two or three years. Federal funds are severely threatened. President Bush's budget for 2009 cuts the Forest Stewardship Program 83.3%.

3. Surface Mining Act Administration

This general fund program is inadequately funded to meet current constituent needs. No application fees have been authorized, yet

personnel time is required to review and approve reclamation management plans mandated by statute.

4. Lake Protection Act (Navigable Waters Program):

This general fund program administers public trust lands. Current costs exceed revenue from permits and leases. The discovery of Idaho by the rest of the nation has spurred interest in fully developing private property along the state's pristine lakes and waterways. For several years the agency has requested, and not received, additional temporary personnel, capital outlay and operating cost to meet the demands of the program which include:

- a. Personnel to afford the timely processing of applications and permits.
- b. Capital outlay to purchase an additional vehicle for the added personnel.
- c. Operating expense appropriation to cover vehicle rental, fuel and office cost commensurate with current level attributable to the Navigable Waters program.
- d. Costs associated with public hearings that are required by statute.

ENDOWMENT PROGRAMS:

1. Commercial Property Maintenance:

Obtain funds necessary to address tenant improvements and the backlog of deferred maintenance associated with commercial properties that were acquired via land exchanges between 1999—2001.

- a. Average building age is 50+ years, i.e. Capitol Park Plaza, Garro, Sherm-Perry
- b. Continued lack of attention could result in:
 - i. Higher tenant turnover and vacancy
 - ii. Long-term vacancy until threat of life/safety issues addressed
 - iii. Higher repair and maintenance due to faulty systems
 - iv. Emergency funding (supplemental appropriation) required to address catastrophic failure of certain systems or conditions
 - 1. Domestic water distribution — Capitol Park Plaza
 - 2. HVAC — Capitol Park Plaza
 - 3. Exterior Masonry Repair of Parapet — Sherm Perry
 - 4. Elevator Replacement — Capitol Park Plaza & Garro

2. Commercial Property Development:

The department has recognized the need to obtain funds to provide "Build to Suit" options for developable commercial properties. This would allow vertical development of key parcels and enhance the earnings power of the trust. Properties ready for such opportunities include:

- a. Water-tower — 10 "wet lots" in a Meridian office park near

- POST Academy
- b. The Hoff parking lot
 - c. The Bannock parking lot
 - d. Deinard 80 in McCall — in designated area for new town center and YMCA
 - e. Orchard Road realignment in Boise — mixed use development opportunities

3. Forest Asset Planning:

The department is currently examining opportunities to increase timber harvest and identify alternative uses for forest products. These opportunities will likely require additional funding sources to allow full development. Funding may be in the form of additional FTEs, increased operating expenses for contract services, or a combination of both. Comprehensive statewide analysis is scheduled for completion in spring, 2009.

4. Dispersed Recreation Damage:

Increasing public use of endowment land is damaging roads, fences, gates, wetlands, lessee improvements and the like. The department estimates that repair work may be costing the endowments over \$1,000,000 per year, although exact figures have not been compiled.

CONCLUSION: **Chairman Schroeder** said the purpose of today's meeting was to review the Resource agencies' needs for next year, so that you can think about them and they are fresh in your memory. The Ad Hoc Committee will continue to work on some of these issues. He thanked the Directors for their input and participation.

ANNOUNCEMENT: The **Chairman** said there may be one more meeting, and it will be subject to the call of the Chair. There will be no meeting Friday.

ADJOURN: He adjourned the meeting at 3:05 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 24, 2008
- TIME:** 1:00 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Senators Cameron, Little, Andreason, Coiner, Siddoway, Stennett, and Langhorst
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Pearce
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:15 p.m. He delayed the meeting due to the lateness of the Senate adjourning from their morning session.
- COMMENTS:** He said one of the disturbing things that we have had happen this year, and it is obvious to him, is that some members of boards and commissions think that they can be a member of a board or commission, then go to the Legislature and undercut their board or commission vote. The Chairman stated that what he is going to do next year, is that anytime he finds a member of a board or commission that doesn't adhere to the vote of the board or commission, they will not get a hearing - if they are reappointed. He said this has to stop. If they want to be a citizen and have their own views, then they should resign and be a citizen. If they want to be a member of a board or commission, then when the vote is taken, they should support the vote. Chairman Schroeder said if he is forced to have a hearing, there will be some nasty publicity. He said members are there to represent that agency or that board or commission. He asked to be recorded on his position of this situation so that everyone understands what could go on.
- PREFACE TO SPEAKERS:** **Chairman Schroeder** said that the Idaho Department of Fish and Game's depredation account is out of spending authority and he talked to Senator Cameron about it and also to **Kent Marlor, Co-chair of the Fish and Game Advisory Committee**. Mr. Marlor is prepared to address the committee, as well as **Ms. Sharon Kiefer, Intergovernmental Policy Coordinator for IDFG**.
- SPEAKER:** **Mr. Marlor** was the first to speak to the committee. A copy of his testimony is inserted into the minutes.

Chairman Schroeder and Committee Members:

When the original Depredation Committee held our first hearings throughout the state in 1989, we began with one stark reality, if sportsmen wanted high big game population levels, the Idaho Department of Fish and Game would need to have a depredation prevention program, along with an agricultural damage compensation system to accompany it.

Thus was born the depredation program from Senate Bill 1515, passed in 1990, modified several times and contained in Title 36, Idaho Code.

In the past, this statute has served Idahoans well. Over time, however, the development of weaknesses in the law requires overhaul. This goal cannot presently be accomplished, particularly when the present and near future depredation claims are seen to be in excess of the funds available.

It is presently estimated that only sixty percent of claim amounts can be paid for FY08, given IDFG present funding authority.

To be succinct, that is the reality of the present situation. Quickly, let me answer the question of how this situation could have occurred.

- The original statutory provisions were based on 1990 dollars with no provision for inflation.
- Crop values were based on 1990 prices. Today's grain prices are at \$12, far above their 1990 levels.
- Beginning in 2007, the total value of, and number of claims received escalated; whereas, before that time they had remained relatively stable.
- Producer awareness and use of the program increased during the last two years.
- Unique characteristics of elk herd numbers and their location have increased claims in the Clearwater Region.
- Extended drought conditions and finally heavier winter conditions have exacerbated big game depredation on growing and stored crops.

There are two options available to IDFG. First, pay the claims at the sixty per cent level. Second, and this is the Committee's recommendation. We recommend that IDFG be authorized by legislative action (spending authority) to use heretofore unappropriated funds to the amount of

\$250,000.

We are aware that this FY08 increase in spending authority in the expendable account would further reduce the expendable account balance. It would negatively impact near term funding for *Access Yes!* and funds for the Animal Damage Control Board.

Reducing the expendable account balance would also impact the interest earned on the account.

These are the negatives to our recommendation, but we see this as the only viable option. We will seek to come forward with solid recommendations on the overhaul of the depredation funding provisions before the next legislature meets. This will not be easy since we have been given the responsibility of developing a depredation funding program for wolves.

One option, we can ask for our state salaries to be doubled. No doubt this will be energetically endorsed.

J. Kent Marlor, Ph.D.

SPEAKER:

Due to time constraints, Ms. Kiefer was unable to present her testimony to the committee. A copy of her testimony is inserted into the minutes.

Subject: FY08 Depredation Claims

Background: Compensation for damage caused by deer, elk, pronghorn, black bear, and mountain lion was enacted in 1990 by passage of Senate Bill 1515 (36-114, 36-115, 36-1108, 36-1109, & 36-1110). The legislation created 2 funds, a 'secondary' account initially funded by State general fund and Fish & Game fund appropriations; and a 'primary' account annually funded (\$200,000) by Fish & Game funds. Claims were paid out of both the primary and secondary accounts, depending on wildlife specie and claim amount.

In 2005, Senate Bill 1171 modified the statutes including creating a nonexpendable, interest bearing account and an expendable account. Pursuant to 36-115 I.C., the nonexpendable account (called the nonexpendable big game depredation fund) was funded by the transfer of \$2.25 million from the old \$3.0 million secondary account. The money is invested pursuant to 67-1210 I.C. Earned interest is paid to the expendable big game depredation fund. By statute, the principal can not be appropriated; only the earned interest is available for appropriation to the expendable big game depredation fund.

The expendable big game depredation fund, referenced as the "expendable account" (36-115 I.C.), is funded annually by appropriating \$200,000 of Fish & Game license funds (from the fish and game account) and interest earnings from the nonexpendable big game depredation fund (~ \$125,000 - \$150,000 annually). Additionally, the \$750,000 balance from the old secondary account was transferred into the expendable account. Pursuant to 36-115(c), funds in excess of \$750,000 are annually

transferred from the expendable account as follows - \$100,000 to the fish and game set-aside account to be ear-marked for sportsmen access programs (Access Yes), and the remainder to the animal damage control account at the end of the fiscal year. The expendable account is used for depredation claim payments and Fish & Game Advisory Committee expenses. Committee expenses are expected to be about \$10,000 in FY08. The expendable account must be appropriated annually.

Producers filing depredation claims are paid ½ of the total claim amount when the claim is filed pursuant to (36-115(d)1. The remaining ½ is paid at the end of the fiscal year, dependent on appropriation and funds. If the balance in the expendable big game depredation fund appropriation is sufficient to pay the balance of all approved claims, they are paid. If the balance of the appropriation is not sufficient to pay approved claims, statutory authority provides for pro-rated payments on the balance owed. All producers filing a depredation claim as of March 20, 2008 have, or will, receive ½ payments.

Prior to 2007, the total number of claims received and total monetary value was relatively stable (Table 1). Beginning last year, the number of claims and total monetary value has increased substantially (Table 1).

Current Status: Current fund balance in the expendable account is \$785,500. Current spending authority (i.e. the FY2008 appropriation) for the expendable account is \$407,600. Depredation claims received as of March 20, 2008 total \$529,305. We anticipate claims for the remainder of FY08 will not exceed \$100,000.

Reasons for increased claims include value of crops and increased producer awareness and use of the compensation program.

Options & Potential Outcomes: With no change in spending authority, Fish & Game would prorate claims received in FY08 for determining final payment in June 2008. Without additional claims filed in FY08, it is estimated claimants would receive approximately 25% of their outstanding balance, resulting in a total reimbursement of approximately 60% for claims filed in FY08.

Increasing spending authority by \$250,000 in the expendable account would allow Fish & Game to cover current and anticipated FY08 claims at 100%. Any increase in the FY08 appropriation would further reduce the expendable account balance below the base \$750,000 and likely impact near term funding for *Access Yes!* and the Animal Damage Control Board. Reducing the expendable account balance would also reduce interest earned on the account.

Future:

Financial demands on the expendable account are anticipated to increase as crop prices rise and more producers use the compensation program. Additionally, there are increasing instances where landowners don't allow hunting or only allow very limited hunting (e.g. leased hunting). These 'refuge' lands often harbor wildlife causing depredations on adjoining properties, and present a significant challenge to the Department to manage population levels.

Table 1. Number of depredation claims paid and total amount of claims paid by fiscal year, 1991- 2008.

Fiscal Year	Number of Claims	Amount of Claims
1991	13	\$ 26,666
1992	25	\$ 54,113
1993	28	\$156,264
1994	18	\$ 46,285
1995	22	\$ 99,123
1996	18	\$ 78,753
1997	40	\$175,588
1998	30	\$139,267
1999	12	\$ 79,029
2000	20	\$118,001
2001	20	\$ 98,433
2002	22	\$ 86,907
2003	23	\$ 82,797
2004	24	\$ 91,360
2005	20	\$ 79,053
2006	27	\$200,473
2007	38	\$232,836
2008*	41*	\$529,305*

*as of 3/20/08

A memo was sent to Senator Cameron from Ray Houston, Legislative Budget & Policy analyst regarding the Expendable Big Game Depredation Fund Distribution on March 19. It stated that for FY 2006, interest exceeded projections by nearly \$23,000 but depredation claims were \$121,200 higher than the 13 year average so the amount transferred to the Animal Damage Control fund was about \$98,400 less than projected. For FY 2007, interest exceeded projections but depredation claims were even higher than projected so only \$88,818 was transferred to the set-aside for Access Yes! in FY 2008. None is projected for FY 2009. A \$150,000 supplemental appropriation in FY 2008 would draw down the balance of the Expendable Big Game Depredation Fund to around \$517,000 depending on interest earnings.

At the conclusion of the discussion, **Chairman Schroeder** asked Senator Cameron if he wished to add anything more to the discussion. **Senator Cameron** said that he would take the issue under advisement. **Senator Little** stated that any recommendations the Depredation Committee has for next year, he would be interested in helping them out.

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

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 27, 2008

TIME: 1:00 p.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Schroeder called the meeting to order at 1:10 p.m. He welcomed Representative Eric Anderson who is presenting H 643.

H 643 **Representative Anderson** provided the committee members with a 20 page handout that contained background information on "Western Quagga Mussels".

House Bill 643 addresses the increasing threat of this invasive species in the State of Idaho. The bill will provide policy direction, planning and authority to combat invasive species infestations and to prevent the introduction of invasive species. A real and present danger to the waterways of Idaho does exist from the threat of certain invasive species, including Quagga Mussels, and has prompted the need to act with urgency to prevent their introduction.

Representative Anderson presented a nine minute DVD showing the infestation and problems caused by the Western Quagga Mussels. They were found in early January, 2007 in Lake Mead National Recreation Area. Populations have subsequently been found throughout the Boulder Basin of Lake Mead and also in other Lower Colorado River lakes: Lake Mohave, Lake Havasu, and the Copper Basin Reservoir. These lakes supply irrigation and drinking water to Southern Nevada, Southern California, and Southern Arizona. They have been found in two fish hatcheries - Nevada State Fish Hatchery on Lake Mead and Willow Beach National Fish Hatchery.

There are two mussels that are invasive. The Zebra Mussel invaded North America in the mid 1980's and came from the Black and Caspian Sea Drainages. The Quagga Mussel invaded a few years later - 1989 and came from the Dneiper River Drainage in the Ukraine. They can survive in temperatures ranging from 33⁰ to 86⁰ F and range in size from

microscopic to about two inches long. They typically live up to five years and may spawn all year if conditions are favorable. A few individuals can produce millions of eggs and sperm. At the larval state, they are free floating and are carried with the current. Adults attach themselves to hard surfaces with threads, but can detach and move to a new habitat.

Ecological impacts are: As filter feeders, these species remove food and nutrients from the water column very efficiently, leaving less or nothing for native aquatic species; and they have the potential of collapsing entire food webs.

The economic impacts are: These species clog pipes, ruin boat motors, and damage aquatic recreational equipment; once established in a lake, routine maintenance is necessary and perpetual; and management costs are enormous, particularly for industrial raw water users like power stations and water supply agencies.

There are no natural predators in North America. However, many species do eat these mussels, including diving ducks, red-eared sunfish and some catfish, but predators cannot keep up with the explosive reproductive potential of these invasive mussels. The Quagga Mussels are typically found at any depth as long as oxygen is present.

To prevent additional spread of this specie, boaters need to be educated on the cleaning of their boats and equipment before transporting them to new waters. The following steps are necessary every time a boat is retrieved from a lake or other water body:

- Remove all aquatic plants, animals, and mud from everything that came in contact with water;
- Drain all water, including bilges, live-wells, cooling water from the motor.
- Clean and dry everything that came in contact with water.
- Dispose of any live bait.

If mussels are seen attached to a boat or other recreational equipment, it must be decontaminated using more stringent guidelines. Those guidelines are as follows:

Step 1: DRAIN

Bilges, wet wells, live wells, and any other compartments that could hold water from an infested field collection site should be drained of water at the boat ramp before leaving the area. If a boat has carried water from another location, remove all water and treat it with household bleach (> 5% sodium hypochlorite) at a concentration of 3 oz of bleach per 5 gallons of water for a minimum of 1 hour before disposing in wastewater drain. Never dump water to the ground.

Step 2: PURGE

In order to kill and purge larvae that may be in the engine's cooling system, run disinfecting water through the motor for at least 1 minute. Disinfecting water should be either 1) a bleach solution using household bleach (> 5% sodium hypochlorite) at a concentration of 3 oz of bleach per 5 gallons of water, or 2) tap water heated to > 140 °F. Running bleach

through an engine may violate the terms of the engine's warranty, so hot water is recommended.

Step 2: SCRUB

Scrub all surfaces with soapy water to remove any clinging material (plants, animals, mud, etc.), then visually inspect and remove anything remaining. Pay special attention to cracks and crevices in which mussels may become trapped, and aquatic plants harboring juvenile mussels that may be present on trailers or propellers. Since adult zebra/quagga mussels can close up and survive for extended periods of time under toxic external conditions, chemical disinfecting as a means to kill adult mussels may require a contact time of several days. Thus, chemical disinfectants are not recommended for killing adult mussels. At this step, the goal is to remove any and all living organisms as well as mud and other debris.

Step 3: WASH

Hose down everything with hot high pressure water, including boat, anchors, trailer, and anything else that came in contact with the water. Pay particular attention to trailer pads made of carpet and foam rubber, which could trap tiny mussels. Temperature and exposure time determine the effectiveness of temperature treatments. Live steam, boiling, and hot (> 140 °F) power washing are all believed to be effective against all zebra/quagga mussel life stages. Work a small section at a time with a minimum exposure of 3 minutes at full heat for each area.

Step 4: DRY

After thorough scrubbing, power washing and visual inspection, dry the boat and all equipment and keep everything out of the water for at least 2 weeks if temperature is below 70 °F or 1 week if weather is warm (> 70°F) and dry (< 40% relative humidity). In winter, freezing may be used as an effective tool. Adult zebra/quagga mussels have a relatively low tolerance to freezing. Exposing boats and equipment to continually freezing temperatures for a recommended period of three days should produce 100% mortality.

Representative Anderson said this legislation establishes certain prohibited actions, duties of the Department of Agriculture and its Director and authorizes the director to promulgate rules and gives authority to conduct inspections and establish check stations as necessary. Other duties include providing for hold orders, invasive species fund, cooperative agreements, and authorization to conduct certain control measures.

Vice Chairman Pearce inquired about the Director of the Department of Agriculture being able to enter and inspect any public or private premises, lands, bodies of water, or means of conveyance, or article of any person within this state for the purpose of inspecting or destroying any invasive species. **Representative Anderson** said that he did have the Attorney General review the bill and that he did not have a problem with the

language in it. **Mr. Brian Oakey, Deputy Director, Department of Agriculture**, stated that they have similar language in laws and programs that they implement, whether it be the plant pest act or livestock investigation, which gives legislative authorization to enter into and inspect private property. Their policy is to respect the privacy and property rights of individuals, so their first attempt, always, is to seek the permission of the landowner first and if that is not achievable, then they go to the court and ask for a search warrant. Mr. Oakey said that is both from a legal standpoint, but also go above and beyond what is statutorily required. This protects the due process rights of the people they inspect. They utilize the legislative authorization if and when there is an emergency and they need to respond to react immediately.

Senator Little said that he felt there was an emergency in this instance. He also stated that he has great faith in the Director of the Department of Agriculture, but would like to revisit this issue next session. Senator Little also suggested that the Invasive Species Council prioritize their list.

MOTION: After a little more discussion, **Senator Pearce** made the **motion** to send H 643 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Andreason**. The motion **passed** by unanimous voice vote. **Senator Keough** will be the **sponsor** of this bill.

Chairman Schroeder thanked Representative Anderson for his informative presentation of the Quagga Mussels and H 643.

PAGE APPRECIATION: The **Chairman** then asked the **Committee Page, Sharri Swanson**, to come forward. He presented her with a letter of appreciation, signed by the Committee members, and also presented her with a Senate watch. Sharri is from Rexburg and is sponsored by Senator Hill.

ADJOURN: **Chairman Schroeder** adjourned the meeting at 1:45 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: April 1, 2008

TIME: Upon Adjournment from the Afternoon Session of the Senate

PLACE: Room 204

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

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

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Schroeder** called the meeting to order at 5:55 p.m. He said the purpose of the meeting was to review the amendments from the House that are attached to S 1280.

S 1280 He said in the amendments, they raised the fee of the hound hunter permit \$10.00, which he felt was a good thing. However, they added bonus (preference) points. In 2005, the House had a fee bill and inserted preference points in it and this committee did not go along with it then. The Chairman feels if preference points are important to the sportsmen, then there should be a public hearing. He feels that adding it to the bill at the end of the session is not the way to do things.

In the discussion, it was pointed out that when application is made for permits for antelope or big horn sheep, you receive a preference point. The points keep building each year that you apply. After awhile, a person builds up a certain amount of points and then receives a permit. It was the consensus of the committee that public hearings should be held regarding this matter.

MOTION: **Senator Little** made the motion to send S 1280, as amended in the House, to the floor and recommended that the Senate not concur with the amendments. The motion was **seconded** by **Senator Stennett**. The motion **passed** by unanimous voice vote. **Chairman Schroeder** is the **sponsor** of the bill.

ADJOURN: The meeting was adjourned at 6:05 p.m.

Senator Gary Schroeder
Chairman

Juanita Budell
Secretary