

**MINUTES
NATURAL RESOURCES INTERIM COMMITTEE
September 24, 2009
9:00 a.m. to 3:30 p.m.
Room 204, Capitol Annex
Boise, Idaho**

Cochairman Representative Dell Raybould called the meeting to order at 9:00 a.m. Members present were: **Cochairman Senator Gary Schroeder**, Senators Charles Coiner, Jeff Siddoway, Lee Heinrich, Kate Kelly substituting for Clint Stennett; Representatives Bert Stevenson, Scott Bedke, Mike Moyle, Donna Pence; and ad hoc members Senator Steven Bair; and Representatives JoAn Wood and Jim Patrick. Senator Dean Cameron and Representative Jim Clark were absent and excused. Staff members present were Katharine Gerrity, Ray Houston and Jackie Gunn.

Others present were: Director Gary Spackman, Hal Anderson, Phil Rassier and Bob McLaughlin, Idaho Department of Water Resources; Jerry Rigby, Idaho Water Resource Board; Clive Strong, Idaho Attorney General's Office; Jonathan Barsch and Joan Kathol, CDR Associates; Jim Unsworth, Idaho Department of Fish and Game; Rich Rigby, Matt Howard and Gail McGarry, Bureau of Reclamation; John J. Williams, Bonneville Power; Lloyd Hicks and Teresa Molitor, Great Feeder Canal System; Stan Hawkins, Harrison Canal Co.; Randy Bingham, Burley Irrigation District; Benjamin Davenport, Risch Pisca; Kent Lauer, Idaho Farm Bureau; Lynn Tominaga and Brenda Tominaga, Idaho Ground Water Association/Idaho Irrigation Pumpers Association; Nate Fisher, Office of Species Conservation; Norm Semanko, Idaho Water Users Association; Dean Stevenson, Magic Valley Ground Water District; Alex LaBeau, Idaho Association of Commerce and Industry; Brian Olmstead, Twin Falls Canal Company; Lyle Swank, Water District 1; Jim Tucker and Rich Hahn, Idaho Power Company; Roger Seiber and Zach Hauge, Capitol West; Cara Tei, Boise State University; Randy MacMillan, Clear Springs Foods; Stephen Goodson; and Darrell Kerr.

NOTE: All copies of presentations, reference materials, and handouts are on file at the Legislative Services Office.

Cochairman Representative Dell Raybould called for a silent roll call and requested a motion for the approval of the minutes of the last meeting. **Representative Stevenson moved to accept the minutes as written, Senator Siddoway seconded** the motion. **The motion carried** by unanimous voice vote.

Cochairman Representative Raybould introduced **Mr. Hal Anderson**, Administrator, Planning and Technical Services Division, Idaho Department of Water Resources. **Mr. Anderson** provided the Committee with a status update on the Comprehensive Aquifer Management Plan (CAMP).

Mr. Anderson recounted the history of the origin of CAMP, beginning with the initiation of a framework in 2006, plan development and adoption in 2007, Advisory Committee recommendation development in 2008, unanimous adoption by the Idaho Water Resource Board in 2009, and the adoption of the plan into law by the Legislature in 2009.

Mr. Anderson noted that demand and supply on the Eastern Snake Plain Aquifer (ESPA) are out of balance. The plan components include a 600 kaf water budget change via a mix of conversions, aquifer recharge and demand reduction strategies. The full implementation timeline is slated over a twenty-year period and the cost of the implementation is anticipated to be roughly \$600 million, not including maintenance and operation costs.

The first phase of the project would get halfway to the objective. According to **Mr. Anderson**, Phase 1 will occur over the course of the first ten years. Phase 1 involves a hydrologic target of 200 kaf to 300 kaf. In addition, this phase involves the initiation of actions that increase aquifer levels, spring and river flows with a geographic distribution of benefits across the ESPA. **Mr. Anderson** noted that the plan aims to build institutional confidence with long-term plan implementation. **Mr. Anderson** stated that additional actions involved with Phase 1 would include ground water to surface water conversions, managed and incidental aquifer recharge, demand reduction through such means as buy-outs, buy-downs and subordination agreements, rotating fallowing, dry-year lease agreements, Conservation Reserve Enhancement Program (CREP), crop mix modification and surface water conservation. **Mr. Anderson** also reminded the Committee of the pilot weather modification program undertaken through Idaho Power.

Representative Wood asked **Mr. Anderson** whether they have taken into account those years in which drought occurs. **Mr. Anderson** responded that they have and that the 200 kaf to 300 kaf is an average annual figure. He noted that the reality of an hydraulic cycle is that in some years there will be more and in some years less.

In response to a question by **Cochairman Raybould** regarding the target figures and the effect of the springs depletion of the aquifer, **Mr. Anderson** responded that the modelers and experts are of the opinion that it is fairly close to equilibrium now. He went on to say that they would not expect to see any huge changes at this point in time.

Senator Coiner asked **Mr. Anderson** to define equilibrium. **Mr. Anderson** responded that it would be when what is quantified as recharge is about equal to discharge. **Senator Coiner** followed up by rephrasing it as no net loss to the water stored in the aquifer. **Mr. Anderson** agreed.

Mr. Anderson advised the Committee that additional plan components will involve refocusing the Advisory Committee on plan implementation as the CAMP Implementation Committee. He noted that there will also be the continued integration of environmental and other considerations and the evaluation of options to implement a flexible mechanism that connects willing participants in the implementation of ESPA water management projects. **Mr. Anderson** went on to indicate that further plan

components involve outreach and education, management flexibility and innovation and downstream transfer policy that would encourage providing water for recharge and conversion projects through downstream transfers of surface water rights to the ESPA in a manner that enhances flows in flow-limited tributaries.

Mr. Anderson recounted that the legislation that was passed in 2009 directs the Idaho Water Resource Board to prepare and submit for legislative approval, a funding mechanism for implementation of Phase 1. Within the legislation there was also the recognition that incidental recharge is beneficial and that water users should be encouraged to continue historic practices. He stated that while there was no additional funding provided in the bill, the Idaho Water Resource Board was authorized to use previously appropriated funds for implementation. He also noted that they are looking for direction in terms of submitting a funding mechanism for implementation of Phase 1.

Mr. Anderson provided the Committee with the ESPA CAMP Phase 1 funding participation targets that were agreed to by the Advisory Committee. Implementation of Phase 1 is expected to cost about \$7 million to \$10 million annually depending on the federal support they can garner. The total cost is estimated at approximately \$100 million. He noted that the breakout is roughly sixty percent from the users and forty percent from the state. The targets include the following:

Irrigated Agriculture - \$3 million annually (based on participation of \$2 million annually for ground water users and \$1 million annually for surface water users); Idaho Power - \$1 million to \$1.5 million annually (for projects that qualify for the Temperature Enhancement Management Program (TEMP)); Municipalities - \$700,000 annually that would include commitments to address rules and statutes that may inhibit municipal growth; Spring Users - \$200,000 annually (based on cfs); Industrial and Commercial Users (not served by municipalities or ground water districts) - \$150,000 annually (based upon estimated 15 kaf use annually); State of Idaho - \$3 million annually; Federal – pursue federal grant and cost share funding opportunity; EQUIP, Water for America, CREP and others; Recreation/Conservation – pursue grants and other funding opportunities.

In response to a question by **Senator Bair** regarding federal funding, **Mr. Anderson** responded that federal money is presently being used on conservation projects near Hagerman and some other conversion projects. The source of the money is the Farm Bill and they received seventy-five percent federal dollars with a twenty-five percent local match where many different approaches can be used to meet that match. **Mr. Anderson** added that it is primarily being used for conversion projects.

Senator Coiner asked **Mr. Anderson** to comment on the source of water for conversions. **Mr. Anderson** responded that they have looked at when water would be available for both conversions and recharge. He added that they are not total conversions. **Mr. Anderson** also said that water may not be available every year.

Senator Coiner followed up with a question regarding the difference between managed and incidental recharge in terms of the impact to the water budget. **Mr. Anderson** responded that they do believe it is important to continue incidental recharge and he believes that looking at incentives to continue to provide incidental recharge is important.

Representative Patrick asked **Mr. Anderson** how many years they anticipate increased spring flows. **Mr. Anderson** noted that it depends on where recharge happens. He stated that the closer to the canyon rim, the faster you will see changes. He said that they would hope to see changes with some recharge activities fairly quickly. But if farther away, it could take years to see changes.

Senator Coiner asked **Mr. Anderson** if the issue of liability has been addressed. **Mr. Anderson** confirmed that they are looking at liability issues. He continued by adding that the Office of the Attorney General is working with the insurance companies and their underwriters. Initially they believe that there probably is not an issue for irrigation entities delivering water through their canals because that would be part of their normal operation. However, he added, if there was a recharge facility constructed, specifically for the purpose of recharging the aquifer, there may be an issue if contamination occurred. They are waiting for a final ruling from the underwriter.

Senator Bair asked about liability when recharge is run into a seasonal lake. **Mr. Anderson** responded that it is his understanding at this time that those normal operating spills are part of their normal operation. If, however, it was for an extended period of time specifically for recharge, there may be a question.

Mr. Jonathan Bartsch, CDR Associates, was the next speaker to address the Committee. **Mr. Bartsch** provided members with an Implementation Committee update and an overview of the funding working group.

Mr. Bartsch noted that the purpose of the Implementation Committee is to develop consensus recommendations to the Idaho Water Resource Board regarding implementation of the ESPA CAMP relating to Phase 1 funding collection mechanisms, implementation criteria, plans and priorities, early action projects and a foundation for plan implementation that is strategically coordinated, consistent and transparent.

The Implementation Committee, according to **Mr. Bartsch**, is made up of previous Advisory Committee members and alternates, agency participants, the Idaho Water Resource Board, which provides a decision-making authority for plan implementation, and Board staff.

Mr. Bartsch advised the Committee that there are five working groups. Those groups are the Ground Water to Surface Water Conversion group, the Weather Modification group, the Demand Reduction group, the Recharge group and the Funding group. The groups are all tasked with making various relevant recommendations.

Representative Wood asked whether there is something to incentivize businesses that use a lot of water to do their own water treatment before it is returned to the aquifer. She added that there are many that would like to be part of the solution but it is costly and if there were funds available they might be able to help them. **Mr. Bartsch** responded that they would look into this issue.

Mr. Bartsch noted that the Implementation Committee met for the first time in August and the top priority, as outlined in HB 264, was to identify a funding collection mechanism. **Mr. Bartsch** recounted that CAMP establishes that sixty percent of funding should come from water users with the remainder to come from the state. Moneys collected for plan implementation are to be deposited in the Water Resource Board Revolving Development Fund.

According to **Mr. Bartsch**, the Funding working group has identified several sideboards for its funding recommendation. Those sideboards include the following:

- CAMP funding should be based upon the assessment of a mandatory fee rather than a tax. A fee based approach can be tailored to each water user group and a fee based on benefits received is likely to enjoy more public support.
- Fees should be collected either through counties or water districts – not a new level of governance such as a conservancy district.
- Fees must be based upon the funding allocation set forth in the CAMP.

The next speaker to address the Committee was **Mr. Phil Rassier**, Deputy Attorney General, Idaho Department of Water Resources. **Mr. Rassier** continued with additional details relating to funding. He noted that the Office of the Attorney General was asked to review the proposed sideboards noted above and provide a preliminary opinion as to whether such sideboards are legally possible. **Mr. Rassier** indicated that the preliminary opinion is that it is possible to develop such a funding mechanism and that the most significant legal issue is the distinction between a fee and a tax.

According to **Mr. Rassier**, the Legislature would need to approve the fee structure that would include findings demonstrating that the fee is reasonably related to the benefits received. **Mr. Rassier** noted that, depending on direction from the Committee, the fee would be collected by either the counties or the water districts. He added that considerable effort will be required by the Idaho Water Resource Board and the Department, in determining the amount of fees to be collected from individual water users or water delivery entities.

In distinguishing between the collection options, **Mr. Rassier** stated that, in the event it is collected by water districts, each district would be legally required to collect the fee, it would probably be collected annually, and would not be identified as an expense related to water distribution but, rather, itemized separately as a CAMP implementation fee.

According to **Mr. Rassier**, in the event it is collected by the counties, the treasurer would be legally required to collect the fee. He stated that the county auditor would probably be

required to make up a roll showing the fee to be collected and from whom collected, and deliver the same to the treasurer. The treasurer would then mail notices to each water delivery entity or affected water user stating the amount due.

Representative Patrick asked about the costs associated with collection – whether they would be passed on to those assessed or assumed by the counties. **Mr. Rassier** responded that it would be anticipated that the counties would retain some of the collections for associated costs. **Representative Patrick** added that it would probably be more expensive for the counties than for the water districts. **Mr. Rassier** noted that there are details such as this that will need to be considered as they put together legislation.

Senator Heinrich stated that he has no idea where auditors would get information to establish a roll for collection. He added that the Implementation Committee needs to talk with auditors and fine tune this issue. **Mr. Rassier** stated that they contemplate that the Idaho Water Resource Board, Department or both would put that information together for them. **Cochairman Representative Raybould** added that they would need to work some of the details out with the canal companies and water districts. **Representative Bedke** stated that some entities are already taxing districts and property taxes are levied. In some cases it would be just designating an existing taxing district and just adding the additional amount on. **Representative Stevenson** commented that ground water districts in his area use the counties to collect assessments and the counties retain one to three percent for administrative costs. Some elect to send out assessments directly.

Mr. Rassier went on to state that legislation would need to provide when the collected fees must be paid and where those fees would be deposited. He said that the legislation would also have to authorize retention of a portion to cover costs associated with collection. He noted that there would probably have to be some provision for unpaid fees and enforcement.

Mr. Rassier concluded by indicating that the alternatives presented satisfy the CAMP Implementation Committee's desire for a funding mechanism that is mandatory with no added level of government. He also indicated that some agreements would have to be entered into between the Idaho Water Resource Board and some individual participants, such as Idaho Power and possibly municipalities.

Senator Bair asked who would bring a legal action for collection if that needed to be done. **Mr. Rassier** responded that those types of issues are being discussed. **Senator Bair** added that there would also have to be an appeals process and **Mr. Rassier** responded that those details are being discussed and would be incorporated in the legislation.

Senator Coiner commented that if a user doesn't pay their fee, they probably wouldn't pay any of the bill. In that event, the county would collect through existing law.

Cochairman Representative Raybould noted that the perception is that after the Implementation Committee has additional meetings, the Office of the Attorney General

will put together some draft legislation. The germane legislative committees can then take public comment and make modifications if necessary. He added that it was beneficial to get initial information at this interim meeting and then have them work out the details.

Representative Wood asked whether nonpayment would affect property or water rights. **Mr. Rassier** said that an entity would bring an action to collect an unpaid fee. He added that if that entity got a judgment, at some point that could turn into a lien. **Cochairman Representative Raybould** stated that it would be extremely difficult to put a lien on a water right. He added that surface water users are stockholders in a canal company and the canal company is the one that holds the water right.

Cochairman Senator Gary Schroeder asked **Mr. Anderson** to confirm that they were not involving private domestic wells and **Mr. Anderson** confirmed that was correct.

In response to a question by **Representative Patrick**, **Mr. Rassier** responded that he believes that commercial users would be subject to assessment.

Mr. Jerry Rigby, Idaho Water Resource Board, addressed the Committee momentarily to thank them and stated that the Board would appreciate the Interim Committee's feedback. He also extended appreciation to the work of Department and Board staff and to **Mr. Bartsch** and CDR Associates.

Cochairman Representative Raybould asked whether **Mr. Rigby** believed they were far enough along in the process to put together legislation to implement CAMP by January, 2010. **Mr. Rigby** responded that it is difficult to make a commitment to that effect but that it is their goal and intent to do so. **Cochairman Representative Raybould** reiterated that they need good public comment when the legislation is prepared and that he believes this is one of the most important things the state of Idaho has done in decades.

Mr. Anderson informed the Committee that **Mr. Dan Chadwick**, Executive Director of the Idaho Association of Counties (IAC), was unable to attend the meeting because the counties were conducting their annual conference in Coeur d'Alene. However, **Ms. Kerry Elliott**, IAC Lobbyist, did send an e-mail to **Mr. Anderson** which he shared with the Committee. **Ms. Elliott** noted that the Idaho Association of County Treasurers (IACT) met at their annual conference on September 23 to discuss the possibility of taking on the additional responsibility of collecting a fee for CAMP. She said that the IACT acknowledge the importance of CAMP to affected local economies and citizens. **Ms. Elliott** indicated that the IACT voted, by majority, that treasurers could perform this function, but only with legislation that provided a uniform, clear and seamless process that includes cost recovery, but does not require them to execute assessment or legal duties that should be assumed by the CAMP. She also stated that the group believes it is essential that adequate sideboards are in place prior to implementation. **Ms. Elliott** added that the IACT is willing to meet to discuss the specifics of their deliberation on the issue and have assigned four treasurers to do so.

Cochairman Representative Raybould stated that it would be helpful for the four treasurers to meet with the Implementation Committee and **Mr. Anderson** responded that he could see that a meeting takes place.

Representative Wood asked whether a fee is legally binding on property. **Mr. Rassier** responded that, conceivably, it could be structured that way. However, he went on to say that the working group did not suggest that approach. Rather, that if the fee went unpaid there would be a penalty and/or interest, and court action to collect, but not have it become a lien against the property.

Representative Bedke inquired that if the four treasurers meet with the implementation team, are they tacitly approving collection by the counties. **Cochairman Representative Raybould** responded that by suggesting that they meet they would be able to get some additional information. He said he would consider the meeting informational.

Director Gary Spackman, Idaho Department of Water Resources, was the next speaker to address the Committee. He indicated that he was not present to advocate for the collection to be done by one method or another. He said that he tried to objectively analyze what resources would be necessary to accomplish CAMP. Collection, he recounted, is proposed to be land-based, dependant on the number of acres irrigated with ground water users responsible for \$2.00 per acre and surface water users responsible for \$1.00 per acre. **Director Spackman** said that he had a group look at the information to get an idea as to what resources it would take internally for the Department to accomplish its jobs.

He reported the breakdown for water rights within the ESPA/CAMP area as follows: 15,000 to 16,000 water rights for irrigation; almost 1,000 for commercial use; 300 for fish propagation; 144 for industrial; 150 to 200 for municipal; 122 for power rights. Given that a disproportionate number of the total water rights are for irrigation, **Director Spackman** stated that the working group evaluated the cost to the Department based on this. In order to identify a single use on a particular parcel of ground by owner, he indicated that the group estimated that in the Department, to initiate this work with the counties, it would require one full-time person and three-quarters of a person ongoing, depending on the degree of accuracy demanded. Additionally, **Director Spackman** stated that three and one-half to five and one-half full-time people would be required for maintenance of this process. He identified uncertainties regarding the amount of support needed to coordinate overall collection, as well for oversight of enforcement, so these areas are not included in the estimate. The group did evaluate what effort would be required should funds be collected by the counties, and estimated one-half a full-time person would be needed. **Director Spackman** asked the committee to consider the associated department personnel costs when drafting the proposed legislation.

Representative Bedke asked **Director Spackman** to confirm the estimated staffing requirement if the traditional water managers get the data to the counties. **Director Spackman** confirmed that the Department of Water Resources will need one full-time

person initially for implementation and three-quarters of a person full-time long term. He indicated that this was the estimate from the Department. **Representative Bedke** followed up, asking the cost of a full-time employee. **Director Spackman** estimated the total cost to be somewhere between \$50,000 and \$60,000 a year, once benefits are included.

Mr. Anderson stated that **Director Spackman** was speaking to just the assessment collection piece. If and when these moneys come into the Idaho Water Resource Board, then there will be projects designed, developed and administered necessitating additional staff. **Mr. Anderson** indicated that this staffing would consist of four to five full-time Department employees and some contract people, with a final total of ten employees associated with that part of it. The contract personnel do not have to be full-time. **Representative Bedke** asked if the additional employee positions would be funded by the dedicated funds, coming from the successful implementation of CAMP. **Mr. Anderson** answered that the funding for the employees would come from dedicated funds, not from general funds. **Representative Moyle** followed up, asking if the cost of the ten employees translated to somewhere between \$500,000 to \$600,000 of the \$7 million to \$10 million of funds. **Mr. Anderson** agreed with that estimate. **Representative Moyle** then asked if the state's cost of that portion is \$3 million to \$4 million. **Mr. Anderson** explained that the money that would be coming in, part of that state contribution, could come to the Department for staff and it would be taken from that dedicated fund.

Senator Coiner asked **Director Spackman** about the letter dated September 23, 2009, addressed to **Randall Budge** from the Director, relating to implementation of ground-water districts' second plan of action for 2009. **Senator Coiner** asked how **Director Spackman** sees the relationship with the Department for the ESPA plan and administration of water on the ESPA. **Director Spackman** responded that he doesn't have a clear vision of how the coordination will work. He said in his opinion, there has to be some connection between comprehensive aquifer management and satisfying mitigation responsibilities.

Senator Coiner stated that he believes the Department needs to focus on administering the resources. Given the information in the letter, **Senator Coiner** said that they are finding that they don't have in place the auditing over mitigation plans that needs to be there. He asked **Director Spackman** what he sees in the future regarding the auditing of mitigation plans so that they would be timely. **Director Spackman** said that he believes the Department will spot check. He continued by stating that there will be responsibility on the part of those who are required to offer mitigation to verify as the mitigation is to be supplied. This should assure accountability and he added that he believes those kinds of provisions will be in place next spring.

Senator Heinrich reiterated to **Director Spackman** that the actual collection through the treasurers is fine, but asked that the Director needs to keep in mind that the auditor cannot furnish the list.

Representative Wood asked about the effect of the court judgment on the relationship of the Eastern Snake Plain and the process of mitigation. **Director Spackman** stated that the recent court curtailment order does not necessarily affect the relationship between the CAMP process and mitigation. The CAMP process is proceeding independently. He also stated that the court is presently reviewing the way in which mitigation is administered and what abilities a Director has to approve or enforce a mitigation plan.

Senator Coiner suggested that all the entities, ground water districts, surface water canal companies and the larger ditch companies, can be directly billed. There would be some challenges with the dual role, the dual water rights. This would make the process simple.

The Committee then allowed for public testimony. **Mr. Lloyd Hicks**, Technical Director, Great Feeder Canal System, was the first to address the Committee. **Mr. Hicks** noted that he has also been involved with the CAMP Committee. He provided the Committee with a handout for their review regarding the rationale, discussion, justifications, alternatives and options for credits/incentives for incidental recharge.

Mr. Hicks stated that his purpose was to discuss incidental recharge. He told the Committee that their canals are extremely leaky. The area has extremely porous soils. He said that they use about 12 to 15 af of water per acre and most of that leaks into the ground. He reminded the Committee that the legislation in 2009 which adopted the ESPA plan specifically recognized incidental recharge. He stated that his group believes they have an opportunity to help the state and vice versa. **Mr. Hicks** went on to explain the problems associated with conversions to sprinklers. He commented that irrigation either needs to be done by flood or by sprinkler and that mixing the two methods creates a significant problem for canal managers.

Mr. Hicks testified that reach gains do not benefit them because they are too high in the system. He commented that the proposal for them to pay \$1.00 an acre while leaking water is inequitable when leakage costs them about \$2.00 an acre foot. **Mr. Hicks** said that he thinks there is a clear separation between high loss canals and high aquifer recharge canals versus other surface water and clearly versus ground water. He said that, as an alternative, they have set forth a "fair share fee proposal." Essentially, the proposal would provide that if a user uses 5 af or less, they would pay the fee. He then stated that his group believes canal companies should be exempt from the tax if they exceed the average amount of use in the ESPA for surface water, which is 5 af. He said that if that amount is exceeded then you are clearly putting it in the aquifer. He asked that the canal companies be given some kind of vehicle such as reimbursement or set-aside fee structure so they can go to their people and say the state has appreciation for their high losses, that it's good for the aquifer. In this manner, he said, they can encourage users not to use sprinklers.

In response to an inquiry by **Representative Bedke**, **Mr. Hicks** stated that every canal company that has flood irrigation would benefit from their fair tax proposal. He said that if usage is over 5 af, they would get a deduction for the excess water. **Representative Bedke** followed up by asking **Mr. Hicks** what amount of revenues his formula shows

would be at issue. He commented that most users probably use over 5 af, which equates to very little payment. **Mr. Hicks** responded that they hope to maintain incidental recharge. **Representative Bedke** also stated that he believes sprinklers are in the Upper Valley's future.

Mr. Randy Bingham, Burley Irrigation District, and member of the CAMP Committee, was the next speaker. He noted that his comments would relate to assessment of acreages. **Mr. Bingham** stated that if they start giving credits or exemptions it gets very complicated. He said that some canal companies don't even sit on the Eastern Snake Plain and that everyone can claim a reason not to pay an assessment. **Mr. Bingham** said that he was concerned that if they start dividing groups, the process could fall apart.

Representative Wood asked **Mr. Bingham** to comment on **Mr. Hicks'** assertion that they will receive no benefit. **Mr. Bingham** responded that he knows that the recharge they do moves downstream. He commented that Aberdeen/Springfield also does. **Mr. Bingham** said that users in **Mr. Hicks'** area do benefit from recharge because Palisades and Jackson Lake are above them and they recharge. He added that **Mr. Lyle Swank** from Water District 1 could probably also address that issue. **Mr. Bingham** said that he agrees that if they quit recharging that would be a problem. They need to keep doing incidental recharge. He added that the springs at Hagerman and American Falls, as well as dried up wells, are the ones suffering. **Mr. Bingham** added that he believes they need to also address domestic wells and use in the future.

Mr. Stan Hawkins, former Idaho State Senator, Harrison Canal Co., and member of the Committee of Nine, was the next speaker to address the Committee. He told the members that he is often asked why the aquifer is in trouble and he responds that it is because of conversion to sprinklers. **Mr. Hawkins** stated that a lot of people want to blame ground water pumpers but it is not the fault of ground water pumpers – it is the fault of sprinklers. He asked the Committee members why they would want to do anything to encourage further conversion to sprinklers. **Mr. Hawkins** noted that in his area, they flood irrigate and discourage conversion to sprinklers.

Mr. Hawkins also told the Committee that they believe the budget for recharge is quite overstated. He recounted the spring recharge where they put 100 kaf of water in the ground and it didn't cost anywhere near the amount projected in the CAMP proposal. He concluded that the users in his area spend money for storage and for the water district and they do not think they should be further taxed, that other tools could be used.

Senator Coiner asked **Mr. Hawkins** what would happen if they were to divert twenty percent less water. **Mr. Hawkins** responded that typically that would extend the growing season. **Senator Coiner** then said that he was having difficulty following their logic, that it baffled him that they wouldn't want to enhance that water right to extend their season. He went on to say that they wouldn't get as much returning to the aquifer but the water they would save due to conversions would go to the next water user – the water isn't going to just be lost. **Senator Coiner** continued, stating that his point is that if they were to change their delivery system so that they would divert less water, they could satisfy

their beneficial use with less water due to the savings from conversions. **Senator Coiner** added that just because the water doesn't get to the aquifer, doesn't mean that that water is lost to the system. **Mr. Hawkins** responded that in his opinion the result is less water for recharge and more water leaving the state.

The Committee recessed for lunch from Noon to 1:30 p.m.

Public testimony continued following lunch. **Mr. Lyle Swank**, Water Master for Water District 1, was the first speaker to address the Committee. **Mr. Swank** noted that a healthy aquifer is essential to agriculture. He said he supports the CAMP process as the best way to keep the water supply and demand component in balance. **Mr. Swank** continued that managed recharge needs to be a big part of the process. In terms of the funds collection mechanism, **Mr. Swank** told the Committee that using the county option makes the most sense to him. He stated that water districts in Idaho are legally responsible for collecting from water users. He went on to say that water districts have depended on counties for keeping track of irrigated acres and transfers. If the fairest way to pay for CAMP is per acre, he said, then counties that update per assessors have the best information for collection. **Mr. Swank** stated that water right adjudication is a snapshot in time. Many do not include updates but counties have this information. **Mr. Swank** also reminded the Committee that there is also the problem with overlapping water rights. Some have up to four delivery sources. Some would pay four times for the same land. **Mr. Swank** said that if you go by irrigated acres, you eliminate that problem.

In terms of collecting for delinquent assessments, **Mr. Swank** stated that the county method of collecting, with their appeal process, presents a better way of dealing with that concern. All counties have multiple entities that they collect for already. **Mr. Swank** told the Committee that it would be easy to provide ESPA boundaries and the counties could overlay this information on their records. **Mr. Swank** said that he has discussed the issue with various other water masters and they all have a strong preference for the county method.

In response to a question by **Representative Wood**, **Mr. Swank** stated that most counties have irrigated acreage numbers. **Representative Wood** stated that, in that event, perhaps it wouldn't prove so expensive to the counties.

Mr. Randy MacMillan, Clear Springs Foods, was the next speaker to address the Committee. He told the Committee that Clear Springs Foods is the largest rainbow trout producer in the world. They believe there is a continuous need for aquifer improvement. He said that in Box Canyon, they had the lowest flow on record this June. He said that many spring users continue to hope CAMP will be successful in rebalancing the aquifer. **Mr. MacMillan** stated that his only request of the Committee is that they provide time for the CAMP Implementation Committee to address the issues we've heard about.

Mr. Lynn Tominaga, Idaho Ground Water Appropriators Association, told the Committee that they will be leasing water from users in the Great Feeder area and that should help them pay any assessed fee. **Mr. Tominaga** said the group is trying to work

toward solutions. He said that they need facilities to take a lot of water in a short period of time for recharge purposes. He concluded by saying that CAMP is the first time where they have all come together to work together, rather than incur a lot of costs in litigation with no solution being put on the ground.

Senator Coiner asked **Mr. Tominaga** if the leasing would be done for mitigation purposes. **Mr. Tominaga** responded that it would but also could be for some of the conversions going on in CAMP. In response to another question by **Senator Coiner** relating to auditing, **Mr. Tominaga** responded that the issue of auditing in regard to mitigation is really a water rights administration issue rather than an issue relating to CAMP. He told **Senator Coiner** and **Representative Wood** that he would be pleased to talk with them after the meeting regarding accounting and added that the ground water districts are working to make sure accounting is done accurately in the future.

Mr. Darrell Kerr provided the next public testimony. He stated that he agrees that something has to be done. **Mr. Kerr** stated that in his opinion the flood irrigator is the one who has to pay the majority of the bill. No one has explained this to him. **Mr. Kerr** also expressed an objection to the administration fees for the CAMP effort. **Mr. Kerr** also mentioned the costs associated with spring recharge. He added that in his experience he needs 10 af of water for a crop with only 2 af getting to the crop – the rest goes into the ground to benefit others. He told the Committee that he doesn't know if it is wise to spend all the money that is being requested.

Mr. Brian Olmstead, Manager of Twin Falls Canal Co., was the next speaker. **Mr. Olmstead** stated that agriculture drives the state economy and that the ESPA drives at least half of the agricultural production in the state. He testified that the aquifer is just a reservoir - like surface reservoirs - and they have been paying maintenance fees on those for many years. **Mr. Olmstead** said that he believes everyone gets a benefit from maintaining the aquifer. He stated that leaky canals are good places for recharge and in many cases they may get as much back as they put in. He also says that in the past they did not like sprinklers on their system but things are changing and sprinklers are coming for all parts of the state. Sprinklers allow users to grow more with less water. He asked for the Committee's continued support of CAMP. He added that it will not be fast or perfect but it is worth the fee.

Mr. Dean Stevenson, Magic Valley Ground Water District and CAMP Committee, provided the final public testimony. **Mr. Stevenson** told the Committee that they are one of the water districts that have the counties collect for them now. He noted that the initial set-up takes some time but once classifications are established you then just have to reconcile ownership changes. He said that fees for collecting have been under one percent after the initial set-up. **Mr. Stevenson** said that he believes that over time, this is the cheapest method to do collections. In regard to credit for incidental recharge, **Mr. Stevenson** stated that if you start charging different rates you have to backfill. He then asked, once you start that where do you stop. He also reminded the Committee that crops use different amounts of water.

In response to a question by **Senator Bair**, **Mr. Stevenson** stated that the only issue they have really run into is that there are different measurements of acreages. There may be discrepancies. He said they chose to go with what the county thinks. If there was a problem they would just take it up with the county.

Representative Bedke asked **Mr. Stevenson** about the concerns of some of the users in the Upper Valley. **Mr. Stevenson** responded that there is nothing that is fair, even on an all surface system. He stated that on private wells he pays for what he lifts. However, if he is in a system, he pays the same no matter what he takes. It isn't fair right now, assessing or administering. **Mr. Stevenson** said that he doesn't know how you give credit for something that is already happening. He asked where you draw the line. He added that he understands it is complicated but he asked, how many factors do you look to.

Mr. Anderson addressed the Committee following public testimony and reiterated that the underlying premise of CAMP has been based on providing equitable benefit for everyone. He said that, for those in the upper part of the system, they have distinct advantages to being in that part of the system. One benefit is managed recharge programs. He told the Committee that the leaky canal system is a huge benefit to them and they made quite a bit of money for that recharge. There is a big incentive for them to continue to use those canals. This may be available in the fall as well. He added that the other thing that benefits them the most is the weather modification program. **Mr. Anderson** said that because they are high in the system with early priority dates, they will have additional water based on that program. Idaho Power is working on that issue. **Mr. Anderson** said there will be additional natural flow water and they will not have to use as much storage water.

In terms of the weather modification program, **Representative Wood** asked **Mr. Anderson** what happens in a drought year. **Mr. Anderson** responded that, as they move through and improve the hydrology of the system, in those years where there is more water there should be more water in storage. **Mr. Anderson** said that even in drought – weather modification will increase available water – it may be less but will still increase it.

Cochairman Senator Schroeder asked **Mr. Anderson** what impact there will be on CAMP if **Judge Redden** does something to impact the Lower Snake. **Mr. Anderson** responded that if there is more demand on the Snake River system, it will put them in a very difficult situation. One possibility would be to build Galloway Dam. **Cochairman Senator Schroeder** asked what the status was on Galloway Dam. **Mr. Anderson** responded that they are working with a private entity and that there is some interest in funding feasibility studies. Some site assessment studies were done, the last one in 1993 by the Corps of Engineers. Those were very specific as to what they wanted to accomplish but are now outdated. **Mr. Anderson** said that they would be building on what has already been done.

Representative Stevenson noted that the Implementation Committee needs some direction. **Representative Stevenson moved that the Interim Natural Resources**

Committee accept the ESPA Implementation Committee’s conceptual plan to fund the ESPA Plan through a mandatory fee assessed either by the water districts and/or counties and/or other methods and request that the Implementation Committee develop legislation consistent with the conceptual plan for consideration at the next legislative session. The motion was **seconded by Senator Coiner**. The **motion carried** by unanimous voice vote.

Mr. Jim Unsworth, Deputy Director – Programs, Idaho Department of Fish and Game, was the next speaker and provided Committee members with an update relating to wolf management in Idaho.

Last year there were eight hundred and fifty wolves, in ninety packs, with forty documented breeding pairs. In Idaho through the last fifteen years, there is a net population increase of about twenty percent. He noted that their estimate is that there are over one thousand wolves in Idaho today. From a depredation standpoint he referenced the data on page 3 of the August Wolf Depredation and Wolf Mortality report in the handout provided. **Mr. Unsworth** summarized that control actions are tracking similar to last year. He stated that **Mr. Todd Grimm**, Wildlife Services, indicated that they have removed eighty-one wolves and five additional wolves just over the border in Montana. Last year between October and December they took about seventeen wolves, so the estimate in control actions is for around one hundred for this calendar year.

Cochairman Senator Schroeder commented that yesterday the Governor had the “Capitol for a Day” program in Kendrick. He said there isn’t an adequate count in several areas because we can’t land a plane there. He asked **Mr. Unsworth** if he has taken this into account. **Mr. Unsworth** stated that a minimum estimate is one thousand wolves. If more information regarding backcountry populations became available, he believes that would add a couple hundred more. If all the wolves could be accounted for, even outside the backcountry, we could have up to two thousand. He restated that their estimates are minimum estimates.

In response to an inquiry by **Representative Wood**, **Mr. Unsworth** stated that we are allowed to count the wolves in the wilderness areas. However, they cannot do management in the wilderness areas in terms of collaring simply because of the terrain involved. **Mr. Unsworth** also confirmed that the Nez Perce are monitoring and doing their part.

Mr. Unsworth told the Committee, in terms of depredation, that the numbers are down a bit for cattle but up a bit for guard dogs and sheep. He indicated that the numbers are tracking similar to last year.

Mr. Unsworth reminded the Committee that the hunting season statewide limit is two hundred and twenty wolves. He said that there are twelve management zones around the state with the two hundred and twenty divided up between zones. There are higher management levels where there has been more livestock depredation. He also stated that there are lower numbers for areas near Yellowstone due to the connectivity with the park.

He said that four zones are open so far with a harvest of eight wolves. One wolf was poached. **Mr. Unsworth** predicts that when deer and elk seasons open they will start seeing more wolves harvested. Despite this, **Mr. Unsworth** said that he doesn't think we will fill the quota due to land size and the backcountry. He thinks they will be close on some of the more open habitats.

Mr. Unsworth noted that the Commission meets in November and will evaluate how the season is going. It may be extended in some areas.

In response to a question from **Cochairman Senator Schroeder**, **Mr. Unsworth** said the Department makes some allowances relating to the twenty-four hour check-in time, for those hunters that are in the backcountry. They would be allowed to keep the wolf.

Mr. Steve Strack, Deputy Attorney General, Natural Resources Division, was the final speaker to address the Committee. **Mr. Strack** updated the Committee on the status of wolf related litigation in federal court in Montana. He told the Committee that **Judge Malloy** determined that the measure of harm is not whether an individual wolf is killed but the effect of the kill on the population. He said that they were able to convince the judge that this hunt would not affect the population. **Mr. Strack** said that they are probably looking at a trial date in March, 2010. According to **Mr. Strack**, the judge did say he saw some problems with delisting in terms of technical issues relating to delisting, given the removal of Wyoming from the three state analysis.

Mr. Strack confirmed for **Cochairman Senator Schroeder** that, in the event wolves wander into a state that is presently listed, their status does, once again, change to endangered.

Representative Moyle asked what the chances are that **Judge Malloy** will put wolves back on the endangered list given the Wyoming situation. **Mr. Strack** said that he could not predict but that Wyoming has dug in their heels and he doesn't see how they can win their case. **Representative Moyle** followed up, asking if there has been an effort to communicate with Wyoming in order to determine the potential for progress. **Mr. Strack** stated that the changes that Wyoming has to make are minimal but he believes they wish to fight it out in court.

Mr. Strack confirmed for **Cochairman Senator Schroeder** that Oregon and Washington have management plans but they have not been through the approval process yet.

Senator Siddoway asked **Mr. Unsworth** how many tags have been sold. **Mr. Unsworth** stated that 16,500 tags have been sold so far. **Mr. Unsworth** believes there could be as many as 25,000 ultimately sold. **Senator Siddoway** commented that he was disappointed that the quota was not set at a much higher level than two hundred and twenty. **Cochairman Senator Schroeder** commented that the Commission was in somewhat of a spot and he is pleased that we have at least started a season.

Reflecting back to the CAMP issues, **Senator Coiner** responded to **Representative Bedke** that, in his opinion, he thinks we should choose not to accept the responsibility relating to the issue of credits but leave that to the CAMP process and the people that have been dealing with the issues for three years.

Cochairman Raybould adjourned the meeting at 3:30 p.m.